



PRE-HEARING MEETING DECISION REPORT

Parsons Creek Aggregates
Limestone Quarry
Regional Municipality of Wood Buffalo

NRCB Application No. 1001

Pre-Hearing Meeting
Fort McMurray, Alberta

August 14, 2013

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1. Introduction

On June 8, 2010, Parsons Creek Aggregates (the Applicant or PCA) filed an application with the Natural Resources Conservation Board (NRCB) and Alberta Environment requesting approval to construct, operate and reclaim a limestone quarry in the Regional Municipality of Wood Buffalo near Fort McMurray (the project). Parsons Creek Aggregates is a joint venture between Graymont Western Canada Inc. and Lehigh Hanson Materials Limited.

On January 16, 2013, Alberta Environment and Sustainable Resource Development's Acting Environmental Assessment Team Leader confirmed the completeness of the Environmental Impact Assessment report for this project, pursuant to Section 53 of the *Environmental Protection and Enhancement Act*. The Board issued a Notice of Application dated February 18, 2013 asking that parties having concerns or objections to the project file a written submission with the Board. The Board received written objections from Alberta Transportation, the Regional Municipality of Wood Buffalo and JH Drilling Inc. Alberta Transportation conditionally withdrew its objection by letter dated June 21, 2013.

The NRCB issued a notice dated July 8, 2013 (*Joint Notice of Pre-Hearing Meeting and Notice of Hearing*) informing parties that a hearing may be conducted and inviting submissions from parties wishing to make presentations at a pre-hearing meeting. The pre-hearing meeting was scheduled to hear representations respecting certain procedural aspects of the hearing.

The agenda items for the pre-hearing meeting included:

- a) a discussion of the major issues to be examined at the hearing;
- b) the appropriate scope and jurisdiction of the review;
- c) the appropriate timing and location for the hearing and filing deadlines for hearing submissions;
- d) a discussion of procedures to be followed at the hearing;
- e) consideration of intervener funding applications made by eligible persons; and
- f) other matters.

Parties were invited to make submissions on these agenda items and were advised that eligible persons who are or may be directly affected by the proposed project could also apply for advance intervener funding to assist in preparing and presenting an intervention.

The Panel established to consider this application included Vern Hartwell (Panel Chair), and members, Jim Turner and Donna Tingley. The Panel held a pre-hearing meeting at the Sawridge Inn and Conference Centre in Fort McMurray, Alberta on August 14, 2013. The following parties participated in the pre-hearing meeting:

- Parsons Creek Aggregates, represented by Ron Kruhlak, Q.C.
- JH Drilling Inc., represented by John Harms

2. Submissions

Three parties filed pre-hearing submissions by the established August 2, 2013 deadline. These parties were:

- Regional Municipality of Wood Buffalo,
- JH Drilling Inc., and
- PCA.

All pre-hearing submissions filed in advance of the meeting were entered into the record as exhibits to the proceeding. All parties to the review were also provided copies of each other's submissions. On August 13, 2013, the Regional Municipality of Wood Buffalo indicated in writing that it was withdrawing its objection to the project and as a consequence would not be attending the pre-hearing meeting.

At the pre-hearing meeting each party was given an opportunity to discuss the agenda items detailed in the *Joint Notice of Pre-Hearing Meeting and Notice of Hearing*. This report summarizes participants' views and presents the Panel's decision in response to the pre-hearing submissions.

JH Drilling Inc.

JH Drilling Inc.'s (JHD) submission identified a number of issues related to the interest it has as the applicant in Surface Materials Lease (SML) application 090054. JHD alleged that PCA failed to adequately consult with JHD and that PCA was actively thwarting Alberta Environment and Sustainable Resource Development's (ESRD) processing of SML application 090054. JHD advised the Board that ESRD was suspending its consideration of SML application 090054 until it receives and considers the NRCB decision report on the PCA application. JHD also expressed the concern that should the NRCB approve the PCA application, JHD would then "lose its SML application" in the ESRD process.

JHD provided a copy of the *Alberta Aggregate (Sand and Gravel) Allocation Policy for Commercial Use on Public Land* to the Board. The policy document, as issued by Alberta Sustainable Resource Development, sets out the process and criteria to allocate sand and gravel "**for commercial use on public land in a fair, comprehensive and timely manner that optimizes benefits for Albertans.**"

JHD filed a Statement of Claim in the Court of Queen's Bench of Alberta in relation to its interest in SML application 090054, naming PCA as one of the defendants. A copy of that Statement of Claim as provided to the Board by PCA, asserted many of the same issues that JHD raised in the NRCB process with greater detail than JHD's submission to the NRCB pre-hearing meeting.

JHD expressed that it may not have an interest in the Board proceeding to a hearing on the PCA application if the Board were to state that it had "*not examined the land issues....or we issue it without prejudice to the land issues.*"

JHD stated that should the Board hold a hearing, it should do so as soon as possible. As to the procedures to be followed at the hearing, JHD encouraged the Board to adopt a process that would provide for requiring or compelling disclosure from the Applicant.

