



# Aggregate Development in Alberta

**Recommendations Related to Delays and Inconsistencies on  
Environmental Permitting**

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ALBERTA SAND & GRAVEL ASSOCIATION

## Executive Summary - Aggregate Development in Alberta

### ASGA Recommendations Related to Delays and Inconsistencies on Environmental Permitting

Alberta's sand and gravel (more correctly known as "aggregates") industry is a pillar to Alberta's economy and development. Aggregates have the largest commercial value of any non-energy/non-renewable mineral resource produced in Alberta.

The industry is a key component in support of the development of infrastructure. It also provides resources for many other industries, such as manufacturing, forestry, and the oil and gas sector.

Alberta has had environmental standards and legislation in place for the development of sand and gravel pits going back to 1978. This oversight and review are performed by the Government of Alberta's Ministry of Environment and Parks (AEP). With increasing awareness of environmental impacts on development, implementation of current regulations changes faster than the actual regulations do.

This has led to regulatory uncertainty when sand and gravel operators prepare to develop an area for sand and gravel extraction. Uncertainty causes delays in the development and recovery of aggregate material while increasing costs and timelines. Review times are growing and can commonly take two to five years. Efforts by AEP have not been successful in reducing approval acquisition timelines and reviews.

Several factors contribute to the delays, the most often cited being the lack of staff resources or the inconsistent application of AEP's rules, which can vary from region to region. Another example of frustration is in regard to public lands, where the Aggregate Land Review process has not replaced other application processes, but just created additional ones. These frustrations are further exacerbated by a lack of communication from AEP. Phone calls and e-mails from industry are not responded to, and can even often go without a response. Existing regulations are also inconsistently applied in different regions, which is troublesome to industry.

The ASGA's Land and Environment Committee, consisting of aggregate producers and environmental consultants to review the current regulatory process to identify constraints with the environmental regulatory process. This report is a product of that review and concludes with recommendations to remedy the permitting delays.

A number of solutions are proposed. Many of them deal with a lack of codified standards to create a process that arrives at a decision to accept or reject a permit application, and inconsistencies between Alberta regions. Uniformity of standards let producers know what they need to address in their applications.

This report demonstrates that these delays are not inevitable or unavoidable. There is an attainable, efficient system that preserves Alberta's ecology and ensures a sustainable aggregate supply. It is the hope of the authors that the elected officials and staff of AEP will engage in a dialogue with ASGA's members to confront and solve these systemic issues as partners.

### **Acknowledgements**

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The Land & Environment Committee invested a substantial amount of time in compiling the report, and it should be noted that this was done without any compensation.

A thank you also goes out to the ASGA Board of Directors and staff for their input and support of the project.

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## 1.0 Introduction

The Alberta Sand and Gravel industry is a pillar of Alberta's economy and development. Sand and gravel have the most significant commercial value of any non-energy/non-renewable mineral resource produced in Alberta. Most commonly, the industry supports the development of infrastructure; however, it also supports and provides resources for many other sectors such as manufacturing, forestry and oil and gas.

The province of Alberta has had environmental standards and legislation in place for the development of sand and gravel pits since the 1970s. With increasing awareness of environmental impacts on development, implementation of current regulations are changing faster than the actual regulations. This has led to regulatory uncertainty when sand and gravel operators prepare to develop an area for sand and gravel extraction. The regulatory change causes delays in the development and recovery of aggregate material while increasing costs and timelines.

The Alberta Sand & Gravel Association (ASGA) Land and Environment Committee, which is formed by sand and gravel operators and environment consultants, reviewed the current regulatory process to identify constraints with the regulatory progression for permitting pits on private and public land with Alberta Environment and Parks under the *Environmental Protection and Enhancement Act*, more specifically the *Code of Practice for Pits*. Recommendations to resolve some of the constraints observed and experienced have been highlighted in this report.

