

# ALBERTA ENVIRONMENTAL APPEALS BOARD

## Decision

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Date of Decision – November 5, 2007

**IN THE MATTER OF** sections 91, 92, and 95 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, and section 115 of the *Water Act*, R.S.A. 2000, c. W-3;

**-and-**

**IN THE MATTER OF** appeals filed by Don Meredith, Paula McGinnis, Laura Peaire, Mike Agostini, Brenda Reddekopp, Jean Morrison, Jana Siminiuk, and Gordon Phillips with respect to *Water Act* Approval No. 00204375-00-00, *Environmental Protection and Enhancement Act* Approval No. 203803-00-00, *Water Act* Licence No. 00203992-00-00 issued to Burnco Rock Products Ltd., and *Water Act* Amending Approval No. 00022289-00-01 and *Water Act* Amending Approval No. 00022289-00-02 issued to Parkland County by the Director, Central Region, Regional Services, Alberta Environment.

Cite as: Issues Decision: *Meredith et al. v. Director, Central Region, Regional Services, Alberta Environment*, re: *Burnco Rock Products Ltd. and Parkland County* (5 November 2007), Appeal Nos. 06-011-030, 032-034, 038-039, 042-049-ID1 (A.E.A.B.).

**BEFORE:**

Dr. M. Anne Naeth, Panel Chair.

**PARTIES:**

**Appellants:**

Mr. Don Meredith, Ms. Paula McGinnis, Ms. Laura Peaire, Mr. Mike Agostini, Ms. Brenda Reddekopp, Ms. Jean Morrison, Ms. Jana Siminiuk, and Mr. Gordon Phillips.

**Director:**

Mr. Tom Slater, Director, Central Region, Regional Services, Alberta Environment, represented by Mr. Bill McDonald, Alberta Justice.

**Approval Holders:**

Burnco Rock Products Ltd., represented by Mr. J. David Brett, Gowling Lafleur Henderson LLP; and Parkland County, represented by Mr. Brian Rimmer.

## EXECUTIVE SUMMARY

Alberta Environment issued *Water Act* Approval No. 00204375-00-00, *Environmental Protection and Enhancement Act* Approval No. 203803-00-00 and *Water Act* Licence No. 00203992-00-00 to Burnco Rock Products Ltd. for the operation of a gravel pit near Duffield, Alberta, and *Water Act* Amending Approval Nos. 00022289-00-01 and 00022289-00-02 to Parkland County in relation to the gravel pit.

Between April 27 and May 23, 2006, the Environmental Appeals Board received 33 Notices of Appeal from 8 appellants. Mediation meetings were held but no resolution was achieved, so the Board scheduled a hearing of the appeals. Burnco requested the issues be identified. The Board received submissions from the parties, and based on the submissions, the Notices of Appeal, and the Board's jurisdiction, the Board determined that the issues to be heard at the hearing were:

1. Do the terms and conditions of the Approvals and Licence (including the terms, monitoring, complaints process, mitigation and remedial measures, and reclamation) adequately deal with the direct, indirect, and cumulative impacts of the project on the environment (including air quality, water quality and quantity, land, noise, and vibrations) and the health of the residents?
2. Did the Approval Holders adequately consider alternative methods, practices, and locations for the project, including the washing and crushing facilities?
3. Were the assessments completed and the baseline data collected for the application appropriate to represent the area and therefore be used as a basis for the Director to apply appropriate terms and conditions?
4. Did the Director consider all other applicable legislation, policies, and programs that could have influenced his decision prior to making his decision to issue the Approvals and Licence?

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## I. BACKGROUND

[1] On March 23, 2006, the Director, Northern Region, Regional Services, Alberta Environment (the “Director”), issued Approval No. 00204375-00-00 under the *Water Act*, R.S.A. 2000, c. W-3, Approval No. 203803-00-00 under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”), and *Water Act* Licence No. 00203992-00-00 to Burnco Rock Products Ltd. (“Burnco”) for the operation of a gravel pit near Duffield, Alberta, and *Water Act* Amending Approval Nos. 00022289-00-01 and 00022289-00-02<sup>1</sup> to Parkland County in connection with the gravel pit.<sup>2</sup>

[2] Between April 27 and May 23, 2006, the Environmental Appeals Board (the “Board”) received 33 Notices of Appeal from the following persons:

Mr. Don Meredith, Appeal Nos. 06-011, 06-012, 06-013, 06-038, 06-039;  
Ms. Paula McGinnis, Appeal Nos. 06-014, 06-015, 06-016, 06-017, 06-018;  
Ms. Laura Peaire, Appeal Nos. 06-019, 06-020, 06-021, 06-042, 06-043;  
Mr. Mike Agostini, Appeal Nos. 06-022, 06-023, 06-024, 06-044, 06-045;  
Ms. Brenda Reddekopp, Appeal Nos. 06-028, 06-029, 06-030;  
Ms. Jean Morrison, Appeal Nos. 06-025, 06-026, 06-027, 06-047, 06-048;  
Ms. Jean Siminiuk, Appeal Nos. 06-032, 06-033, 06-034, 06-048, 06-049; and  
Mr. Gordon Phillips, Appeal No. 06-046,

(collectively the “Appellants”)<sup>3</sup> appealing the Approvals and Licence.

[3] Between May 1 and 23, 2006, the Board wrote to the Parties acknowledging receipt of the Notices of Appeal and notifying the Director and Approval Holders of the appeals. The Board requested the Director provide the Board with a copy of the records (the “Record”) relating to these appeals and the Parties provide available dates for a mediation meeting, preliminary meeting, or hearing.

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<sup>1</sup> In this decision, the Board will refer to *Water Act* Approval No. 00204375-00-00, EPEA Approval No. 203803-00-00, *Water Act* Licence No. 00203992-00-00, and *Water Act* Amending Approval Nos. 00022289-00-01 and 00022289-00-021 collectively as the “Approvals and Licence.”

<sup>2</sup> In this Decision, collectively, Burnco and Parkland County will be referred to as the “Approval Holders.”

<sup>3</sup> In this Decision, the Appellants, Approval Holders, and Director will be referred to, collectively, as the “Parties.”

