

WATER ACT

BEING CHAPTER W-3 R.S.A. 2000 (the "Act")

ENFORCEMENT ORDER NO. WA-EO-2014/02-UAR

Danny J Stewart
11117 – 158 Street NW
Edmonton, Alberta
T5M 1Y5

Rock Hard Contractors Inc.
1155, 5555 Calgary Trail
Edmonton, Alberta
T6H 5P9

[Hereinafter, Danny J Stewart and Rock Hard Contractors Inc. are collectively referred to as the "Parties"]

WHEREAS Danny J Stewart ("Mr Stewart") is the registered owner of the lands legally described as Lot 3A, Block 1, Plan 9622272 ("Mr Stewart's lot") located in Mattwa Bay subdivision, Parkland County, Alberta.

WHEREAS Mattwa Bay subdivision has five lots, each of which are adjacent to Wabamun Lake [hereinafter the five lots that compose Mattwa Bay will be referred to as the "Lands"];

WHEREAS the Lands are adjacent to a water body known as Wabamun Lake;

WHEREAS on August 25, 2013, Alberta Environment and Sustainable Resource Development ("AESRD") received a complaint regarding modification of the shoreline adjacent to the Lands;

WHEREAS during a site inspection on August 26, 2013, an AESRD Environmental Protection Officer ("EPO") observed the following on and adjacent to the Lands:

- Wire baskets being formed, placed in the water and along the shore of Wabamun Lake and filled with rock ("gabion baskets");
- Two rows of gabion baskets, stacked vertically on top of each other [the "Gabion Basket Wall"], were visible from the Lands.
- Empty wire baskets and piles of rock were being stored for use on the land side of the Gabion Basket Wall;
- A pile of soil was being stored on the land side of the Gabion Basket Wall, some of which had already been used to backfill behind the installed gabion baskets;
- A backhoe and three bobcats were present on the land side of the Gabion Basket Wall;
- A portion of the Gabion Basket Wall was covered with geotextile material, plastic sheeting and then backfilled with soil;

- The length of the Gabion Basket Wall along the shore of Wabamun Lake is approximately 90 meters long;

[collectively, all of the above is hereinafter referred to as “the Works”]

WHEREAS during the site inspection on August 26, 2013, the EPO spoke to workers on the Lands who advised that they work for the company Rock Hard Contractors Inc. and were hired by the landowner, Danny Stewart, to construct the Works and in particular to install a gabion basket wall on the bed and shore of Wabamun Lake, adjacent to the Lands;

WHEREAS Danny Stewart is the sole director of Rock Hard Contractors Inc.;

WHEREAS the registered lands that border the Works are owned and described as follows:

- Shanaz Iyer is the registered owner of the lands legally described as Lot 1, Block 1, Plan 752MC, in Parkland County, Alberta (located three lots west of Mr Stewart’s lot);
- Mark and Katheryn Murray are the registered owners of the lands legally described as Lot 2 Block 1 Plan 752MC, in Parkland County, Alberta (located two lots west of Mr Stewart’s lot);
- County of Parkland #31 is the registered owner of Lot R Block 1, Plan 752MC, in Parkland County, Alberta (located one lot west of Mr Stewart’s lot);
- Sharon Lee Shave is the registered owner of the lands legally described as Lot 4 Block 1 Plan 752MC, in Parkland County, Alberta (located one lot east of Mr Stewart’s lot);

WHEREAS during an interview with an EPO on August 29, 2013, Danny Stewart stated the following:

- He used his own company Rock Hard Contractors Inc. to construct the Works;
- Prior to the Works being constructed there was a single level gabion basket wall along the shoreline, which was failing;
- He had neither applied for nor obtained a *Water Act* approval prior to commencing construction of the Works;
- He had not contacted any regulatory departments regarding authorizations to construct the Works;
- He had constructed the Works on the shore adjacent to all five lots;
- He had collected letters of consent from the two registered owners to the west of his lot and one letter of consent from the registered owner to the east of his lot to construct the Works.
- He did not seek, nor did he have a letter of consent for the lot owned by Parkland County.

WHEREAS Wabamun Lake is a “water body” within the meaning of section 1(1)(ggg) of the *Water Act*;

WHEREAS the construction and continued operation of the Works may alter or may become capable of altering the flow or level of water, may change or may become capable of changing the location of water, and may cause or may become capable of causing siltation of water or the erosion of the bed or shore of Wabamun Lake, and may cause or may become capable of causing an effect on the aquatic environment of Wabamun Lake;

WHEREAS the construction and continued operation of the Works is an "activity" within the meaning of section 1(1)(b)(i) of the *Water Act*;

WHEREAS section 36(1) of the *Water Act* states that no person shall commence or continue an activity except pursuant to an approval unless it is otherwise authorized under this *Act*;

WHEREAS AESRD has never received an application from nor issued an approval to Mr Stewart or Rock Hard Contractors Inc. for the construction or operation of the Works, and the construction and operation of the Works are not otherwise authorized under the *Water Act*, nor were the Works authorized, as required, under the *Public Lands Act* c. P-40 RSA 2000;

WHEREAS Mr Stewart and Rock Hard Contractors Inc. are each a "person responsible" for the Works pursuant to section 1(1)(kk) of the *Water Act* and section 1(5) of the *Water (Ministerial) Regulation* (A.R. 205/1998);

WHEREAS Faye Hutchings, AESRD Compliance Manager, Upper Athabasca Region (the "Director"), has been appointed a Director for the purposes of issuing enforcement orders under the *Water Act*;

AND WHEREAS the Director is of the opinion that the Parties have contravened section 36(1) of the *Water Act*, which is an offence under section 142(1)(h) of the *Act* by conducting an activity without an approval;

