

Is South Island Aggregates Operating Without Required Permits?

Shawnigan Residents Association and the Shawnigan Focus Newspaper request Provincial clarification.

Astonishment is the reaction to assertions made on May 13th by Michael Kelly (president of SIA's parent company, Cobble Hill Holdings) that their contaminated waste facility is in full compliance with various permits issued by the Province.¹

The Shawnigan Residents Association and the Shawnigan Focus Newspaper, jointly provide the following comments:

It is understood that before the facility, located on Cobble Hill Holdings Lot 23, can legally operate, amendments are required to two Provincial permits.

It is understood that the existing **Mine Permit**, issued by the Ministry of Energy and Mines (MEM), has not yet been altered to allow the import of contaminated soil.²

It is understood that the **Waste Discharge Permit**, issued by the Ministry of Environment (MOE), also requires amending to reflect several conditions stipulated by the Environmental Appeal Board (EAB), and that this has not happened, nor have the associated requirements been fully implemented by SIA.³

The Honourable Mary Polak, Minister of Environment, states *"The permit does not provide the company with carte blanche. The permit essentially sets out the requirements that they must meet before they are allowed to operate."*⁴ Why then is the Province allowing the company to receive contaminated material, ostensibly in contravention of both permits?

SIA, in presenting itself as *"operating and open for business"*⁵, appears to be gambling that the tradition of lax enforcement for non-compliance will continue. Encroachments onto parkland owned by the Cowichan Valley Regional District remain outstanding.⁶ On April 21st waste water was being discharged from the site⁷, seemingly in contravention of an MOE order requiring a Commissioning Report for the Water Treatment System.⁸

There are serious concerns about the long-standing storage of *"potentially hazardous waste"* at the SIA site. This soil, illegally transported in 2010, has been sitting on SIA's Lot 23 with no treatment and minimal protection⁹. It contains elements known to be very harmful to the environment and human health, including tetrachloroethylene and trichloroethylene. Despite orders from the Ministry of Environment¹⁰ and the Cowichan Valley Regional District (CVRD)¹¹, SIA has done nothing about this highly contaminated material.

Mr. Kelly states *"this is no longer a debate about science"*¹². This overconfident declaration is incorrect. A recent Federal Court decision had strong words about decision makers sheltering behind the questionable practice of professional reliance. *"What the Minister cannot do is make unsupported statements of science"*¹³, writes Justice Donald Rennie in a case where the Federal Minister of Fisheries pleaded that she was guided by expert advisors. In a similar manner, both MOE and the EAB relied heavily on the Technical Assessment Report (TAR)

produced by Active Earth, the engineering firm advocating for SIA. Active Earth declined to testify at the hearing but there was agreement among opposing specialists that the TAR was incomplete and that crucial components were in error.¹⁴ On May 20th this was sufficient for the Capital Regional District Regional Water Supply Commission to vote unanimously in favour of a motion to direct staff to further investigate the potential impact of the SIA facility on the Sooke Lake water supply.¹⁵

The Shawnigan Residents Association has recently filed for a Judicial Review of the EAB decision and questionable science will be a key issue. The Cowichan Valley Regional District has also announced a legal challenge based on zoning bylaws and land use jurisdiction. It is clear that the argument is far from over.¹⁶

Given outstanding issues of non-compliance on both Lot 21 and Lot 23, and marked disregard for the current conditions of both MEM and MOE permits, it is incumbent on both the Ministry of Environment, and the Ministry of Energy and Mines, to clearly state the position of the Province and explain why SIA appears to be above the law.

- 30 -

Contacts: Calvin Cook
SRA President
(250) 208-2749

David Hutchinson
Co-editor, Shawnigan Focus
(250) 882-1843

Reference documents available at:

<https://drive.google.com/folderview?id=0ByjXcSRz392ZanNxM2NQakJBbEk&usp=sharing>

¹ paragraph 6 of document: Mike Kelly Statement - May 13 2015

² section 18 of document: Lot 23 Mine Permit Q-8-094 - Apr 20 2009

³ pages 119-120 of document: EAB Decision Mar 20 2015

⁴ Shaw TV: <https://www.youtube.com/watch?v=rhJQ1f8kOms> - May 9 2015

⁵ paragraph 6 of document: Mike Kelly Statement - May 13 2015

⁶ document: CVRD to MEM re SIA - Apr 27 2015

⁷ document image: Discharge - Apr 21 2015

⁸ page 90, ref [540] document: EAB Decision Mar 20 2015

⁹ document image: PERC Pile - Apr 19 2015

¹⁰ document: MEM to SIA re PERC Ltr 1 and Ltr 2

¹¹ document: CVRD to SIA re PERC - Mar 9 2011

¹² paragraph 4 of document: Mike Kelly Statement - May 13 2015

¹³ ref [39] in: <http://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/109425/index.do>

¹⁴ many references (e.g. [211] [212] [329] [535] [536] ...) in document: EAB Decision Mar 20 2015

¹⁵ document: CRD Motion - May 20 2015

¹⁶ Times Colonist: <http://www.timescolonist.com/news/local/shawnigan-contaminated-soil-dump-opponents-head-to-court-1.1942034>