Toxic Troubles: An Update on a Sorry Saga

by Dave Hutchinson – March 2015

1) SIA vs Shawnigan: A Sorry Saga

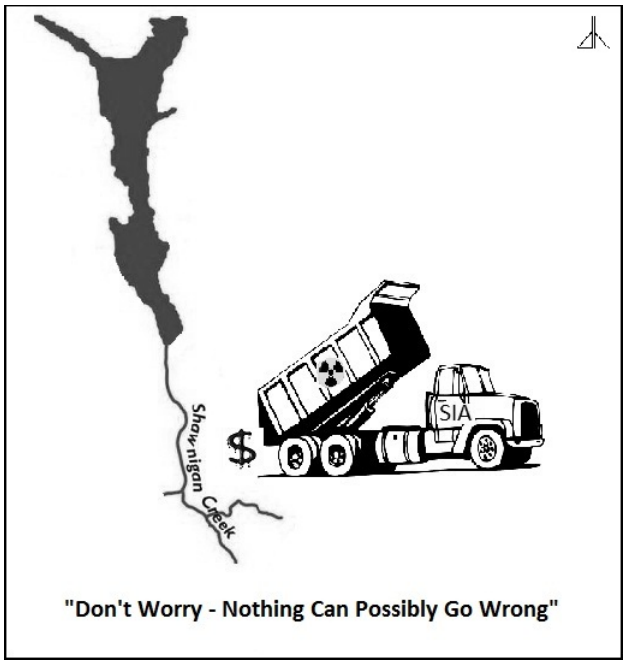
A year ago, in the March 2014 issue, we ran the "Sorry Saga" article. Parts are reprinted here as a refresher. If you are familiar with the story you can skip to the next section.

South Island Aggregates Ltd. (SIA) was founded in 2006 by Mike Kelly and Marty Block. Their quarry is located on Stebbings Road.

"I think I may have stumbled on a good thing here" said Mike Kelly in an email to the CVRD in October, 2007. *"Yes, get a Mines Act permit and don't retail and you'll be in under the F-1 Zone radar"* replied the CVRD Planning Manager. So starts the sorry saga which has pitted SIA against the Shawnigan Community over the company's plans to spend the next 50 years depositing 5 million tons of contaminated material alongside the main creek feeding Shawnigan Lake, the source of drinking water for several thousand people.

"I would like to fill in the hole with clean fill", he said back then, and that is how reclamation of the gravel pit began. Then, in late 2010, 59 truckloads of soil laced with tetrachloroethylene (a carcinogenic dry-cleaning solvent, aka PERC) were deposited on-site which triggered Ministry of Environment concerns over hazardous waste violations. Despite repeated orders from the Ministry and the CVRD to deal with this mound of poison, it remains to this day, a stone's throw from the Shawnigan Creek. When the incident occurred, SIA retained Active Earth Engineering to resolve the issue. They saw an opportunity and in October 2011, SIA sought began seeking Provincial approval for receiving and processing contaminated soil.

The initial spin was that their facility would eliminate problems associated with illegal dumping; that their site was "ideal" due to local hydrogeology; and there would be state of the art facilities which would be virtually failsafe. Also, the material to be received, although technically considered to be contaminated, would be relatively benign. The Province was on board from the start.



"Don't Worry - Nothing Can Possibly Go Wrong"

Significant work facilitated by the Shawnigan Creek Protection Association gradually informed an unsuspecting public. The Shawnigan Residents Association (SRA) got involved and commissioned the Lowen Report which challenged SIA and Active Earth's engineering claims. The CVRD offered to work with the Ministry to find an alternate site. The Ministry ignored this

offer and repeated that the appropriate bureaucratic process was being followed. The Premier and Minister of Environment declined to interfere. A Draft Permit was issued for public comment. It became apparent that the list of permitted contaminants included many very malignant substances. PCBs, dioxins, furans, heavy metals; but not to worry, the site was ideal and nothing very bad could possibly go wrong. Despite conflicting scientific opinion and virtually unanimous public opposition, a final Permit was issued on August 21, 2013.

The SRA and CVRD and three private individuals quickly launched appeals with the Environmental Appeal Board (EAB). A Stay was applied for, and then granted by the EAB. That meant that SIA could not receive contaminated soil, pending a decision on the merits of the appeals.

SIA then applied to "Vary the Stay" because it had already entered into four contracts and would incur financial hardship if not allowed to carry out the work. To the dismay of the community, the EAB sided with SIA. One of the contracts involved 8,000 tonnes of dredged sediments from a Marine Bulk Terminal near Prince Rupert. SIA lawyer John Alexander was quoted as saying the material did not contain dangerous compounds, just sodium and chloride. Curious then that someone was willing to pay SIA to barge the stuff from Prince Rupert.

Fears were voiced that SIA was seeking to accept material from up and down the coast. Could barges laden with contaminants from Washington and Oregon be headed for Saanich Inlet, offloaded at Bamberton, and trucked up the road to be dumped in our watershed? The Prince Rupert contract lent credibility to this scenario.

One of the Permit conditions was that SIA post a security to be used to cover any inadequacy of works, default in compliance, or remediation. $220,000 has evidently been posted. It is not clear how that amount was determined. It is a paltry sum when a community's water supply is purposely put at risk. Should a serious event occur, the decrease in property values alone would be in the hundreds of millions.