## 2.0 Regulatory Requirements

There are three main pieces of legislation that are subject to review by Alberta Environment and Parks (AEP) for aggregate pit development, including the *Environmental Protection Enhancement Act* (EPEA), the *Public Lands Act* (PLA), and the *Water Act*. Depending on the location of an aggregate source, different legislation may be required. In the case of aggregate operations on private land (deeded land), they are generally governed by the associated *Acts, Regulations and Code of Practice for Pits* under the EPEA and the *Water Act*. While aggregate operations on public land (green zone) are generally governed by the associated *Acts* and guidelines under the PLA, EPEA and the *Water Act*.

The development of pits within Alberta are subject to many other regulations other than EPEA, PLA, and the *Code of Practice* that were reviewed to provide the enclosed recommendations. The industry is also governed by additional legislation that is administered through municipalities, other Government of Alberta (GoA) departments, and federally. While these recommendations and reports may refer to permitting under the *Water Act* or other governing bodies, the suggestions are not to be considered an exhaustive list of these processes.

### 3.0 Financial & Business Impacts and Regulatory Certainty

Permitting<sup>1</sup> an aggregate resource is a very costly and timely endeavour that takes many years to generate income to recuperate costs. This is due to the high level of uncertainty that has become the permitting process in Alberta. Additional consideration must be given to whether a resource can withstand the ever-changing approval requirements, through the lengthy review period of the application itself, and the entire life cycle of the pit.

In December 2018, a survey conducted by the ASGA indicated that members had seen an increase in permitting costs of up to 60 per cent. Additionally, members have been observing an upward trend in application review timelines. Given the uncertainty of the regulatory process and the upward trend in permitting costs and review times, the financial risk for aggregate producers to develop new locations is limiting the growth of the industry. This has the potential to ultimately lead to aggregate shortages in specific market areas or most certainly increased costs to infrastructure projects, end-users, and the economy in general.

Included in the appendices of this report are detailed reviews of the process for permitting land for aggregate extraction under the PLA and the *Code of Practice for Pits*. The main constraints identified through both methods were identified as application review timelines, application processing, inconsistencies in requirements, lack of communication, and financial security management. Priorities of resources on the landscape is a specific constraint under the PLA, and acceptable land uses is a specific constraint identified under the *Code of Practice for Pits*. These constraints ultimately lead to regulatory uncertainty and financial burden.

#### **Example of Application Processing Constraint under the PLA:**

An operator may spend over \$20,000 through the Aggregate Land Review (ALR) & Surface Material Exploration Program (SME) process, only to be rejected or denied during the Surface Material Licence (SMC) / Surface Material Lease (SML) process. The recent addition of the ALR process, a process that was promised to last no longer than 45 days, has further delayed exploration of new aggregate sources; many well beyond 180 days, or even 365 days. A process that was supposed to assist aggregate companies has become an additional level of 'red tape' that further delays exploration activities and increased costs to producers.

#### **Example of Application Review Timelines Constraint under the *Code of Practice for Pits*:**

There are numerous cases reported to the ASGA, where private Landowner Agreements have expired before getting the necessary approvals or authorizations from AEP, or

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<sup>1</sup> The process of obtaining all necessary regulatory authorizations required for the development of an aggregate operation.

where operators had to pay additional extension fees to ensure the monies spent on the application process are not lost to an expiry.

#### **Example of Application Processing under the PLA and the *Code of Practice for Pits*:**

Permitting private land, public land, and posting financial security to cover reclamation costs is something that must be done before operation commences, and the industry agrees with this. However, it does present a risk to the operator - as monies are tied up in reclamation security, the operator's borrowing capital is impacted. If reclamation certificates and applications are not being processed/issued or returns of reclamation security are not completed in a timely fashion, it could delay an operator's ability to expand, invest in new technologies, or source out new aggregate sources.

Ultimately, these constraints cause a chain reaction to an industry already faced with many financial challenges, and eventually, the consumer and the public will bear the cost either through increased aggregate prices or lost revenue to Alberta's economy.

## 4.0 Proposed Recommendations and Solutions

Below is a comprehensive list of all the recommendations that were made following the review of the processes under the PLA and *Code of Practice for Pits*.

