



## **Gravel can be the pits!**

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## About the ELC

- Incorporated in 1982
- Registered charity
- Mission: To ensure that laws, policies and legal processes protect the environment.

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## Overview of presentation

- Laws that apply to gravel pits
  - *Environmental Protection and Enhancement Act*
  - *Water Act*
  - *Municipal Government Act*
  - Sometimes: *Public Lands Act*
- Issues for community groups

*Environmental Protection and Enhancement Act*

Gravel Pits 12.5 acres and up on private land are subject to Registration process

Size includes all related infrastructure (roads, buildings etc.)

Does not include old abandoned pits or construction excavations

**Pits on private land only** are subject to registration under EPEA

## Large private pits: Pits vs. Quarries

### **Quarries and mines are not gravel pits**

- definition of "pit" in *EPEA* excludes quarries and mines.
- No approval for a quarry is required unless large tonnage.
- Mine = coal, oilsands.

## Large private pits: Registrations under EPEA

- Director may register the activity under Part 2 Division 2 of *EPEA*
  - Director does not have express power to add conditions.
  - No statement of concern or appeal process
  - No environmental impact assessment
  - *Code of Practice for Pits* will apply
  - Director has discretion to ask for statements of concern or public meeting.



## What to do if there may be a registration?

Advocacy on a pit registration to AB ENV:

- 1) Minister has discretion (s.64) to order that a registration is not in the public interest
- 2) Director may “bump up” the registration to an approval if necessary for environmental protection (s.66.1)
  - Results in notice/consultation opportunities and appeal rights, possible conditions.

There is no formal process, contact the Director or Minister and explain why these apply.

## Registrations under EPEA

- The *Approvals and Registrations Procedure Regulation* governs information that must be submitted.
  - **Application should include environmental impacts resulting from the activity, wastes produced, substances released etc.**
  - Conservation and reclamation plan.
  - Director may waive requirements. (s.3(2))
  - Scope of review outlined by s.6(2) includes mitigation, monitoring, substance release and disposal.
- \* Ask proponent and Director for the application!



## *Code of Practice for pits*

Pits subject to registration must comply with the [Code of Practice for Pits \(Alberta Environment\)](#).

- Activities plan must be authorized by the Director
- Prohibition on release of pit water unless monitored and analyzed for pH and hydrocarbon limits.
- Topsoil and subsoil must be salvaged for reclamation
- Prohibited to bury waste, debris.
- Contraventions must be reported.

## Pits on Public Land

**The *Public Lands Act* does NOT prohibit all gravel pits!**

- Authorizations are available under the *Public Lands Act* from SRD.
- Surface mineral licences or leases, public pit licences
- Will apply to pits in permanent natural waterways (along shore or in bed), Crown land

*Alberta Aggregate Allocation Policy (March 2006)* deals with allocation of gravel rights on public lands.

## Does the *Public Lands Act* apply?

- Provincial crown land only,
- Beds and shores of natural waterbodies are included
- not municipal land, not provincial parks.
- Not aquifers (no bed or shore)

## Aggregate on (Provincial) Public Lands

- Large projects:
  - Surface material Lease (80 acres, 10 years)
  - Must get a reclamation certificate
- Medium, short term:
  - Surface material License (1 year, up to 5 acres)
- Very small incidental projects:
  - Public Pit License (1 year, maximum volume set for each pit)

## Environmental – Pits on public lands

- Governed by *Dispositions and Fees Regulation Part 7*
  - *process not environmental*
- *Guideline for surface materials licences and Aggregate allocation policy.*
  - there is “adequate” environmental protection and
  - reclamation requirements
  - the issuance fits with regional land management objectives.

## All pits: *Water Act*

- Use of water in gravel pits potentially required for:
  - Gravel washing
  - Pit dewatering
  - Pits in watercourses or floodplains
  - Watercourses, culverts, bridges, etc.
- Licence required for diversion(use) or approval for works.
- Water Act requires public notice and allows statement of concern (s.108-109)
- Directly affected
- Persons who submit a statement of concern have appeal rights.



## *Water Act* - exemptions

- Pit dewatering is exempted from licence if:
  - Water is not used (retained on-site or diverted back to water body at same quality) and if there is hydraulic connection between the pit, water body & storage.
  - There must be no adverse effect on aquatic environment or a household user, licensee or traditional agricultural user.
- Authorizations may still be required where
  - Diversions not for pit dewatering (gravel washing)
  - Works in waterways, use of groundwater not for pit dewatering
  - Pit dewatering without hydraulic connection/impact on aquatic environment or other users

## *Water Act* – groundwater exemption

Groundwater evaluation used only where:

- A licence is required for pit dewatering
- OR where development of a spring will increase groundwater flow rate.
  
- Otherwise operations adjacent to water bodies are treated as surface diversions and will require diversion licence. For gravel washing etc. No groundwater evaluation.