The CVRD stated that it would also file a case before the Supreme Court which would assert that SIA and the Province do not have the authority to override local zoning restrictions for contaminated soil. The complexities of Regional District land use jurisdiction have resulted in contradictory statements from the CVRD and the Province. The CVRD has been criticised for not asserting zoning authority earlier in this matter. No court date has been announced.

In September 2013, legal teams for both sides began preparation for the EAB Hearing. Over 7,800 documents were filed. SRA lawyer Sean Hearn said their case would be based on scientific evidence. The SRA had raised about $130,000 from the community for its legal battle, and anticipated that it would need at least $70,000 more.

Marty Block of SIA claimed that they had "done the science." They had certainly paid for their version of it anyway. It had always been in the financial interests of SIA and Active Earth for this project to go forward. There would be a lot of money to be made if the Permit was upheld.

Meanwhile, the Shawnigan community wondered what happened to the precautionary principle, and what kind of government would allow its own Ministry of Environment to jeopardize a community's drinking water. There was something fundamentally wrong with the process.

The EAB Hearings were scheduled for March 3 through 14 and March 24 through April 4, 2014

2) The EAB Decision: An Ideological Sell-Out

The EAB Hearings took far more time than planned and did not complete until July 25, 2014. The three member Panel listened to four legal teams argue over conflicting expert advice. It became clear that there were significant areas of valid concern and uncertainty. There was optimism that the appointed EAB Panel would deliver an impartial and correct decision.

Months passed with not an inkling of news. The expected fall announcement did not happen. What did this bode? It was all quiet over the holiday season (a favourite time to announce unpleasantries). 2015 was ushered in and the community started to forget the SIA threat and get on with their lives.

Then, on Friday March 20th, two days before International Water Day, the EAB finally delivered its decision. The 120 page document is clear and well-written. It is also reprehensible. To quote Steve Housser, it is *"a kick in the guts*" for Shawnigan.

It is organized into 4 sections (A: Jurisdiction, B: Ministry Process, C: New Evidence and D: Enforcing Compliance) which address 8 primary questions. There are 722 numbered reference points. You can view it at: http://www.eab.gov.bc.ca/ema/2015EMAList.htm

It is beyond the scope of this article to provide a comprehensive analysis of the whole document. However, as the fight for our community watershed begins again with renewed vigour, the Focus will have much fodder for future issues. For now, we will just reprint a few of the many questionable findings of the EAB report (with a bit of commentary).

[475] Clearly, there is no consensus among the qualified experts as to whether any further investigation is required, or if it is required, how much is needed to adequately characterize the Site. However, in the end, all of the experts agree that no amount of investigation will allow characterization of the Site with absolute certainty.

[718] … on a balance of probabilities, the geology and hydrogeology of the Site and the facility design, together with the Permit conditions, will provide the required protections.

SF: So, let's just throw the dice …

[679] Regarding non-compliance with the mine permit, the Panel finds that the incidents referenced in these appeals do not lead to the conclusion that Cobble Hill is an unreliable operator … The Regional Director** (of the Ministry of Energy and Mines) **further testified that the compliance issues that he addressed with Cobble Hill/SIA were, in his view, consistent with the "growing pains" expected of an operator who does not have any experience operating a quarry.

SF: So, the mountain of questionable fill on Lot 21 that has been leaching noxious substances into nearby Shawnigan Creek for the last few years is just a "growing pain". The encroachment onto adjacent properties, and the PERC laced soil that has been on-site since 2010 is not a problem. And we are supposed to accept and excuse "no experience".

[272] … The Panel finds that the fact that Active Earth was an advocate for the application, and that its original statements about the Site were modified or corrected, does not disqualify Active Earth from being a "Qualified Professional" for the permit application. The fact is that Active Earth employs qualified professionals, including professional engineers, who must abide by the standards set by their respective professional associations.

[273] The Panel finds no merit to the assertion that Active Earth should be disqualified because they have not been fully paid for their work to date.

*SF: So, if SIA is unable to pay the $500,000 they owe (except maybe if the Permit is approved) and, because Active Earth is a professional outfit (except for a few engineering mistakes, and the occasional email describing people concerned about their water as "f**king retards"), we are supposed to accept that it is okay for them to be an advocate, and also deliver an unbiased opinion? Something is incredibly wrong and we are not alone in this assertion. The failure of this ideology is the core tenet of the 2014 Ombudsman's Report: "Striking a Balance: The Challenges of Using a Professional Reliance Model in Environmental Protection". The term "Conflict of Interest" could find no better example than Active Earth's advocacy role. This is almost beyond belief!*

In closing, there must be a vehement rejection of the EAB assertion that there is a “rift in the community”; that, along with John Alexander’s claim that those unsatisfied with the EAB decision, represent just “a small segment of the community”. Apart from SIA and their close connections, no one supports the risk to our drinking water; no one welcomes the associated impact to our social and economic well-being. Why would we?

And finally, it is not just about the water. Shawnigan is a vibrant community which is poised to become an envied example of how to balance responsible economic development with social and ecological prosperity. The SIA site, determined by negligent happenstance, in the headwaters of our watershed, is clearly not appropriate, and also not necessary. We must convince the Provincial Government that Shawnigan will contribute more to the provincial economy if the Permit is rescinded. The Liberals might even gain a few votes - how’s that for proper ideology?