THEREFORE, I, Faye Hutchings, Director, pursuant to sections 135(1) and 136(1) of the *Act*, DO HEREBY ORDER THAT:

1. The Parties shall immediately cease all unauthorized activities relating to the Works.
2. The Parties shall immediately prevent all siltation of water in Wabamun Lake caused by the Works.
3. The Parties shall,
 - a) prior to undertaking any of the requirements of this Order, and
 - b) during all stages of activity required by this Order;install a silt curtain in Lake Wabamun that runs the entire length of the shoreline adjacent to the Lands;
4. The Parties shall, at all times during the implementation of the requirements of this Order, prevent the siltation of water in Wabamun Lake.
5. The Parties shall, at all times during the implementation of the requirements of this Order, use rip-rap that is clean and free of silts and organic debris
6. The Parties shall by **September 2, 2014** submit to the Director, for the Director's approval, a written remedial plan for the Works (the "Remedial Plan").
7. In the Remedial Plan, the Parties shall include, at a minimum, detailed information for each of the following:

- a) A detailed description of how all of the gabion baskets will be removed, including, but not limited to descriptions of each of the following:
- (i) how the undisturbed portions of the bed and shore of Wabamun Lake adjacent to the Lands will remain undisturbed during the removal of the gabion baskets;
 - (ii) the types of
 - A. equipment,
 - B. methods, and
 - C. materialsthat will be used during this process;
- b) A detailed description of the installation each of the following in all locations where the gabion baskets were removed:
- (i) Best Management Practice #45 (Vegetated Riprap), from the Erosion and Sediment Control Manual – June 2011, Alberta Transportation;
 - (ii) Best Management Practice #27a (Live Staking) or Best Management Practice #27b (Brushlayering) from the Erosion and Sediment Control Manual;
 - (iii) The exclusive use of native vegetation; and
 - (iv) The exclusive use of riprap that is clean and free of silts and organic material.
- c) A description of how the Vegetated RipRap and Live Staking or Brushlayering will be installed, including each of the following.
- (i) A location plan showing:
 - A. Proposed installations in relation to property lines;
 - B. Locations of the proposed installations relative to the
 - I. Present,
 - II. Highest; and
 - III. Lowestknown water levels; and
 - C. The dimensions of the entire area on which the Remedial Plan will be implemented.
 - (ii) A cross section of the shoreline showing all :
 - A. Existing conditions, including but not limited to the slope of the current shoreline;
 - B. The Remedial Plan's proposed modifications; and
 - C. The proposed slope of the shoreline after implementation of the Remedial Plan.

- (iii) A detailed description of how the undisturbed portions of the bed and shore of Wabamun Lake adjacent to the Lands will remain undisturbed during the implementation of the Remedial Plan;
 - (iv) The types of:
 - A. Equipment,
 - B. Methods; and
 - C. Materials

that will be used in the implementation of the Remedial Plan.
 - (v) The types of vegetation that will be used in the implementation of the Remedial Plan;
 - (vi) The size of rip rap that will be used; and
 - (vii) The origin of the rip rap that will be used;
- d) A written confirmation that the location plan required in clause 5(b)(i) and the cross sections required in clause 5(b)(ii) of this Order follow the Government of Alberta "Content Requirements of Disposition Sketch Plans, April 2, 2012, Government of Alberta";
- e) A description of the measures that will be implemented to prevent all erosion of the bed and shore of Wabamun Lake adjacent to the Lands, both
- (i) during the implementation of the Remedial Plan; and
 - (ii) after completion of the work set out in the Remedial Plan;
- f) A description of the measures that will be implemented to minimize or prevent all siltation of water in Wabamun Lake adjacent to the Lands, both
- (i) during the implementation of the Remedial Plan; and
 - (ii) after completion of the work set out in the Remedial Plan;
8. In the Remedial Plan, the Parties shall include a schedule of implementation for the Remedial Plan that shall have a completion date of no later than **March 15, 2015**.
9. The Parties shall only implement the work described in the Remedial Plan pursuant to the schedule of implementation that is approved by the Director.
10. The Parties shall, prior to implementing the approved Remedial Plan, obtain all required authorizations under the *Public Lands Act*, for implementing the Remedial Plan.

11. The Parties shall, prior to implementing the approved Remedial Plan, provide a copy of each of the relevant *Public Lands Act* authorizations to the Director.
12. The Parties shall implement each part of the Remedial Plan in accordance with the Director's written authorization.
13. The Parties shall provide the Director with 3 days' notice either by phone or email prior to commencing the work in the approved Remedial Plan.
14. Within 30 days of completion of the requirements of this Order, the Parties shall submit to the Director a final written report (the "Final Report") describing the work undertaken to comply with this Order.

DATED at the City of Spruce Grove, in
the Province of Alberta, this 31 day of July, 2014

Original signed by:

Faye Hutchings, Director
Compliance Manager
Upper Athabasca Region

Section 115 of the *Water Act* may provide a right of appeal against this decision to the Alberta Environmental Appeals Board. There may be a strict time limit for filing such an appeal. A copy of section 115 is enclosed. For further information, please contact the Board Secretary at #306 Peace Hills Trust Tower, 10011 – 109 Street, Edmonton, Alberta, T5J 3S8; telephone (780) 427-6207; fax (780) 427-4693.

Notwithstanding the above requirements, the Party(ies) shall obtain all necessary approvals in complying with this order.

Take notice that this enforcement order is a remedial tool only, and in no way precludes any enforcement proceedings being taken regarding this matter under this or any other legislation.