### 4.1 Recommendations to Address Timeline Constraints.

The following summarizes recommendations to address the application review timelines throughout both processes:

- Implement mandated timelines for all applications under the *Code of Practice for Pits* similar to the Department of Fisheries and Oceans, the Alberta Energy Regulator, Canada Energy Regulator (formerly the National Energy Board), or the Alberta Utility Commission. Mandated timelines should include the process of requesting internal referrals.
- Continue the development and maintenance of OneStop with adoption as soon as possible for straightforward applications under EPEA and the PLA (i.e. SME, SMLs, 5-year reports, updated activities plans and reclamation certificate applications).
- Improve staff (director and reviewer) training to ensure a better understanding of the industry and requirements.
- Develop an internal subject matter expert referral process (including setting expectations/timelines on when referrals are sent and received).
- Increase communication internally to ensure consistency, externally to set expectations, and individually between applicants and AEP frontline staff.
- Hire temporary staff with the knowledge to assist with the backlog. Consider hiring a consulting firm or seconding individuals with provincial experience.

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- In collaboration with ASGA, develop a risk-based approach to streamline the permitting process to meet mandated timelines.
- Streamline reviews between pieces of legislation (e.g. *Code of Practice for Pits and Water Act* or *SML and Water Act*). Security should not be requested until all permits are ready to be issued.
- Maintain jurisdictional independence. AEP should not interfere in other jurisdictions, nor allow municipalities to interfere with theirs, nor require visible proof of municipal permits before reviewing/approving applications.

The following summarizes recommendations to address the application review timelines throughout the private land process:

- Consider allowing a simple Updated Activities Plan (UAP) to be treated similar to filing a 'Notification of Change' one would do with approvals under Section 67 (3) e of EPEA or prepare a risk matrix to guide streamlining the review. Items considered as a simple update could be items that do not include substantial changes to the pit boundary or add drastically new processes.
- Where a more in-depth review is needed for significant changes to an existing permitted operation (expansion or new process like adding washing), a timeline in which a decision is made should be mandated (12 months would be reasonable for this).
- The development of a simple triage/evaluation for risk management of the perceived 'non-compliance' for environmental and/or adverse impact would likely reduce the workload during a review of the UAP. In consideration of a department that appears to be so overwhelmed, requests for ridiculously bureaucratic self-reporting for things extremely minor are requested from reviewing coordinators creating compliance records and additional costs for operators, but also additional work for the Environmental Response Centre, compliance, and approvals departments within AEP.
- Streamline the review approach for Five-Year Reports as a status update rather than a formal review. Additional data outside the scope of Schedule 4 Part 1 should be not be requested.
- Reassess the priority of the Reclamation Certificate application reviews and processing and ensure they are continually reviewed to avoid a backlog of applications.
- Streamline AEPs internal review and requirements for issuance of Reclamation Certificates.

The following summarizes recommendations to address the application review timelines throughout the public land process:

- Eliminate the ALR process or merge it with the SME process or remove duplicated processes/referrals.

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- Consider moving ALR and SME programs under Temporary Field Authorization (TFA). Similar to other activities of a similar nature such as Geotech surveys.
- Ensure a referral process, whether as part of the ALR or a combined ALR/SME process, is complete the first time so that missed referrals do not stop a project once it has progressed any further.
- AEP should meet mandated timelines. If referrals are not responded to, AEP should consider acceptance.

### 4.2 Recommendations to Address Application Processing

The main recommendation that applies to both procedures regarding application processing is to modify the current Reclamation Certification process to be consistent with AEPs staffing resource. This can be streamlined into something similar to the upstream oil and gas model for Reclamation Certification and have AEP perform audits instead of reviewing and inspecting every site when an application is prepared by a <sup>2</sup>qualified professional.

The following summarizes recommendations to address the constraints in application processing throughout the private land process:

- Provide allowances for consideration and/or logical approaches to allow for Five-Year Report submissions before 60 days of the anniversary date.
- Following or during submission of the Final Reclamation Report, allowing for the ability to reduce security should be considered. If reducing to full third-party costs is not favourable, consider determining a pre-set rate once the Final Reclamation Report is submitted.