[See: AB Environment, \*Groundwater Evaluation Guideline - Appendix C policy on water diversions from sands and gravels adjacent to a water body, and from springs\*](#)

## Problems with these laws

- Large number of gravel pits near rivers, large potential aquatic habitat damage (effluent).
- Inadequate oversight of groundwater issues
  - Stability
  - Contamination of groundwater through surface opening
  - Groundwater quantity, changes in flow
  - Effects on marshes, rivers of dewatering can be significant
- Backwardness of scheme – no approval or groundwater evaluation required *unless* impacts on environment other water users, groundwater etc. (whose onus?)
- No oversight where pit and construction area is small – no rational connection between size threshold and environmental impacts (which are location-based).
- Lack of notice/transparency/appeal rights
- Cumulative impacts not evaluated at any scale.

## Municipal Government Act

- bylaw powers
- If not permitted by existing bylaws amendment.
- Land use bylaw requirements
- Development permit process governed by land use bylaw
- Permit may
  - Deal with hours of operation, buffers, noise, routes, traffic, location.
  - Other issues allowed by land use bylaw

Note that: development permits cannot be appealed by citizens for permitted uses!

## Municipal Processes

- Public meeting (s.230) required for:
  - Second reading of a land use bylaw, MDP, or amendment etc. (s.692)
  - Before voting on a resolution
- At a public hearing council must “hear” any person or group of persons who claims to be affected...
  - Check procedural bylaws and policies
  - Notice must be published for two weeks in local paper at least five days before and include information (s.606)
  - Reports and other information must be provided if requested.

## Municipal issues

- Municipalities have jurisdiction over
  - waterways, s.60(1)
  - the environment s.7(a) (*Spraytech*)
  - Nuisances s.7(c)
  - Businesses s.7(e)
- Municipalities do not have ownership over mines and minerals by virtue of jurisdiction over water s.60(2). Can't expropriate mines or minerals (s.71)



## Municipal examples

- Edmonton Municipal Development Plan (May 26, 2010)

***Except where resource extraction is required to the extent necessary to accommodate an approved development, [and] subject to federal and provincial overriding approvals, resource extraction is prohibited within the North Saskatchewan River Valley and Ravine System in order to preserve its ecological value.***

→ Passing the buck? Federal and provincial approvals do not “override” any prohibition by Edmonton.  
= unclear what will happen if pit gets EPEA registration etc. How will Edmonton interpret this?

## Municipal versus provincial

- Fact that there is an EPEA registration required is irrelevant to municipal process unless the municipality requires proof of registration.
- AB ENV does not normally require proof of municipal authorization but may request it.
- If there is a provincial regional land use plan under the *Alberta Land Stewardship Act (ALSA)* then the plan will prevail. (s.638.1)

Otherwise, s.13 of the *MGA* provides that bylaws are invalid if they are inconsistent with another enactment, to the extent of the inconsistency.

= Municipality can still prohibit gravel pit, or put additional conditions on a gravel pit.

## Items to watch for

- Alberta Association of Municipal Districts and Counties is promoting a “coordinated provincial-municipal authorization process.” Recs to Minister of Environment in early 2011.
- Many municipalities have aggregate bylaws of various types, some of which mirror EPEA requirements.
- Some municipalities *require* aggregate extraction in new developments, which is questionable in cases where there are sensitive aquifers.
- There may be duplicate code of practice and reclamation security requirements (EPEA and municipal)

## Federal Requirements

- *Fisheries Act* and *Navigable Waters Protection Act* Will relate primarily to crossings and fish habitat harmful alteration etc. (EA required)
- Indian Affairs, DND, Parks Canada etc.
- DFO has authorized gravel projects in riverbeds in BC
- Do not apply to most gravel operations.

## Review of legal requirements

- Registrations only on private land for pits greater than 12.5 acres. Application should include environmental impact information.
- *Water Act* licence exemptions for pit dewatering don't apply if harm to aquatic environment or other groundwater users! Notice is required.
- Limited application of *Public Lands Act* dispositions process to provincial land.
- Ability for your local council to regulate is broad, not constrained by provincial process.
- If right in or directly adjacent to water-body, may be able to make a case for some limited federal involvement.

## Strategies

- Regulate: Propose MDP and land use bylaw amendments that would address your concerns
- Discuss: Petition for a public meeting in your municipality on the issue.
- Respond: Ask Director to require approval and environmental assessment under EPEA
- Submit SOC when there is a *Water Act* notice.
- Advocate: Exemptions and other requirements should be based on adequate information about potential impacts



## Information needs: advocacy

- Understand local well and groundwater information
- Cumulative air quality, noise
- River valley habitat information
- Aggregate resource maps of your area
- Obtain applications, activity plans, etc.
- Look for: groundwater evaluations, pumping tests, karst mapping, total volume of water to be pumped, water balance calculations, groundwater recharge information.
- Biologist, and hydrogeologist expertise may assist you in making your case/understanding potential impacts.

## For Operators

- Expect community and regulator concerns about dewatering, aquatic and groundwater impacts, site specific issues. Be prepared to provide information to address those concerns.
- Consider future sites based on an examination of environmental criteria (distance from water bodies, aquifer impacts, species habitat etc.) rather than deal with these after considerable investment.
- Operators could also benefit from more clarity around acceptable/unacceptable site characteristics, good for risk management!

Thank you!

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