ALBERTA SAND & GRAVEL ASSOCIATION

June 12, 2020

Hon. Jason Nixon, MLA
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Edmonton, AB
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Minister Nixon,

In early May, the Alberta Court of Appeal provided a ruling affecting sand and gravel pits. This decision was rendered in relation to the Big Molly frac sand operation in Lac Ste. Anne County. The decision means that under the Environmental Protection & Enhancement Act, there is a strong possibility that gravel pits would have to be considered quarries, instead of having its own classification

Based on the ruling, any new sand and gravel applications to Alberta Environment & Parks could be evaluated as a quarry. Quarries producing more than 45,000/tonnes per year are required to complete an Environmental Impact Assessment (EIA).

EIA's are typically reserved for large resource projects, not sand and gravel pits. Regulation and policy on a modified EIA process for gravel pits would take significant time to develop and adversely affect the industry.

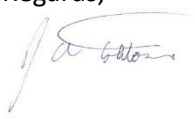
Based on this, attached are recommendations suggested to remedy the situation. The goal is ensuring that the sand and gravel industry remains differentiated and unique from quarries, in order to both ensure safe environmental practice and make sure our members can contribute to economic recovery.

The association is aware that numerous sand and gravel pit applications are now on hold a direct result of this decision. The ASGA has communicated this to government. For the sand and gravel community to contribute to Alberta's economic recovery, this business interruption must be minimized and go forward uncertainty must be addressed.

Attached are recommendations suggested to rectify the situation. The goal is ensuring that the sand and gravel industry remains differentiated and unique from quarries, in order to both ensure safe environmental practice and make sure our members can contribute to economic recovery.

Thank you for your consideration. We look forward to continuing the dialogue on this and other permitting issues.

Regards,



John Ashton
Executive Director

Delay in Addressing the Alexis v. Alberta Decision

Currently, AEP has put a hold on all applications that indicate production will be over 45,000 tonnes/year. There are varied approaches amongst regions within Alberta as some are only holding on applications is specific to Registrations and SML's, while some have included Water Act applications (both for Licencing and Approvals).

The following concerns have been identified if the AEP delays a response to the Alexis v. Alberta Decision:

- Further delays on application backlog related to pits. As the review or processing of applications with operations producing more than 45,000 tonnes/year are being put on hold under (*Code of Practice for Pits* and *Water Act)*.
- Financial impact of not being able to access pits with applications put on hold. Such as longer hauling distances.
- Potential shutdown of operations producing over 45,000 tonnes/year. Impacting, jobs, aggregate supply, possible increase of environmental liability (financial security)?
- Impact to the ability to supply Alberta Energy Sector with domestic sand supplies.
- Impact to the ability to supply Alberta Transportation with domestic aggregate for infrastructure projects that have been slated for the economic recovery.
- Creates regulatory uncertainty with pits now being quarries under EPEA.

Recommendation to Address Alexis v. Alberta Decision

The ASGA's Board of Directors and Land and Environment Committee believes the definitions of a pit under Alberta Environment and Parks legislation need to be better aligned. Based on the Alexis v. Alberta Decision and review of AEP's legislation, the Land and Environment Committee present the following recommendations. These are not individual options, but rather a comprehensive plan.

1. Amend the *Environmental Assessment (Mandatory and Exempted Activities) Regulation* to specifically list a 'pit' as a Schedule 2 Exempted Activity.

The *Environmental Assessment (Mandatory and Exempted Activities) Regulation* presently lists a quarry producing more than 45,000 tonnes per year as a Schedule 1 Mandatory Activity. By making the changes in the above recommendations, removal and processing of surface materials should no longer be designated as a quarry. To make things clearer, Schedule 2 Exempted Activities could be amended:

(a) the construction, operation or reclamation of

(vii) a sand, gravel, clay or marl pit that is less than 2 hectares (5acres) in size

changed to:

(vii) a sand, gravel, clay or marl pit

Reasons to support sand and gravel pits from being exempt include:

- There have been 107 EIA's since as early as 1973 with 8 remaining in progress.

EIA by Activity	Completed	In Progress
Coal	8	2
Oil and Gas	88	2
Hydro	2	1
Power Lines	4	0
Aggregate	2	0
Water	2	2
Other	1	1
	107	8

Of the two aggregate EIA's both were extracting limestone, under our proposed recommendations both would still be considered a Quarry.

- Surface material is typically exempted from EIAs.
- Impacts by sand and gravel operations are well understood. Where there are potential impacts, there are studies that can be completed without going through an EIA.