[4] According to standard practice, the Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board asking whether this matter had been the subject of a hearing or review under their respective legislation. Both boards responded in the negative.

[5] On June 5, 2006, the Board received a copy of the Record from the Director, and on June 13, 2006, the Board forwarded a copy to the Appellants.

[6] On July 12, 2006, Ms. McGinnis applied for a Stay of the Approvals. The Board asked the Appellants to respond to the Stay request.<sup>4</sup> The Appellants provided their responses between July 24 and 26, 2006. The Board notified the Parties on August 8, 2006, that the Stay request was denied, and the Board provided its reasons for the denial in the same letter.

[7] After canvassing for the most suitable date, the Board notified the Parties that a mediation meeting would be held on August 16, 2006. The Mediation Meeting was held on August 16, 2006, and a series of subsequent meetings were held (September 10, 2006, January 11, 19, and 23, 2007, and February 12, 2007) in an attempt to resolve the issues. No resolution was reached, and on August 17, 2007, the Board notified the Parties that the appeals would be proceeding to a Hearing on December 12 and 13, 2007.

[8] On August 10, 2007, Burnco requested that issues be set for the Hearing. The Board set the submission process, and submissions were received from Ms. Laura Peaire, Mr. Mike Agostini, Ms. Paula McGinnis, Ms. Brenda Reddekopp, Ms. Jana Siminiuk, Burnco, and the Director on September 12, 2007, and response submissions, including a submission from Parkland County, were received from September 19 to October 1, 2007. Ms. Reddekopp provided her response submission on October 5, 2007. The Board did not receive submissions from Mr. Don Meredith, Ms. Jean Morrison, or Mr. Gordon Phillips.

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<sup>4</sup> In the Board's letter of July 14, 2006, the Appellants were asked to provide responses to the following questions:

- “1. What are the serious concerns that the appellants have that should be heard by the Board?
2. Would the appellants suffer irreparable harm if the Stay is refused?
3. Would the appellants suffer greater harm for the refusal of a stay pending a decision of the Board on the appeal, than BURNCO Rock Products Ltd. and Parkland County would suffer from the granting of a Stay; and
4. Would the overall public interest warrant a Stay?”

[9] On October 31, 2007 the Board notified the Parties of the issues that will be heard at the Hearing.

## **II. SUBMISSIONS**

### **A. Appellants**

#### 1. Ms. Laura Peaire

[10] Ms. Peaire was concerned with the application process and questioned the accuracy of the material relied on for the Approvals and Licence. She noted a map supplied by Burnco was not accurate. She questioned the Director's verification of information provided by the Approval Holders before he made the decisions, asking if he received all requested information, such as further details into reversing adverse effects on groundwater. She stated the Director had regular communication with the Approval Holders but limited communication with residents and Statement of Concern filers. She expressed concern that Burnco had the opportunity to outline its own approval but the Statement of Concern filers were not involved. Ms. Peaire questioned why an Environmental Impact Assessment was not required since it would have provided for public involvement in the review process and a prediction of environmental, social, economic, and cultural consequences of the project.

[11] Ms. Peaire questioned whether potential and cumulative impacts were considered by the Director as required in the *Water Act* and EPEA. According to Ms. Peaire, the Director explained that Alberta Environment "...cannot and does not refuse applications, that they only make conditions.... Alberta Environment does not consider potential or cumulative effects, they only look at the application on the table."<sup>5</sup> Ms. Peaire asked whether the approved project, including cumulative and long term impacts, fits into the Water for Life Strategy. She questioned whether there is a connection between aquifers in the region and the effect this would have on area residents. Ms. Peaire explained the project borders two rural multi-parcel residential subdivisions. She asked if the Director considered the location and size of the land

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<sup>5</sup> Ms. Laura Peaire's submission, dated September 12, 2007, at page 2.

required for the project, that Burnco owns or leases an additional five quarter sections in the area, and that similar activities in the area are imminent.

[12] Ms. Peaire had numerous issues with the monitoring program. She questioned whether submitting an annual report is sufficient since potential problems could intensify over that time. She asked whether Burnco's groundwater monitoring program proposal was received by March 31, 2006, and questioned why it was not due until after the Approvals and Licence were granted. She asked whether the Director has sufficient means to monitor groundwater, who is responsible for monitoring dust and noise levels of Burnco's operations, and whether public safety is ensured.

[13] Ms. Peaire was concerned with the complaint process. She stated Approval No. 203803-00-00 does not provide conditions to address complaints, and she asked when residents would be advised of the complaint process. She questioned the complaint investigation clause in Licence No. 00203922-00-00. She asked why a distance was not specified in the Licence and if the Director had specified a distance for which Burnco would be required to provide contact names and numbers of its representative. She stated the gravel pit is located adjacent to a multi-parcel subdivision and the specified distance should include these residents. She questioned whether only written complaints would be accepted and what allegations of surface water and groundwater interference the Director would accept. She argued that any disturbance to a domestic well must be rectified immediately, and the onus should not be on the residents. She stated that residents should not require approval from the Director to have problems fixed. Ms. Peaire questioned why the complaint system only applies to water and not dust, noise, health, and wildlife concerns.

[14] Ms. Peaire had various water issues. She questioned information the Director received regarding the wetlands and whether the project will affect watercourse X and Y, Mink Creek, Muskeg Leg, and the Bellhouse Water Management project. She questioned why an extra 124 m<sup>3</sup> of water per day was approved when the application and newspaper advertisement was for 50 m<sup>3</sup> per day, and the aquifer flow rate is estimated at 80 m<sup>3</sup> per day. She was concerned how this increased rate of diversion would affect the aquifer, water users, and the watershed. Ms. Peaire stated the Westland Park Community Hall well was likely to be affected. She asked about protective measures in place and if they include the water system and

equipment. Ms. Peaire noted Burnco's request for an exemption of the 60 metre buffer zone along a watercourse, and questioned whether watercourse X and Y were included in the exemption.

