

## News Release

FOR IMMEDIATE RELEASE

March 20, 2015



### **CVRD Disappointed with Environmental Appeal Board Ruling**

**Duncan, B.C.** – The Cowichan Valley Regional District (CVRD) is disappointed with the recent Environmental Appeal Board (EAB) decision to allow a contaminated soil relocation permit issued by the British Columbia Ministry of Environment (MOE) to Cobble Hill Holdings Ltd. and South Island Aggregates Ltd (CHH/SIA). The permit, which gives CHH/SIA permission to treat and store contaminated soil on property located within the Shawnigan Lake watershed, was confirmed in a decision handed down by the EAB Friday.

The EAB decision was in response to an appeal filed by the CVRD under the *Environmental Management Act* in opposition to a permit issued by the MOE in August, 2013 for the treatment and landfilling of 100,000 tonnes per year of contaminated soil and ash material at 640 Stebbings Road. The EAB considered the appeal between March 3, 2014 and July 25, 2014.

"The Shawnigan Lake community will be devastated by this decision," said Area B Director Sonia Furstenau. "The safety of our drinking water is our highest priority, and we will continue to put our efforts into protecting it. It's critical that our community and the CVRD remain vigilant about the dumping of contaminated soil within our watersheds."

The decision by the Environmental Appeal Board allows the proponents to treat and landfill contaminated soil and ash at the Stebbings Road site subject to the conditions of the permit issued by the Ministry of Environment, additional conditions imposed by the EAB, and the CVRD's zoning and other applicable bylaws. In its 120 page decision, the panel found that "on a balance of probabilities, the geology and hydrology of the Site and the facility design, together with the Permit conditions, will provide the required protections." The panel's decision was subject to six additional directives requiring the permit to include provisions:

- Providing for representation on the advisory committee by the local community;
- Prohibiting blasting while cell liners are being installed;
- Precluding the reuse of liners;
- Requiring a permanent roof be placed over the soil management area, to be constructed no later than March 20, 2016;
- Requiring the wheels of transport vehicles be rinsed before leaving the Site; and
- Requiring monitoring of water quality in the ephemeral stream immediately following a storm event greater than 1 in 200 years.

"The decision of the Environmental Appeal Board is cause for concern, particularly for residents who live within the Shawnigan watershed – the safety of their drinking water is a top priority for us," said CVRD Board Chair Jon Lefebure. "As such, the CVRD will be examining other options with regard to managing the importation and deposit of contaminated soil and ensuring the safety of drinking water sources in the region."

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*For more information, please contact:*

Jon Lefebure

Chair, CVRD

[chairperson@cprd.bc.ca](mailto:chairperson@cprd.bc.ca)

250.746.2501

## BACKGROUNDER

March 20, 2015



### **Environmental Appeal Board Ruling – South Island Aggregates Timeline of Events**

The following provides a timeline of the main events associated with CVRD's appeal of the *Environmental Management Act* (EMA) permit for the treatment of contaminated soil on Stebbings Road in the Shawnigan Lake watershed:

#### **Waste Discharge Permit for a Contaminated Soil Treatment and Landfill Facility**

##### **October 2011**

CHH/SIA applied to MOE for a permit to treat and discharge approximately 100,000 tonnes per year of contaminated soil and ash on property located on Stebbings Road.

##### **May 2012**

Consultations regarding CHH/SIA's permit application began with various stakeholders, agencies, First Nations and the general public. As part of the consultation process, CHH/SIA held a public meeting attended by over 200 people.

##### **July 2012**

The CVRD also hosted a public meeting where approximately 350 members of the public attended.

##### **August 2012**

On several occasions, the CVRD advised MOE it opposed the issuance of a permit to discharge waste in a public drinking watershed and expressed its concerns regarding the MOE's lack of regulation of contaminated sites in the Cowichan Valley.

##### **September 2012**

As part of the consultation process, the permit application was submitted to the Water Protection Division of the Ministry of Forests, Lands and Natural Resource Operations (MFLNRO). In a letter dated September 14, 2012, MFLNRO expressed several concerns about hydrogeological aspects of the permit application and indicated additional data and site characterization was required prior to the permit application being considered further.

The Shawnigan Resident Association (SRA) also retained a consultant, Lowen Hydrogeology Consulting Ltd. to review CHH/SIA's permit application. In a letter dated September 23, 2012, Lowen also expressed several concerns about the hydrogeological characterization of the Stebbings Road property and insufficiency of available data.