Parsons Creek Aggregates

PCA provided the Board with a *Preliminary Submission of Parsons Creek Aggregates in Response to Objections Raised by JH Drilling Inc.*, within which PCA asked the Board to dismiss JHD's objections and proceed to a decision without the need for a formal hearing.

PCA asserted that JHD's objections were beyond the jurisdiction of the NRCB and that JHD was not a "directly affected" party within the meaning of the *Natural Resources Conservation Board Act*. The Applicant asserted that the NRCB has a mandate to determine whether a project is in the public interest considering its social, economic and environmental effects and that the objections raised by JHD which relate to a commercial dispute between parties, rights in land, and the past actions of ESRD fall outside that mandate.

PCA submitted in the alternative, that should the Board find that JHD is a “directly affected” party it should dismiss the JHD objections as they “*are without merit, vexatious, and could be more efficiently and economically addressed outside of a formal hearing process.*” PCA stated that the interests of JHD would not be prejudiced by a dismissal of its objections, as JHD is actively pursuing the same remedies in the court system and with ESRD.

PCA stated that should the Board determine that a hearing was necessary that it be held as soon as possible and that Edmonton may provide a more convenient forum. It further stated that the NRCB’s current review practices provide for adequate disclosure.

3. Board Views

While the agenda established by the Board in advance of the pre-hearing meeting included a number of issues, by the time of the pre-hearing meeting it became clear that JHD’s standing would be the primary focus of the meeting. Both parties provided written materials and oral argument addressing this issue.

Generally objections filed with the Board in relation to a reviewable project take issue with identified adverse effects associated with the development of the project. The JHD objections differ in that no issue was taken with the social, economic or environmental effects associated with the proposed PCA quarry project. Rather, the JHD objection was founded largely on a concern that should the NRCB approve the PCA limestone quarry, ESRD may decline to approve SML application 090054.

The sole stated objective of JHD was to have ESRD issue SML application 090054 so that it may proceed with sand and gravel recovery operations. The evidence before the Board was that ESRD had deferred the processing of SML application 090054 until such time as the NRCB issued reasons for its decision on PCA’s application. Presumably, the basis for ESRD’s action was that the sand and gravel identified in SML application 090054 overlies a portion of PCA limestone quarry lands included in the project.

JHD stated that the relief it would seek from the NRCB would be that the NRCB not make any determination on land issues detrimental to JHD’s interest in SML application 090054. Having regard for all of the JHD submissions, the Board understands that JHD’s concern is that the NRCB decision might include a determination regarding the merits of SML application 090054. The Board finds that this concern does not have merit. The Board review mandate is limited to the assessment of the project advanced by PCA and as such it does not include the potential to comment on SML application 090054.

The Board must consider whether the PCA project as described in the application to the NRCB may preclude the potential for JHD to pursue the sand and gravel in SML application 090054. Having regard for the PCA application, including the phased development plan, the Board has no evidence to suggest that the PCA project would preclude ESRD’s consideration of SML application 090054. Further, the evidence provided by JHD is that the *Alberta Aggregate (Sand and Gravel) Allocation Policy for Commercial Use on Public Land* would encourage sand and gravel recovery where there is pending or approved development activity that puts the aggregate deposit in peril. Specifically, that policy document states that when there are “*aggregate deposits of any size that are located in areas where there is pending or approved development activity.....Sustainable Resource Development may issue surface material leases of any size, to any party, in order to liquidate the deposit and make the most beneficial use of the resource.*” ESRD is solely responsible for deciding on SML application 090054.

The Board’s mandate does not extend to considering the merits of SML application 090054. A reasonable explanation for ESRD’s deferral of the SML application 090054 may be that ESRD wants to

have the benefit of the Board's assessment of the social, economic and environmental effects associated with the PCA project, as it has a common footprint with JHD's sand and gravel interest.

The balance of the objections raised by JHD amount to matters of commercial dispute between potentially competing entities in the aggregate supply business. As such, these are matters for negotiation or litigation directly between the parties and are beyond the NRCB mandate.

The NRCB finds that JHD has not established that it is a "directly affected" party as intended by the *Natural Resources Conservation Board Act*. Consequently the objections filed by JHD are dismissed.

4. Next Steps

As there are no outstanding objections from a directly affected party, the Board hereby cancels the hearing and will proceed directly with its consideration of PCA's application. During the course of its deliberations the Board may seek further clarifications from PCA. The Board will issue its written decision with reasons in a timely manner.

DATED at Edmonton, Alberta on September 5, 2013.

NATURAL RESOURCES CONSERVATION BOARD

Original signed by:

Vern Hartwell
Panel Chair

Jim Turner
Panel Member

Donna Tingley
Panel Member