[15] The Appellant raised various other concerns. She questioned the berms, whether stockpiling would be monitored, and if the stockpiles are satisfactorily stabilized from erosion. She questioned the dust suppressants to be used. Ms. Peaire stated the noise, dust, and emissions from the equipment and trucks detract from the use and enjoyment of the Westland Park Community Hall. She asked whether the pit will be reclaimed by November 1, 2008, the date the Approval expires, and if there would be any ramifications if it is not. Ms. Peaire raised the issue of health concerns and noted studies provided included averages and were based on urban levels, not rural.

2. Mr. Mike Agostini

[16] Mr. Agostini had numerous water issues. He explained water from the extraction site and pit flows over his land. He questioned the impact on the aquifer and if disrupting the groundwater flow would affect his property, creeks, and lakes. He expressed concern that disruption and altering surface and groundwater flows could affect fish on his property. He explained the lake and creeks on his property are spring fed and asked whether Burnco's consultant accurately identified the number of natural springs on his property. He wanted to know when Burnco intended to consult him and explain its proposal to modify the lake outlet and proposed pipe installation to measure flow from the outlet. He questioned why the proposal was presented to the Director before discussing it with, and receiving consent from, the landowner. Mr. Agostini indicated modifications may not be desirable and again expressed concerns about his lake and creeks. He stated that since the monitoring well was drilled north of his property, the lake level has gone down, which has never happened before, even in dry years. He questioned why the lake level would be down.

[17] Mr. Agostini expressed concern regarding dust, noise, and health risks associated with the project, and the effect extraction and processing would have on wildlife living and viewed on his property.

3. Paula McGinnis

[18] Ms. McGinnis expressed concern that cumulative impacts were assessed on this one application only, and questioned long term cumulative impacts of the project in isolation and in conjunction with applications likely to follow. She questioned whether information relied on by the consultants and the completed assessments are still valid, given the scope and magnitude of the application may have changed in the past six years. She noted the baseline study was completed in winter during a drought year. Ms. McGinnis submitted that alternatives should be considered before allowing this type of operation in a rural residential operation. She raised the issue of section 60 of EPEA and whether it has been resolved to the satisfaction of the Appellants and the community.<sup>6</sup>

[19] Ms. McGinnis questioned whether Federal legislation that applies to the application, the Water for Life Strategy, and the Alberta Strategic Business Plan were considered in processing the application. She submitted that “quality of life” under the Water for Life Strategy should include physical and mental health, safety, use and enjoyment of property, and property value, and that each of these topics should be a separate issue for the hearing. She asked how the Water for Life Strategy is being implemented in this application and how the Director can guarantee effective reclamation of the operation, because it is apparent reclamation applications and completions continue to be issues.

[20] Ms. McGinnis suggested one of the issues is the effect of the project on her health, the health of other community residents, and pets, livestock, and wildlife in the area, including pre-existing and long term effects. She was concerned with impacts on air quality from dust and diesel particulates from the project and in conjunction with existing activities in the area. She was also concerned with noise pollution.

[21] Ms. McGinnis was concerned with the monitoring and mitigation programs. She stated residents had the burden of proof to demonstrate an impact, and costs incurred proving even minor impacts could be high. She argued that “averaged monitoring” includes down time

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<sup>6</sup> Section 60 of EPEA provides:

“No person shall knowingly commence or continue any activity that is designated by the regulations as requiring an approval or registration unless that person holds the required approval or registration.”

and ideal time, but the operation is too close to residential areas to permit wide swings in air quality and noise levels. Ms. McGinnis was concerned that Alberta Environment may not have adequate resources to effectively monitor an operation of this size so close to residents. She noted that rules and regulations have not been followed.

[22] Ms. McGinnis raised resident safety issues. She explained there is only one exit onto Highway 16 and over 280 truck trips per day will use the exit point. She believed there would be an increase in crime from increased truck traffic. Ms. McGinnis said Burnco needed to protect its own property and safeguard the lives of young people who may use the gravel pits to "...engage in less-than-safe practices. It requires more than a 3 or 4 strand section of barb-wire fence to keep them at bay and keep them safe."<sup>7</sup>

[23] Ms. McGinnis raised animal and plant issues. She stated the pileated woodpecker and red belly dace, which are declared sensitive, live in the area, and asked what impact Burnco's operations would have on them. She questioned the effect vibrations from heavy equipment on extraction and processing sites and transport mechanisms would have on wildlife and vegetation in the area. She asked what steps were being taken to protect the wildlife corridor in the area. She questioned the effect on equine operations located adjacent to and across the highway from the extraction site, and the impacts of the operation on agricultural lands. Ms. McGinnis was concerned with the reclamation plan as it related to the impact of a large unnatural water body for mosquitoes and West Nile virus, and for creating an unnatural environment and subsequent change to wildlife population and behaviours.

[24] Ms. McGinnis addressed several water issues. She wanted confirmation there would be no negative impacts on the Bellhouse Drainage Project. She suggested potential impact on neighbouring wetlands was an issue, asking if the wetlands are affected, how this could impact downstream water users, neighbouring lands, the aquatic environment, groundwater wells, or the local aquifer. She questioned the impact current operations and future applications would have on Mink Creek, Johnny's Lake, and the Wabamun River systems. She questioned connectivity between and thus effect on aquifers. She questioned how she can determine if impacts are the result of Burnco's activities, seismic activities in the area, or other

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<sup>7</sup> Ms. McGinnis' submission, dated September 12, 2007, at page 2.

gravel operations in the area. She questioned whether pit dewatering would impact surface water or groundwater beyond those specified by Burnco. She stated Burnco indicated this two year process would affect 20 percent of local wells. She asked if they are within the Sturgeon River Basin Watershed Management Program, and if not, if the applicable watershed management program had been instituted.

[25] Ms. McGinnis was concerned with the impacts on the Westland Park Community Hall. She stated Burnco informed residents the hall well is likely to be affected and she questioned the likely impacts. She questioned what impacts the operations would have on the financial well being of the Westland Park Community League, because it has already experienced loss of revenue and complaints due to Burnco's operations. She stated the operation resulted in a split in the community and impacted the social well being of the residents. She expressed concern with safety of the hall renters, including children and pets, with the extraction site adjacent.

