

ALBERTA ENVIRONMENTAL APPEALS BOARD

Report and Recommendations

Date of Report and Recommendations – November 19, 2018

IN THE MATTER OF sections 91, 92, 94, 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 the refusal of Reclamation Certificate Application No. 001-00378221, 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* (19 November 2018), Appeal No. 16-044-R (A.E.A.B.).

BEFORE:

Mr. Alex MacWilliam, Board Chair.

PARTIES:

Appellant:

Ms. Caroline Jing, Mr. Moumen Yousri, and Mr. Troy Haggkvist, Lafarge Canada Inc.; and Ms. Michele Corry, Aspen Land Group.

Landowners:

Mr. Wayne Gee and Ms. Mary Lou Gee.

Director:

Mr. John Collins, Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks, and Mr. Nathan Polturak, Environmental Protection Officer, Alberta Environment and Parks, represented by 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 Gee Pit (the Pit), located on private land in Ponoka County.

AEP based the decision to refuse to issue the Certificate on a gravel pit inquiry which identified concerns held by the landowners, Mr. Wayne and Ms. Mary Lou Gee (the Landowners) with the reclamation work performed by the Appellant. The Appellant appealed the decision to the Environmental Appeals Board (the Board).

A mediation meeting was held with the Appellant, the Landowners, and AEP, and a resolution was reached whereby the parties asked the Board to recommend to the Minister the Certificate be issued to the Appellant. The Board accepted the mediated agreement and recommended to the Minister the Certificate be issued.

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I. INTRODUCTION

[1] This is the Report and Recommendations of the Environmental Appeals Board (the “Board”) to the Minister, Alberta Environment and Parks (“Minister”), arising from a mediation held by the Board.

II. BACKGROUND

[2] On October 28, 2016, the Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks (the “Director”) refused Reclamation Certificate Application No. 001-00378221 (the “Certificate”) submitted by Lafarge Canada Inc. (the “Appellant”) for the Gee Pit (the “Pit”), pursuant to the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”). The Pit is located on private land owned by Mr. Wayne Gee and Ms. Mary Lou Gee (the “Landowners”), located at SE 33-042-26 W4M, in Ponoka County.

[3] The Director based the decision to refuse to issue the Certificate on a gravel pit inquiry conducted on August 30, 2016, which identified concerns of the Landowners with respect to the reclamation work performed by the Appellant.

[4] On November 25, 2016, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from the Appellant appealing the refusal. Between December 2016 and May 2018 the Appellant and the Director engaged in discussion.

[5] A mediation meeting was held on November 2, 2018, with the Appellant, the Landowners, and the Director (collectively, the “Parties”).

III. DISCUSSION

[6] The mediation resulted in an agreement between the Parties requesting the Board make a recommendation to the Minister to issue the Certificate.

[7] The Board considers the mediated agreement to be reasonable and recommends the Minister order the Director to issue the Certificate to the Appellant.

IV. RECOMMENDATIONS

[8] In accordance with section 99(1)¹ 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. 001-00378221 be reversed; and
2. a Reclamation Certificate be issued to Lafarge Canada Inc. for the Gee Pit located at SE 33-042-26-W4M.

[9] Pursuant to section 100(2)² of EPEA, a copy of this Report and Recommendations and any decision by the Minister regarding this appeal, are to be provided to:

1. Ms. Caroline Jing, Lafarge Canada Inc.;
2. Mr. Wayne Gee and Ms. Mary Lou Gee; 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 November 19, 2018, at Edmonton, Alberta.

"original signed by"

Alex MacWilliam
Board Chair

1 Section 99(1) of EPEA provides:

"In the case of a notice of appeal referred to in section 91(1)(a) to (m) of this Act or in section 115(1)(a) to (i), (k), (m) to (p) and (r) of the *Water Act*, the Board shall within 30 days after the completion of the hearing of the appeal submit a report to the Minister, including its recommendations and the representations or a summary of the representations that were made to it."

2 Section 100(2) of EPEA provides:

"The Minister shall immediately give notice of any decision made under this section to the Board and the Board shall, immediately on receipt of notice of the decision, give notice of the decision to all persons who submitted notices of appeal or made representations or written submissions to the Board and to all other persons who the Board considers should receive notice of the decision."



ALBERTA
ENVIRONMENT AND PARKS

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

Ministerial Order
43/2018

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

**Order Respecting Environmental Appeals Board
Appeal No. 16-044**

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. 16-044.

Dated at the City of Edmonton, Province of Alberta, this 22 day of November 2018.


Shannon Phillips
Minister

Appendix

Order Respecting Environmental Appeals Board Appeal No. 16-044

With respect to the decision of the Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks (the "Director"), to refuse Reclamation Certificate Application No. 001-00378221, under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, from Lafarge Canada Inc., I, Shannon Phillips, Minister of Environment and Parks, order:

1. The Director's decision to refuse Reclamation Certificate Application No. 001-00378221 be reversed and a Reclamation Certificate be issued to Lafarge Canada Inc.