2. Change the definition of '*mineral*' and '*sand*' in *Environmental Protection and Enhancement Act* (EPEA) to align with the definitions used in the *Law of Property Act* and *Minerals Act*.

Presently in EPEA '*minerals*' means all naturally occurring minerals, without limitation and therefore includes sand.

In the Law of Property Act:

58(1) The owner of the surface of land is and is to be deemed at all times to have been the owner of and entitled to sand and gravel on the surface of that land … .

(2) The sand and gravel referred to in subsection (1) is deemed not to be a … mineral … but is deemed to be and to have been a part of the surface of land and to belong to the owner of the surface.

In the Mineral Act:

(p) "minerals" means all naturally occurring minerals, and without restricting the generality of the foregoing, includes

(i) gold, silver, uranium, platinum, pitchblende, … sand, gravel, clay and marl, but
(ii) does not include
(A) sand and gravel that belong to the owner of the surface of land under section 58 of the Law of Property Act,
(B) clay and marl that belong to the owner of the surface of land under section 57 of the Law of Property Act, or
(C) peat on the surface of land and peat obtained by stripping off the overburden,

excavating from the surface, or otherwise recovered by surface operations…

Changing the definition to align with other common legislation will create consistency through various legislation, while creating symmetry between the definition of surface material between the EPEA and the Public Lands Act (PLA).

ASGA does not necessarily have to provide a detailed recommendation for the change of wording, simply advocate for the definition of mineral and sand under EPEA are consistent with the *Law of Property Act* and *Minerals Act*.

3. Revise the definition of 'pit' in EPEA to include the purposes of 'processing'.

Presently the definition only includes the purpose of 'removing'. Given the basis of the decision, incorporating processing activities is an important inclusion. Various terminology could be used, instead of term 'processing', including 'processing' is in the interest of integrating processes and/or activities that occur within a pit.

Activities that could be considered processing could include, but are not limited to: screening, crushing, washing, operation of an asphalt plan or concrete plant (temporary or permanent), and drying. It should be noted if a list is provided, we might limit activities, hence the recommendation to use a generic term/phrase to account for the various activities. The thought was that if a list is required, it might be able to be included in other regulatory guidance document, instead of the legislation.

There was also consideration in using the phrase "working, recovering, opening up, proving" to capture processing activities. This phrase would create consistency in the terminology that is currently used in EPEA.

Example:

> EPEA (xx) "pit" means any opening in, excavation in or working of the surface or subsurface for the purpose of **working, recovering, opening up, proving or** removing sand, gravel, clay or marl and includes any associated infrastructure, but does not include a mine or quarry;

There is uncertainty with the how the above example could impact standalone processing sites. There is a potential that these once standalone facilities may trigger an additional authorization under the *Code of Practice for Pits.* At this time the group supports the inclusion of associated facilities being approved under the Code of Practice for Pits, as major stand-alone facilities may not be the norm, and this may be a non-issue. However, if a concern it could be addressed by:

- By reworking the wording,
- Or implementing a definition of processing sites, such as a crushing or washing site.

Ultimately, we expect AEP to work with legal teams to re-write the definitions, so providing specific examples may not be required at this time.

4. Make the definitions of a 'pit' consistent in EPEA, the Activities Designation Regulation, Environmental Assessment (Mandatory and Exempted Activities) Regulation and the Code of Practice for Pits.

The Court was critical of the different definitions used between the Act and Regs. ASGA should support AEP ensuring consistency between the definitions, while ensuring that processing material is captured in the definition (recommendation 3).

5. Change the EPEA definition of a 'quarry' by adding the highlighted bold text.

(ccc) "quarry" means any opening in, excavation in or working of the surface or subsurface for the purpose of working, recovering, opening up or proving

> *(i) any mineral other than* ***surface materials (sand, gravel, clay, marl, and peat)****, coal, a coal bearing substance, oil sands or an oil sands bearing substance, or*
>
> *(ii) ammonite shell,*
>
> *and includes any associated infrastructure*

This change should exclude any aggregate development from being classed as a quarry and subject to a mandatory EIA.

It has been noted that failure to help standardize the definition of a pit may impact other initiatives and work (ASGA's Health and Safety Committee). Advocating for changes to the definition of a pit under Alberta Environment's legislation could be completed by one or a combination of the following options.

6. Producer election to pursue EIA

ASGA would support a modification to the Environmental Assessment (Mandatory and Exempted Activities) Regulation which would allow a sand and gravel applicant, at their sole election, to elect to pursue an EIA process. The ASGA views this as a means to ensure thorough review of the merits of a resource project if deemed desirable by the applicant.