[26] Ms. McGinnis raised various other issues. She stated she had difficulty in receiving high speed internet, and believed it was possibly due to the berm and dust affecting transmission. She asked whether historical artifacts found on the site are now in a museum. She questioned the air quality standards being applied and if acceptable limits should be revised or if air quality standards for rural residential communities are available. Ms. McGinnis referred to a "disaster like Villeneuve" and asked what is being done to prevent the same condition occurring in her community. Ms. McGinnis asked if the Director was aware of any applications for subdivisions in the area and how this operation would affect future developments. Ms. McGinnis requested the Director explain what Alberta Environment was doing to protect the residents in the area, given evidence indicates gravel operations immediately adjacent to rural residential subdivisions is harmful and there are policies that protect residents.

4. Ms. Brenda Reddekopp

[27] Ms. Reddekopp questioned the distance within complainants must live from the pit before complaints will be investigated, because she is located one kilometre from the site. She was concerned whether her well was one that may be affected by Burnco's operations. She

also questioned how a landowner can prove Burnco's operations caused a water shortage and why it is the responsibility of the landowner to prove it. She argued Alberta Environment should monitor, investigate, and prove Burnco affected neighbouring wells.

[28] Ms. Reddekopp noted the Westland Park Community Hall well was one of the wells Burnco stated would likely be affected by its operations. She stated that people are not using the hall because of dust, noise, and fumes and questioned whether Burnco would pay the monthly expenses of the hall because nobody wants to rent it.

[29] Ms. Reddekopp was concerned with the dust and noise of the operations and how the operation does not fit with the quiet rural setting she lives in. She explained she has been diagnosed with asthma, and the dust from the gravel pits and the fumes from the trucks will not help her condition and she may need medication to deal with the irritants from Burnco's operations.

[30] Ms. Reddekopp stated Burnco is allowed to remove 124 m<sup>3</sup> of water from the aquifer, but there is 80 m<sup>3</sup> of water flowing through the aquifer daily and the residents of Westland Park use 62.7 m<sup>3</sup>. She questioned how Burnco would be able to pump an equivalent of 50 m<sup>3</sup> per day without adversely affecting the residents. Ms. Reddekopp explained it is unclear whether the aquifers are connected, because she has seen documents that state the aquifers are connected and others state they are not connected.

5. Ms. Jana Siminiuk

[31] Ms. Siminiuk was concerned with various aspects of the approval process. She argued the Director failed to follow Alberta Environment's own procedures, respond to her Statement of Concern, acknowledge the importance of the Smithfield area and the community, acknowledge public lands, and incorporate cumulative impacts. She was concerned with communication between Approval Holders and area residents. She stated the Smithfield Advisory Committee meetings did not address concerns of residents. She expressed concern the Approvals expire in 2016. Ms. Siminiuk argued the archaeological study done for Burnco was of no value because of the methods used and the exclusion of historical research.

[32] Ms. Siminiuk asked that Parkland County prevent further degradation of residents' rights by exercising their power in land use. She stated Parkland County's process was flawed, because the Gravel Issues Resolution Committee was biased. She stated Parkland County has not created a watershed protection bylaw and has failed to include sustainable development principles into its land use decisions. She believed Parkland County was wrong to rezone the processing quarter since the majority of submissions opposed it.

[33] Ms. Siminiuk stated she is not opposed to gravel development but does not support current methods and practices. She argued Burnco did not investigate alternatives and pushed current procedures, including pit mining, dewatering and mining below the water table, and washing and screening in a rural community instead of in an industrial area. Ms. Siminiuk explained Burnco has industrial land in the Acheson industrial area, but it would have to pay for its water. She argued dewatering is no longer an acceptable practice.

[34] Ms. Siminiuk raised issue regarding the complaint investigation process and argued the community should set the distance to be included in the complaint process, not the Director. She stated that complaints need not be written but must be valid and the complaint response should be within 24 hours. Ms. Siminiuk stated the residents should not be expected to do the work of Alberta Environment.

[35] Ms. Siminiuk had various water issues. She argued there is connectivity between the confined and unconfined aquifer. She stated the bedrock is cracked, her well responded to seismic activity in the area, and the subsoil has many fractures and small layers. She noted that no study of the area had been conducted of subsurface media and water flows from a gravel extraction operation before the pit, during pit operation, and post pit. She stated the use of water for dust control is not accounted for in the Approvals or Licence.

[36] Ms. Siminiuk raised monitoring and reclamation issues. She argued the groundwater monitoring program is not acceptable, and third party sampling should be required. She argued a three meter buffer is not sufficient. She stated reclamation must be done correctly without the use of chemical fertilizers, and the community should approve the seed mixture. Ms. Siminiuk stated it is unclear what will happen with reclamation, because changes in the land

cannot be predicted and Burnco admitted the groundwater will not have the same flow after sand and gravel removal.

[37] Ms. Siminiuk raised some health issues. She expressed concern regarding cumulative air quality impacts, including particulate matter from the excavation, processing, and truck fumes. She argued she would not tolerate dust and particulate matter, because she has "...a right to clean air, clean water and the enjoyment of our property."<sup>8</sup> Ms. Siminiuk stated she has been able to alleviate her allergies, partly through breathing clean country air, and she wanted to protect her daughter from developing bronchial conditions. She expressed concern about the increased noise pollution from the increased truck traffic, explaining that constant, monotone, low level noise causes stress that could affect the autonomic nervous system. She was opposed to city noise levels in the country. She said she is suffering from daily stress due to the operations.

[38] Ms. Siminiuk explained she chose to live in the farming community and values the natural environment around her residence. She stated her growing businesses, including organic small scale farming, alternative crops, and landcrafting, would be affected. She wants to maintain and expand her yoga business, but no students would want to come to an area with high levels of dust and noise. She explained that she depends on her gardens for food and education and for her natural products business. Ms. Siminiuk believed the Smithfield area could provide eco-tourism opportunities of its water bodies and bogs, and provide agri-tourism of conventional farming and alternative crops and wild crafting.

[39] She stated there is high biodiversity in the area, and she relies on the birds and bees in her farming operations. She expressed concern that Burnco's consultants conducted a plant survey in November and therefore did not know about some species in the area. Ms. Siminiuk explained water and wildlife patterns in the area are north to Lac Ste Anne and south to Johnny's Lake, Kilini Creek, and the Sturgeon River. She stated moose and deer migrate along the corridor.