The following summarizes recommendations to address the constraints in application processing throughout the public land process:

- ALR applications should only require the submission of a shapefile and the Applications, Geomatics and Education Unit review should only ensure that the shapefile is technically sound. The ALR is not a formal application under the Public Lands Administration Regulation, and the submitted plans are not available to the public within open databases such as BADGR or DIDs, as are formal dispositions on public land.
- Implement a digital application process that allows applicants to know where in the process the application is and the AEP representative that has been assigned the file.

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<sup>2</sup> Where appropriate (Qualified professionals should not be an automatic requirement or expectation for all applications by AEP, but only after site specific determination between all affected parties), qualified professionals will be engaged by applicants. When that occurs, meaningful dialogue between the applicant, their professional and the reviewers should be preferred over the traditional SIR method. Increased involvement by subject matter professionals should assist / expedite the review process, not slow it down.

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- Develop an audit process for reclamation/letters of clearance to conclude the SME process.
- Allow the Applications, Geomatics and Education Unit to request revisions without refusing applications.
- Change the term in Public Lands Administration Regulation (PLAR) to allow one year for an SME, to give operators/applicants time to prepare a complete an SML application.
- Extend the annual reporting process to be changed from a yearly report to every five years, to be consistent with the private land requirement.
- Streamline assessment requirements at the exploration phase, such that applicants should not be required to complete any site assessment **before** submitting an SME application.
- Issue authorizations for the maximum current legislation framework to allow (25 years terms) for an SML Permit as a means to reduce the administrative renewal process on both government and industry.

### 4.3 Recommendations to Address Inconsistencies in Requirements

The following summarizes recommendations to address the constraints caused by inconsistencies in requirements throughout both processes:

- Consider the development of an Aggregates Unit with one designated director to review all pit aggregate applications under the *Code of Practice for Pits, Public Lands Act* and the *Water Act* to distribute the work across the province. Alternatively, assess staffing capacity and ensure appropriate staffing availability for all regions.
- Standardize the format of how Supplemental Information Requests (SIR) are issued and ensure that SIRs are based on regulatory requirements that link back to the applicable regulation when sent to the Operator.
- Develop standardized SIRs and/or conform to the guidelines and principals as provided in the LAT report.
- Processes should be implemented to make the construction of wetlands easier as part of the reclaimed landscape.
- Release Guidelines for Wetland Reconstruction specific to the aggregate industry.

### 4.4 Recommendations to Address Lack of Communication

The main recommendation to address the lack of communication is to develop strategies and guidelines to increase communication internally to ensure consistent interaction, and externally to set expectations with industry, applicants and AEP frontline staff.

#### 4.5 Recommendations to Address Financial Security Management

The following summarizes recommendations to address the application review timelines throughout both processes:

- Once a Reclamation Certificate is issued, security should be returned automatically.
- Develop or set mandated timelines for security return.

##### Private Land Specific

- Standardized requirements to allow reductions in financial security when a pit is reclaimed, and the liability has been reduced.

##### Public Land Specific

- Transfer security fees to the Reclamation Fund instead of the General Revenue.

#### 4.6 Recommendations to Address Priorities of Resources on the Landscape

The following summarizes recommendations to address the application review timelines.

- AEP should consider developing a land-use management practice that can avoid sterilization of aggregate, rather than the first come first serve approach that is currently being applied to the landscape.
- Create a standardized framework for compensation of other impacted users/leaseholders on the landscape.
- Allow multiple uses for the same piece of land under one disposition, if included in the Conservation Operation Reclamation Plan (CORP). Some activities, such as campsites should be allowed without any further approval necessary. *Public Lands Act* Section 77 Use of Land - shall not make use of the land for any purpose other than which the lease was granted without the consent of the director.
- Remove the section requiring consent (*Public Lands Act* 9(1)(e)), and/or determine priorities of the best use for the landscape and create a standardized framework for land-use compensation of other impacts on leaseholders that are currently active and approved.

## 5.0 Closure/Intent

The ASGA has compiled this list of constraints and recommendations in the hopes of improving the regulatory system for permitting requirements under the *Public Lands Act* and *Code of Practice for Pits*. ASGA is favourable to working with AEP as these recommendations are explored and possibly implemented.