

FAQ

A gravel mine is being proposed in my area, what laws apply?



The Environmental Protection and Enhancement Act

A gravel mine is considered a “pit” in the *Environmental Protection and Enhancement Act (EPEA)* which means it is governed the same way as other pit operations including sand, gravel, marl, or clay.¹ A gravel extraction operation may take place on public land or private land (including within a municipality).

Pits on private land that are equal to or larger than 12.5 acres in area² require a Registration under the *Environmental Protection and Enhancement Act (EPEA)* and must comply with the *Code of Practice for Pits*.³

The requirement for a Registration under EPEA means that the proponent of the gravel extraction operation must submit an application to Alberta Environment and Protected Areas describing any environmental impact resulting from the activity, waste produced, substances that will be released, and conservation and reclamation plans.⁴ Following an application, there are a few possible outcomes:

1. A Director (authorized under EPEA) may require more information.⁵
2. A Director may require an Approval instead of a Registration.⁶
3. The Minister may order that a Registration is not in the public interest, and a Director would therefore not issue it.⁷
4. A Director may issue, issue for a specified period, or refuse to issue the Registration.⁸

There is no discretion to apply any conditions to the Registration in addition to those in the Code of Practice.⁹



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Additionally, an environmental impact assessment may be required at the discretion of the Director for a pit that is greater than 5 acres.¹⁰ For any pit, the Minister may require an environmental impact assessment report.¹¹

The Water Act

All gravel pits, regardless of size or location, must comply with the *Water Act*. Gravel excavation operations may require the use of water for various purposes, including gravel washing and pit dewatering. Water uses or diversions may require an authorization (Approval or Licence) under the *Water Act*.

If the gravel mine alters the flow or level of water, changes the location or direction of flow of water, causes siltation, or causes an effect on the aquatic environment, or otherwise matches the definition of "activity" under the *Water Act*, it will require an Approval unless exempted.¹² A Director authorized to issue approvals will determine whether to grant the approval and attach conditions to it. Similarly, any "diversion of water" will require a Diversion Licence under the *Water Act* unless exempted.

One exemption that may apply is for the dewatering of a sand and gravel site. This activity is exempted from the requirement to apply for an Approval and a Diversion licence if:

- (i) the water diverted as a result of the dewatering is
 - (A) diverted into and retained in an on site pit, without using the water, or
 - (B) diverted back into a water body without using the water, if the water is equal to or of the same quality as the water that was originally diverted,
- (ii) the dewatering site, the water body and the on site pit referred to in subclause (i) are hydraulically connected, and
- (iii) there is no adverse effect on the aquatic environment, a household user, licensee or traditional agriculture user, or any parcel of land.¹³

How can I get involved in these decisions?

EPEA

If a Registration is required under the EPEA, there is limited opportunity for participation. A Director has the discretion to order a public meeting or request information from directly affected persons but is not required to do so.¹⁴ Further, there is no requirement for formal



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notice or opportunity to submit a Statement of Concern nor is there an opportunity for appeal.

If the Director exercises their discretion to require an Approval under EPEA, there will be public notice and consultation (the opportunity to submit a Statement of Concern if you are directly affected) and an opportunity to appeal the Director's decision.¹⁵ There is no formal way to request that the Director require an Approval.

Water Act

The *Water Act* imposes notice requirements on proponents applying for Licences or Approvals.¹⁶ Part 8 of the *Water Act* and the *Water (Ministerial) Regulation* outline the requirements for this notice including potentially publishing the notice in "one or more issues of a newspaper that has daily or weekly circulation in the area of the Province in which the activity, diversion of water or operation of a works that is the subject of the application, decision or order is or will be carried out".¹⁷ A Director has broad discretion about the type of notice required, however it seems that it is standard practice to publish notice of an application on the Digital Regulatory Assurance System.

Section 109 of the *Water Act* provides for persons "directly affected" by an application to submit a statement of concern within 7 days for an approval and 30 days for a licence. The notice will often set a date by which to provide a statement of concern, which should not be sooner than the statutory deadlines.

While "directly affected" is not defined in the *Water Act*, there is some guidance as to how it is interpreted. In general, unless you own land near the project site or will suffer physical or economic harms, it can be difficult to prove that you are directly affected.

A Director authorized under the *Water Act* determines whether the person submitting the statement of concern is directly affected. If you are determined not to be directly affected by the Director, you will not be able to participate further in the formal approval process. However, there is a possibility that you may be found directly affected by the Environmental Appeals Board if you appeal the decision.

If you have submitted a statement of concern by the deadline and decide to challenge a finding that you are not directly affected, it would be a good idea to check in regularly with the Director to determine when a decision on the application has been made as they are not required to notify you. Once a decision is made you have a limited window of time to file a notice of appeal to the Environmental Appeals Board (within 7 days for an Approval and 30 days for a Licence). Consult a lawyer if possible to receive legal and practical options, including whether an appeal or a judicial review is advisable.



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Please note that regulation under the Public Lands Act, other provincial statutes, and federal and/or municipal regulation may also apply to gravel extraction operations but are not discussed in this FAQ.

Nothing in this FAQ should be relied on as legal advice.

Further Reading

[Gravel Can Be the Pits!](#)

[A Guide to Public Participation in Environmental Decision-Making in Alberta](#)

(Footnotes)

¹ RSA 2000, c E-12, s 1(xx) [EPEA].

² This measurement includes infrastructure, roads, buildings, stockpiles etc. associated with the excavation.

³ Activities Designation Regulation, Alta Reg 276/2003 s 3(3)(d), Schedule 2, Division 3 (b); EPEA, *supra* note 1, s 83.1; Government of Alberta, "Code of Practice for Pits" (01 September 2004), online (pdf): <https://kings-printer.alberta.ca/570.cfm?frm_isbn=9780779765560&search_by=link>.

⁴ *Approvals and Registrations Procedure Regulation*, Alta Reg 113/1993, s 3.

⁵ EPEA, *supra* note 1, s 66(2).

⁶ *Ibid*, s 66.1.

⁷ *Ibid*, s 64.

⁸ *Ibid*, ss 68(1), (5).

⁹ See *Ibid*, s 68.

¹⁰ *Ibid*, s 43; Environmental Assessment (Mandatory and Exempted Activities) Regulation, Alta Reg 111/1993, Schedule 2(a)(vii).

¹¹ EPEA, *supra* note 1, s 47.

¹² *Water Act*, RSA 2000, c W-3, ss 1(1)(b), 36(1); See Government of Alberta, "Guide to Water Act Authorizations Required for Excavations (Dugouts, Borrow Pits and Other Types of Pits/Excavations)" (04 March 2024), online (pdf): <<https://open.alberta.ca/dataset/9e8a78a8-194d-4e55-9501-59af99a3b0c5/resource/20766d66-ff88-456c-8d4b-9edca049d7db/download/epa-guide-to-water-act-authorizations-required-for-excavations-2024.pdf>> (See Table 1 for examples of where an approval would be required).

¹³ *Water (Ministerial) Regulation*, Alta Reg 205/1998, Schedule 1(2(p)), Schedule 3 (3(f)).

¹⁴ *Approvals and Registrations Procedure Regulation*, *supra* note 4, s 5.

¹⁵ EPEA, *supra* note 1, ss 72-73, 91.

¹⁶ *Water Act*, *supra* note 12, ss 37(1)(d), 50(1)(d).

¹⁷ *Water (Ministerial) Regulation*, *supra* note 13, s 13(1).