[40] Ms. Siminuk was concerned with traffic and truck safety on local roads and on Highway 16. She stated there is a fear of more accidents and deaths caused by gravel trucks, and

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<sup>8</sup> Ms. Siminiuk's submission, dated May 2, 2006.

she was told of incidences where school buses were run off the road by gravel trucks. She stated Parkland County cannot control the gravel trucks. She did not believe tax dollars should go to patrolling the trucks, and industry should be responsible for policing and for the costs of patrolling its trucks.

**B. Approval Holders**

[41] Burnco explained that its proposal for the site had been planned for a number of years, but it was held in abeyance as the gravel industry, government representatives, and landowners, including some of the Appellants, worked to find solutions to competing land uses west of Edmonton. Burnco explained that during this time, Alberta Environment introduced the Code of Practice for Pits (the “Code”), and Burnco was invited to re-apply under the Code. Burnco stated it opted to proceed with its application under EPEA, but it is compliant with the Code, and therefore, there are no issues relevant to Approval No. 203803-00-00 that should be heard at the Hearing. Burnco argued the Appellants did not present any genuine concerns regarding the Amending Approvals issued to Parkland County or *Water Act* Approval No. 00204375-00, and therefore, none of the concerns should be issues for the Hearing.

[42] Burnco stated the experts’ reports demonstrate the lack of connectivity between the gravel and underlying bedrock aquifers that are the source of the Appellants’ water, and therefore, there is no risk of impacting the quality or quantity of the Appellants’ water or their well equipment. Burnco explained it is obligated to put a monitoring process in place and provide the results to the Director and to take the lead in complaint investigation and remediation.

[43] Burnco advised landowners that it was prepared to “...increase the number of monitoring wells and share results with landowners; periodically conduct well management workshops for area landowners; provide water to landowners should there be a cessation of water supply; [and] promptly investigate and diagnose, with third party experts, an alleged reduction in water quality or quantity, and make the landowner whole should such reduction be attributable to BURNCO’s operation.”<sup>9</sup>

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<sup>9</sup> Burnco’s submission, dated September 12, 2007, at page 2.

[44] Burnco submitted that, if there is an issue that should go to a hearing, it is the potential impact of its operations on the Appellants' water supply, specifically a reduction in quality and quantity, and the mitigative and remedial measures proposed by Burnco.

[45] The Board did not receive an initial submission from Parkland County.

### **C. Director**

[46] The Director stated the issue is whether the approval conditions in EPEA Approval No. 203803-00-00, *Water Act* Approval No. 00204375-00-00, and Water Act Licence No. 00203992-00-00 issued to Burnco are reasonable. He explained Approval Amendment Nos. 00022289-00-01 and 000022289-00-02 are amendments to an existing project operated by Parkland County. He stated the amendments were to the Bellhouse Water Management Project and were required as a result of the approval issued allowing Burnco to operate its gravel pit.

[47] The Director submitted that a number of matters raised in the Notices of Appeal should be excluded from the hearing of these appeals, including: reference to the planning process followed by Parkland County in its decision to approve the Burnco pit; and any matter or issues relating to the form and content of the application and specifically with respect to whether Division 1 of Part of EPEA, the environmental impact assessment process, applies.

[48] The Director explained Approval No. 00022289-00-01 was an administrative amendment to deal with the name change of the approval holder, Parkland County. The Director submitted that the appeals relating to this Approval should be dismissed, because no issues regarding this Approval were set out in the Notices of Appeal.

## **III. Response Submissions**

### **A. Appellants**

1. Ms. Laura Peaire and Mr. Mike Agostini

[49] Ms. Peaire argued matters relating to Parkland County demonstrate how Parkland County's permit process affected the process of Alberta Environment. She explained the Gravel Issues Resolution Committee was formed by Parkland County, and Burnco's permit applications

were withdrawn until the committee made its recommendations. She argued the Director's processing of the application was affected because it was put on hold during the Parkland County permit process, and therefore, the Appellants should be able to raise matters relating to the permit process that affected the process and timing of the Director's decision to issue the Approvals and Licence.

[50] Ms. Peaire argued that any documents relating to Burnco's application and used by the Director in his decision making should be a matter that can be raised before the Board. She questioned why Burnco's application stated that an independent expert would complete a comprehensive environmental impact assessment, but only a baseline study was completed. According to Ms. Peaire, this raises the question whether everything submitted by Burnco and relied on by the Director was correct. She stated the baseline study was completed in winter in drought years.

[51] Ms. Peaire argued that "No approvals or amendments should be dismissed from the hearing as it contributes to understanding the magnitude and complexity of the matter before the Board."<sup>10</sup> She stated it demonstrates the involvement of Parkland County in this matter. She indicated the residents' concerns are still outstanding and Burnco's public consultation process has torn apart the community. She stated Burnco opted for an approval instead of the Code, and therefore, all issues related to the EPEA Approval should be heard at the Hearing. She stated there are reduced distances than what is required under the Code. Ms. Peaire stressed that all of the issues raised in her submission and her Notice of Appeal are genuine concerns to her. Ms. Peaire questioned how Burnco advised landowners of well management workshops. Ms. Peaire stated the residents do not feel they have been treated fairly and the Director has not fulfilled his commitment to protect residents. She requested the Board hear all of the Appellants' issues.

[52] Ms. Peaire stated that an expert advised residents that there is connectivity between the gravel and underlying bedrock aquifers, and residents were told at community meetings that 20 percent of water that infiltrates the aquifer will get through to the bedrock. According to Ms. Peaire, Burnco recently stated the estimated flow was incorrect and there is

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<sup>10</sup> Ms. Peaire's submission, dated September 27, 2007.

four times the estimated flow. She argued this shows experts can be wrong and questioned what material the Director used to confirm the information provided by Burnco in its application.

