

ALBERTA ENVIRONMENTAL APPEALS BOARD

Report and Recommendations

Date of Report and Recommendations – March 29, 2018

IN THE MATTER OF sections 91, 92, 95, and 99 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12,

-and-

IN THE MATTER OF an appeal filed by Lafarge Canada Inc. respecting a refusal of Reclamation Certificate Application No. 001-00378282, under the *Environmental Protection and Enhancement Act*, by the Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks.

Cite as: *Lafarge Canada Inc. v. Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks* (29 March 2018), Appeal No. 16-043-R (A.E.A.B.).

BEFORE:

Mr. Alex MacWilliam, Board Chair.

PARTIES:

Appellant: Ms. Caroline Jing, Lafarge Canada Inc.

Landowners: Mr. Glenn and Ms. Patricia Greenhough, and Mr. Neil Kyle, Mr. Gordon Kyle, and Mr. Bruce Kyle.

Director: Mr. John Collins, Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks, represented by Mr. Will Randall and Ms. Nicole Hartman, Alberta Justice and Solicitor General.

EXECUTIVE SUMMARY

Alberta Environment and Parks (AEP) refused to issue a reclamation certificate (the Certificate) under the *Environmental Protection and Enhancement Act* to Lafarge Canada Inc. (the Appellant), in relation to the Mothersole Pit (the Pit), located in Leduc County.

AEP concluded the application did not provide sufficient information regarding the construction and reclamation of a waterbody located to the north of the Pit, which was to be included in the Certificate. The Appellant was required to provide a Detailed Site Assessment regarding the waterbody and written consent from Leduc County to include the County's access road in the Certificate. AEP refused to issue the Certificate. The Appellant appealed this decision to the Environmental Appeals Board (the Board).

The Appellant contended the County's access road was better characterized as an "undeveloped road allowance," such that consent from Leduc County was not necessary. The Appellant also stated the required information regarding the waterbody had already been provided.

The parties conducted a site inspection of the Pit. On the basis of this site visit, the Director notified the Board the deficiencies justifying the initial refusal to issue the Certificate had been appropriately addressed and recommended the Certificate be issued.

The Board wrote to the affected landowners, Mr. Neil Kyle, Mr. Gordon Kyle, Mr. Bruce Kyle, Mr. Glenn Greenhough, and Ms. Patricia Greenhough (the Landowners) and asked them to confirm the deficiencies justifying the initial refusal of the Certificate had been appropriately remedied.

The Board provided a deadline for the Landowners to advise the Board of any concerns they had with the issuance of the Certificate. The Board did not receive a response from the Landowners, and as a result, the Board recommended the Certificate be issued.

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I. BACKGROUND

[1] On October 28, 2016, the Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks (the “Director”), refused Reclamation Certificate Application No. 001-00378282 (the “Certificate”) submitted by Lafarge Canada Inc. (“the Appellant”) for the Mothersole Pit (“the Pit”), pursuant to the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”). The Pit is located at NW 3 and S 24-51-03-W5M, in Leduc County, Alberta.

[2] The Director indicated a Detailed Site Assessment needed to be provided by the Appellant regarding the waterbody located to the north of the Pit. The Appellant was also required to provide written consent from Leduc County authorizing the inclusion of a County road in the proposed Certificate.

[3] On November 25, 2016, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from the Appellant appealing the refusal. The appeal was brought on the basis that appropriate information regarding the land in the proposed Certificate, including the waterbody, had already been provided by the Appellant, and the land had already been reclaimed to the satisfaction of the Landowners.

[4] The Board acknowledged receipt of the appeal on November 29, 2016 and subsequently notified the Director and the Landowners of the appeal. The Board requested the Appellant and the Director provide available dates for a mediation meeting, and further requested the Landowners to advise the Board whether they wished to participate in the appeal, including the mediation.

[5] Discussions between the Appellant and the Director resulted in the scheduling of a site visit. The Appellant’s appeal was held in abeyance until the site visit could be undertaken.

[6] The site visit eventually occurred in September 2017, and an analysis of the waterbody was undertaken. The site visit resulted in the Director concluding the deficiencies noted in the October 28, 2016 refusal letter had been properly addressed, such that the Certificate could be issued.

[7] The Board initially requested the Landowners provide confirmation by January 15, 2018, that they were in agreement with the issuance of the Certificate. On January 26, 2018, the Appellant confirmed its representative had spoken with the Landowners, who did not express any concerns relating to the issuance of the Certificate.

[8] In a letter dated February 7, 2018, sent to the Landowners by registered mail, the Board asked the Landowners to contact the Board if they had any concerns with the Certificate being issued to the Appellant. In its letter, the Board explained that if the Certificate was issued, it could not be appealed. The Board did not receive any responses to this letter.

[9] In a letter dated March 16, 2018, the Board advised the Landowners it would be recommending the Minister issue the Certificate to the Appellant.

II. RECOMMENDATIONS

[10] In accordance with section 99 of EPEA, the Board recommends the Minister of Environment and Parks order that:

1. the Director's decision of October 28, 2016 regarding Reclamation Certificate Application No. 001-00378282 be reversed; and
2. the Reclamation Certificate be issued to Lafarge Canada Inc. for NW 3 and S 24-51-03-W5M.

[11] Pursuant to sections 100(2) and 103 of the EPEA, a copy of this Report and Recommendation and of any decision by the Minister be sent to:

1. Lafarge Canada Inc.;
2. Mr. Glenn and Ms. Patricia Greenhough, and Mr. Neil Kyle, Mr. Gordon Kyle, and Mr. Bruce Kyle; and
3. Ms. Nicole Hartman, Alberta Justice and Solicitor General, on behalf of the Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks.

Dated on March 29, 2018, at Edmonton, Alberta.



Alex MacWilliam
Board Chair



ALBERTA
ENVIRONMENT AND PARKS

*Office of the Minister
Minister Responsible for the Climate Change Office
MLA, Lethbridge-West*

**Ministerial Order
/7/2018**

*Environmental Protection and Enhancement Act
R.S.A. 2000, c. E-12.*

**Order Respecting Environmental Appeals Board
Appeal No. EAB 16-043**

I, Shannon Phillips, Minister of Environment and Parks, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeals Board Appeal No. 16-043.

Dated at the City of Edmonton, in the Province of Alberta, this 11th day of April, 2018.

Shannon Phillips
Minister

Appendix

Order Respecting Environmental Appeals Board Appeal No. EAB 16-043

With respect to the October 28, 2016 decision of the Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks, to refuse to issue a reclamation certificate to Lafarge Canada Inc. for Reclamation Certificate Application No. 001-00378282 under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, I, Shannon Phillips, Minister of Environment and Parks, order that a reclamation certificate be issued for Reclamation Certificate Application No. 001-00378282.