##### **October 2012**

At the request of the Ministry of Energy, Mines and Natural Gas (MEMNG), the B.C. Geological Survey Division (BCGS) performed surface mapping on the property and prepared a bedrock geology report.

### **November 2012**

As part of the ongoing consultation process, CHH/SIA's permit application to MOE was submitted to the Vancouver Island Health Authority (VIHA). In a letter to MOE dated November 2, 2012, VIHA expressed several concerns and requested that issues raised by Lowen be addressed during the project review.

MFLNRO also provided further comments about the permit application and continued to express concern regarding the hydrogeological characterization of the property and insufficiency of data. The MFLNRO concluded further research and analysis must be undertaken before regulatory approval should be considered further by MOE.

### **March 2013**

A draft permit was posted for public review and comment due to the substantial level of public interest in the matter.

### **April 2013**

VIHA provided comments to MOE regarding the draft permit. VIHA continued urging MOE to resolve community concerns before issuing a permit.

The CVRD also expressed concerns, noting the divergence in professional opinion regarding geology and hydrogeology of the property and the limited ability of MOE to ensure compliance with the permit. Further, the CVRD Environment Commission wrote several letters to MOE which also noted the divergence in professional opinion, the adequacy of the data, and compliance and enforcement issues.

The Provincial Health Officer issued a letter to the Deputy Minister of Health which raised concerns about the permit issuance review process, the risks to human health, and the divergence in professional opinions regarding hydrogeology of the property.

### **July 2013**

MOE's Land Remediation Division (LRD) reviewed and commented on the hydrogeological characterization of the property. In a letter dated July 24, 2013, the LRD agreed with most of the comments made by the MFLNRO, noting the hydrogeological characterization for the area was based on a limited amount of data. The LRD also noted Active Earth's assertion that:

- Two additional diamond cored wells were planned for the property
- If data from the additional wells added new information regarding fracture zones in the upper part of the bedrock, a re-evaluation of the water use determination would be required.

### **August 2013**

A Senior Environmental Protection Officer with MOE completed an Assessment Report regarding the permit application. The report recommended a permit be granted with certain site specific recommendations. On August 21, 2013, MOE issued the permit. On August 26 the SRA filed an appeal with the Environmental Appeal Board (EAB) to rescind the permit.

### **September 2013**

CHH/SIA installed two additional monitoring wells and undertook additional testing on the two wells as required by the permit. On September 11, the SRA filed an application with the EAB for a stay of the permit. On September 16, 2013, the CVRD filed an appeal with the EAB to rescind

### **October 2013**

On October 4, 2013, the CVRD filed an application with the EAB for a stay of the permit. On October 11, 2013, the CVRD commenced legal proceedings in B.C. Supreme Court to enforce its zoning bylaw regarding the contaminated soil treatment and landfill facility. Active Earth

submitted to MOE a bedrock integrity inspection and risk assessment for the first encapsulation cells as required by the permit. It also submitted a report summarizing the core drilling and testing results of the two additional wells.

#### **November 2013**

MFLNRO reviewed the core drilling and testing results for the two additional wells and continued to express concerns about uncertainties regarding hydrogeology of the property. On November 15, 2013, the EAB granted a stay of the permit, in favour of the appellants.

#### **December 2013**

On December 24, 2013, CHH sought to vary the stay of the permit to permit CHH to receive soils under four specific contracts. The CVRD retained Thurber Engineering Ltd. to conduct an independent review of the hydrogeological characterization of the property including the two additional wells and testing undertaken by CHH/SIA after issuance of the permit.

#### **February 2014**

In a report dated February 11, 2014, Thurber identified significant uncertainty in the conceptual understanding of flow conditions at the property, based on investigations undertaken to date. Also on February 11, the stay was varied by the EAB to permit CHH to receive soils under four specific contracts.

#### **March 2014**

EAB hearings commenced and continued over a 31 day period. The appellants called 10 expert witnesses -largely in the areas of hydrogeology and geology- and several other witnesses to express the concerns of the CVRD and the public. MOE called 10 government witnesses from MOE and MEMNG. CHH choose not to call any expert witnesses but was required to put one of the directors for CHH/SIA on the stand.

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#### **Media Contact:**

*For more information, please contact:*

Jon Lefebure

Chair, CVRD

[chairperson@cverd.bc.ca](mailto:chairperson@cverd.bc.ca)

250.746.2501