[53] Ms. Peaire posed a series of questions, including whether: the Director balanced economic benefits and environmental impacts of the project; the Director adequately considered alternatives to using water for the project; the Director adequately considered the impact of removing the allocated water from the hydrological cycle; the Approvals and Licence adequately protect other water users, recreational users, fish and wildlife, and the environment; the terms and conditions regarding monitoring and reporting are adequate; the terms of the Approvals and Licence are appropriate; the renewal mechanisms are appropriate; the impact of the allocation on future water users were addressed; the potential impacts, including long term impacts, on immediate neighbours were considered; immediate neighbours are adequately protected; and the Director took into account all applicable policies of the Government of Alberta.

2. Ms. Paula McGinnis

[54] Ms. McGinnis emphasized that she just wants her concerns to be seriously considered, and she has a right to have her real concerns addressed and to have the information she has to support her concerns heard. She argued that "...to deny the Board access to any of the questions / concerns / support material we have would be a slap in the face, and an injustice to the democratic foundation of this country."<sup>11</sup>

[55] Ms. McGinnis explained she is bringing forward issues of process and procedure with Alberta Environment as an indication of regulations or attitudes that may be counterproductive to a balanced decision. She argued the project is too big "...not to look at the suppositions, studies, base facts, and groundwork upon which the decision was made."<sup>12</sup>

3. Ms. Brenda Reddekopp

[56] Ms. Reddekopp reiterated that all of the issues should be heard by the Board.

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<sup>11</sup> Ms. McGinnis' submission, dated September 28, 2007.

<sup>12</sup> Ms. McGinnis' submission, dated September 28, 2007.

**B. Approval Holders**

1. Burnco

[57] Burnco argued that a number of issues raised by the Appellants lacked the required connection to the operations under the Board's jurisdiction. Burnco argued the Appellants failed to provide sufficient evidence to demonstrate an unbroken causal connection between the project and the bulk of the claims set out in the Appellants' Notices of Appeal and submissions. Burnco stated it is not enough to argue in the abstract about generalized goals of environmental protection. Burnco argued the Appellants failed to give specific and detailed explanations how the action of the Director will cause a direct effect on their individual interests and that the effect will be actual or imminent and not just speculative.

[58] Burnco stated the Appellants did not show a causal link between the activity proposed by the Approvals and the speculated environmental effects they suggested will result and that are not based on any direct scientific evidence. Burnco argued "...there has been no evidence submitted, and none anticipated, that refutes BURNCO'S expert reports that clearly demonstrate a lack of connectivity between gravel and underlying bedrock aquifers (the source of the Appellants' water) and thus no material risk of impact on the appellants' water – either quantity or quality, or on their well equipment."<sup>13</sup> Burnco submitted that the Board should assess whether any unbroken causal connection to its operations was provided.

[59] Burnco stated it has made determined efforts in good faith to consult with the residents of the community and to address their concerns. It explained it is determined to be a responsible and good neighbour to the communities, and over the course of the approval process, it has "...gone above and beyond what is required of them to address the concerns of the various land owners in the area."<sup>14</sup>

[60] Burnco reiterated that if there is an issue, it is the potential impact Burnco's operation may have on the Appellants' water supply, specifically a reduction in water quality or quantity, and the mitigative and remedial measures proposed by Burnco.

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<sup>13</sup> Burnco's submission, dated September 28, 2007.

<sup>14</sup> Burnco's submission, dated September 28, 2007.

2. Parkland County

[61] Parkland County stated no matters should be raised regarding Parkland County's development permit approval or permit approval process, the Gravel Issues Resolution Committee study, the environmentally significant area study, any traffic issues that may be related to the County development permit approval, articles and comments from the local newspapers outside the scope of the appeals, or the amendment of Approval No. 00022289-00-01, as this was an administrative amendment dealing with its official name change from the County of Parkland to Parkland County.

**C. Director**

[62] The Director stated the issue in these appeals is whether the Director's decisions regarding the Approvals and Licence were reasonable. He stated the Appellants raised a number of complex questions related to the manner in which the Approvals and Licence issued to Burnco will be administered. He stated two Appellants questioned the process used by the Director after receiving the application and prior to making his decisions. He stated that a number of matters outside of the Director's jurisdiction were raised, including safety of the residents and truck traffic on the roads, protection of the Approval Holders' property, interference with high speed internet, impact on the pileated woodpecker and red belly dace, historical artifacts on site, and impacts on the Westland Park Community Hall and Community League.

[63] The Director explained EPEA Approval No. 203803-00-00 expires on November 1, 2008, and as gravel pits are now under a Code of Practice, an approval for gravel pits is no longer required. He argued the Board should consider the short duration of the Approval and whether the use of Board resources is warranted to address the short term Approval.

[64] The Director submitted that, because no substantive issues regarding the amendments to the Parkland County approval were raised, there did not appear to be any issues that the Board could deal with regarding the approval amendments.

## **IV. DISCUSSION**

### **A. Legislation**

[65] Under section 95 of EPEA, the Board has the authority to set the issues for a hearing. Section 95 provides:

- “(2) Prior to conducting a hearing of an appeal, the Board may, in accordance with the regulations, determine which matters included in notices of appeal properly before it will be included in the hearing of the appeal....
- (4) Where the Board determines that a matter will not be included in the hearing of an appeal, no representations may be made on that matter at the hearing.”

### **B. Application**

[66] In their submissions, the Appellants raised a number of matters, some within and others outside the Board’s jurisdiction. In assessing whether a matter can be considered an issue at the Hearing, the Board must assess not only submissions of the Parties, but also the Approvals and Licence being appealed and the Notices of Appeal filed by the Appellants. If the matter was not raised in the Notices of Appeal, it cannot be considered an issue to be heard by the Board. The issue must relate to the terms and conditions of the specific Approval or Licence being appealed. If the matter relates to another approval or licence or is not included in the Approvals or Licence, it is not an appealable matter.

[67] The test for determining if a matter is an issue the Board can consider does not include an assessment of whether there is a direct causal connection between the project and the matters identified as issues by the Appellants. The Board uses the connectivity test when determining whether an appellant is directly affected, which has not been raised as a preliminary matter in these appeals. Issues will be determined based on the Notices of Appeal, whether the matter is environmental in nature, and whether the issue can be affected by confirming, reversing, or varying the authorization granted by Alberta Environment.

[68] The matters raised by the Appellants can be summarized as follows:

1. Cumulative impacts of this facility and potential future facilities

2. Monitoring requirements including one time per year reporting requirement, berms/stockpiles, dust, noise, averaged vs. real time, Alberta Environment resources to follow up, and third party sampling
3. Reclamation
4. Dust suppressants
5. Groundwater and aquifers monitoring, effects on groundwater, effects of dewatering, and connectivity
6. Complaint process including specified distance, dust, noise, wildlife, and water
7. Amount of water approved as it impacts aquifers, water users, and the watershed
8. Domestic wells
9. Effects on the Westland Park Community Hall's well, use of hall, and safety of users
10. Information used for granting Approvals and Licence
11. Alberta Environment's process regarding residents' concerns and involvement in decision making
12. Wetlands
13. Surface water including watercourse X and Y, Mink Creek, Muskeg Leg, Bellhouse Water Management project, Wabamum River, Johnny's Lake, lake levels and creek levels, and springs on Mr. Agostini's lands
14. Quality of life including physical and mental well being, safety, use and enjoyment of property, and property values
15. Environmental impact assessment
16. Location of pit and operations including rural residential area, and Acheson site operations
17. Health risks including physical and mental, pre-existing and long term effects, and asthma
18. Public safety related to exits (one road out of area), truck traffic, and crime
19. Water flow from pit onto Mr. Agostini's lands
20. Pipe installation to measure flow from Mr. Agostini's lake
21. Dust and diesel particulates
22. Noise
23. Effect on wildlife, pets, livestock, and equine operations
24. Property values
25. Use and enjoyment of property
26. Burden on residents to prove impact

27. Section 60 of EPEA
28. Interference with high speed internet
29. Historical artifacts
30. Baseline data and assessments
31. Vibrations from operations
32. Social well-being and split in community
33. Air quality including limits and standards
34. Federal legislation/Water for Life Strategy/Alberta Strategic Business Plan
35. Water shed management program
36. Villeneuve
37. Agricultural land impacts
38. Future subdivision applications
39. Terms and conditions including distance complaints will be investigated
40. Length of approval (2016)
41. Buffer zones
42. Businesses impacted including organic farming, manufacturing alternative crops
43. Communication with landowners
44. Alternative methods and practices

[69] The Appellants raised matters such as the process used by the Director to determine whether or not the Approvals or Licence should be issued and to determine the terms and conditions of the Approvals or Licence. Beyond determining whether requirements of the applicable legislation were followed, the actual process used by the Director in making his decision cannot be reviewed by the Board. The Board cannot address whether Alberta Environment has the necessary resources to follow up on the required monitoring. The Board can only operate under the premise that Alberta Environment will meet its obligations under the legislation, the various regulatory documents, and the policies and programs established by the Government.

[70] The decision of Parkland County to allow gravel operations in that area is not reviewable by this Board. It is a land use decision made by the Parkland County Development

Board, not Alberta Environment. Therefore, any issue related to the process used or the decision made regarding the location of the gravel operations cannot be considered at the Hearing.

[71] The concern of the effect on agricultural lands in the area is related to location. The Board assumes this was a consideration for the development board when it made its decision regarding the approval to allow the development to proceed.

[72] The Appellants raised issues regarding matters that may arise in the future, such as subdivisions in the area, cumulative impacts of future developments, and the possibility of increased crime in the area. As these matters are speculative, they cannot be used as a basis to determine whether the Approvals and Licence should have been issued with the existing terms and conditions.

[73] Ms. Peaire argued that documents relating to the application submitted by Burnco and used by the Director in his decision making should be a matter raised before the Board. The Director's Record is the information on which he based his decision. All of the information in the Record is part of the Board's record and will be reviewed by the panel prior to the Hearing. That information can be referenced by any Party at the Hearing, should they want to use it to support their arguments.

[74] The requirement of conducting an environmental impact assessment is found under Part 2, Division 1 of EPEA. The Board's jurisdiction does not extend into this part of EPEA, and therefore, the matter of whether or not an environmental impact assessment should have been completed is outside of the Board's jurisdiction.

[75] The Appellants referred to section 60 of EPEA and questioned whether the requirements had been met.<sup>15</sup> Section 60 of EPEA requires proponents of projects to hold an approval or registration prior to starting any activity. The Approval Holders in these appeals were complying with this section of the legislation by applying for and obtaining the Approvals and Licence currently being appealed. Therefore, the matter of section 60 is not an issue for the Board to consider.

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<sup>15</sup> Section 60 of EPEA provides:

“No person shall knowingly commence or continue any activity that is designated by the regulations as requiring an approval or registration unless that person holds the required approval or registration.”

[76] The issue of truck traffic and safety raised by the Appellants is not within the Board's jurisdiction. These matters are within the control of Parkland County and Alberta Transportation and Infrastructure. Therefore, these matters cannot be considered by this Board.

[77] The Appellants mentioned the Town of Villeneuve, but it was unclear what the Appellants were referring to in this case. Only the current Approvals and Licence under appeal can be considered by the Board, and therefore, the Board cannot see the relevance of Villeneuve in these appeals.

[78] The Appellants raised the matter of property values being affected by the gravel operations. The Board has no authority to determine the effects of any project on property values, so it is not a valid matter to be heard by the Board.

[79] Although the matter of interference with high speed internet is interesting, the Appellants did not provide any indication how the gravel pits will interfere with receiving high speed internet. As a result, it is not a matter this Board can make any determination on and therefore, is not a valid matter for the Hearing.

[80] The Appellants questioned whether historical artifacts had been found on the site and transferred to a museum. This is not a matter for the Board to consider, but it may be information the Approval Holders can provide to the Appellants, or the Appellants can seek clarification on this issue from Alberta Tourism Parks Recreation and Culture.

[81] The matters that can be heard by the Board relate specifically to the terms and conditions of the Approvals and Licence. Many of the issues raised by the Appellants are interconnected and hearing evidence on one issue would naturally overlap with evidence of another issue. To minimize repetition of evidence and to ensure the Parties can present their oral evidence within the specified time limits, the Board has grouped the matters within the Board's jurisdiction into four specific issues as follow.

1. Do the terms and conditions of the Approvals and Licence (including the terms, monitoring, complaints process, mitigation and remedial measures, and reclamation) adequately deal with the direct, indirect, and cumulative impacts of the project on the environment (including air quality, water quality and quantity, land, noise, and vibrations) and the health of the residents?

2. Did the Approval Holders adequately consider alternative methods, practices, and locations for the project, including the washing and crushing facilities?
3. Were the assessments completed and the baseline data collected for the application appropriate to represent the area and therefore be used as a basis for the Director to apply appropriate terms and conditions?
4. Did the Director consider all other applicable legislation, policies, and programs that could have influenced his decision prior to making his decision to issue the Approvals and Licence?

[82] The Appellants raised the issue of cumulative effects of this project. Alberta Environment has recognized this issue as an important consideration with the rapid growth and development throughout the province. Therefore, the Board will hear arguments on whether the terms and conditions of the Approvals and Licence adequately deal with cumulative impacts of the project on the environment. The Appellants should note that cumulative impacts of future projects cannot be considered by the Board as they are speculative and the current Approvals and Licence have not been issued to deal with other projects.

[83] The Appellants raised concerns regarding monitoring, including how it is done, who does the sampling, frequency of reporting, and what is monitored. The Board will hear evidence and arguments on whether the monitoring conditions are adequate. The Parties may include evidence regarding the reporting requirements, including frequency, method of obtaining data, what should be monitored, and location of monitoring devices.

[84] Reclamation of the gravel pits was considered an issue by the Appellants. It is a term of the Approval, and therefore can be considered by the Board.

[85] The Appellants had concerns with air quality, including dust and particulate matter, the limits set, the standards used to assess air quality, diesel particulates, and dust suppressants used. These are issues that can be heard by the Board and relate to the Approvals issued.

[86] The effects, if any, the project may have on groundwater and surface waters in the area were a major concern expressed by the Appellants. The dewatering of the pits and the possible effect on groundwater sources is related to the connectivity of the water sources. This

includes the effect, if any, on local water wells, including that of the Westland Park Community Hall. Included in this issue is the question raised by the Appellants regarding the amount of water allowed for diversion under the Licence and the effect the project will have, if any, on the surface water flows in the area and the surrounding wetlands.

[87] The Appellants were concerned with the complaint process proposed, or not included, in the Approvals and Licence. The Appellants expressed concerns regarding the distance from the site that complaints would have to be investigated and that complaint mechanisms should be in place not only for effects on water sources, but also for noise, dust, and effects on wildlife. The complaint process issue would address the Appellants' concern that they have the "onus of proof" to demonstrate that Burnco caused the impact and their issues related to communication with landowners.

[88] The Appellants submitted that the issues of noise and vibrations from the operations should be considered. They suggested the impacts would be felt by persons in the area as well as wildlife that live and use the area. The Board will accept noise impacts and vibrations from the operations as an issue at the Hearing.

[89] The effect on the health of the residents, both short term and long term, was raised by the Appellants. This issue is connected to many of the previous issues identified, so the Board will hear evidence on health concerns at the Hearing.

[90] The Appellants included impacts on their use and enjoyment of their properties, the buffer zone, businesses impacted, and effects on wildlife. The Board believes these concerns are intricately connected to the other issues raised by the Appellants. By providing arguments on the issues as explained above, the Parties should be able to address these concerns as they relate to air quality, noise, water impacts, vibrations, and reclamation.

### **C. Other Matters**

[91] In their submissions, the Appellants raised a number of questions that, although not applicable to the determination of the issues, should be answered to clarify the role of the Board and to provide the Appellants with a better understanding how the Board will proceed at the Hearing.

[92] As part of preparing for the Hearing, the panel members review all documents in the Board's file, including the Notices of Appeal and the Director's Record, which includes Statements of Concern filed on the Approvals applications. The Board reviewed the Statements of Concern and Notices of Appeal in determining the issues in this decision.

[93] The Appellants raised a series of questions in their submissions that may be more suited as part of their cross examination of the Approval Holders and the Director, including whether the data provided to the Director in March 2007 was different than expected from the application and variance in water levels since the data have been collected.

[94] The Appellants wanted clarification of the Board's jurisdiction on the Approvals and Licence. After the Hearing, the Board will submit its report and recommendations to the Minister of Environment. It may make recommendations to confirm, reverse, or vary the Approvals and Licence. The Minister will then issue a Ministerial Order accepting the Approvals and Licence as they are written, reverse or cancel any or all of the Approvals or Licence, or amend any term or condition in any of the Approvals or Licence. Each Approval and Licence will be considered separately in the report and recommendations even though the Board will be hearing all of the evidence as it relates to all of the Approvals and Licence concurrently.

## **V. DECISION**

[95] The issues that will be heard at the Hearing scheduled for December 12 and 13, 2007, will be:

1. Do the terms and conditions of the Approvals and Licence (including the terms, monitoring, complaints process, mitigation and remedial measures, and reclamation) adequately deal with the direct, indirect, and cumulative impacts of the project on the environment (including air quality, water quality and quantity, land, noise, and vibrations) and the health of the residents?
2. Did the Approval Holders adequately consider alternative methods, practices, and locations for the project, including the washing and crushing facilities?
3. Were the assessments completed and the baseline data collected for the application appropriate to represent the area and therefore be used as a basis for the Director to apply appropriate terms and conditions?

4. Did the Director consider all other applicable legislation, policies, and programs that could have influenced his decision prior to making his decision to issue the Approvals and Licence?

[96] Pursuant to section 95(4) of EPEA,<sup>16</sup> the Parties will be allowed to make representations on these issues only. Any submissions that go beyond these defined issues will not be considered by the Board in its deliberations.

Dated on November 5, 2007, at Edmonton, Alberta.

*“original signed by”*

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M. Anne Naeth  
Board Member and Panel Chair

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<sup>16</sup> Section 95(4) of EPEA provides:  
“Where the Board determines that a matter will not be included in the hearing of an appeal, no representations may be made on that matter at the hearing.”