

**WATER ACT**

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

**ENFORCEMENT ORDER NO. WA-EO-38059**

Quality Concrete Products Ltd.  
PO Box 7339, Stn Main  
Bonnyville, Alberta  
T9N 2H7

and

Barry Luciak  
4123 Lakeshore Drive  
Bonnyville, Alberta  
T9N 2H7

(Hereinafter referred to as "the Parties")

**WHEREAS** the Parties entered into a roadway license agreement with the Municipal District of Bonnyville No. 87 on May 17, 2021 for the purposes of access to an approved Surface Material Lease No. 110016 issued to the Parties on September 16, 2021 from Alberta Environment and Parks ("AEP").

**WHEREAS** the road development goes through lands legally described as southeast 22 and southwest 23 Township 62, Range 7, West of the 4<sup>th</sup> Meridian located in the Municipal District of Bonnyville No. 87 (the "Lands");

**WHEREAS** on April 1, 2022, AEP received a complaint through the Environment and Dangerous Goods Emergencies call center that "Quality Concrete" had started building a road and was removing peat moss from a wetland (the "Impacted Wetlands") and that salvageable timber was being harvested in the surrounding crown lands;

**WHEREAS** on April 5, 2022, an AEP Environmental Protection Officer ("EPO") conducted a desktop review of AEP authorizations under *Environmental Protection and Enhancement Act* and the *Water Act* database, which revealed that, the Parties prior to any activity obtained no authorizations.

**WHEREAS** on April 5, 2022, an EPO conducted an inspection of the Lands and the EPO made the following observations:

- a John Deere tracked hoe parked near the tree line within the impacted wetland area,
- a portion of the impacted wetland was dug in a square shape approximately the width of the road allowance,
- peat piles observed next to the impacted wetlands and along an existing lease road,
- water was present inside the excavated portion of the impacted wetland during the inspection, and
- the salvageable timber was cut and stacked on the road allowance and the adjacent lease road;

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[Hereinafter, collectively referred to as the "Unauthorized Activities"].

**WHEREAS** on April 8, 2022, the EPO and a Forest Officer from Lac La Biche conducted an inspection of the road allowance area with the Parties;

**WHEREAS** on April 13, 2022, the EPO sent a Investigators Notice letter to the Parties, that the work that has been done within the wetland area was potentially a contravention of the *Water Act*. AEP requested the Parties obtain the services of a Qualified Authenticating Wetland Professional (QAWP) to provide an assessment of the Impacted Wetlands and to immediate halt to the Unauthorized Activities. The report should include, but not be limited to:

- wetland classification,
- delineation of the pre-disturbance boundary, and
- proposed remedial actions to address the Unauthorized Activities by June 17, 2022;

**WHEREAS** on April 14, 2022, an AEP Wetland Specialist conducted a desktop review of the Lands using satellite imagery and confirmed the presence of the impacted wetlands and advised the EPO that:

- the Impacted Wetland had been disturbed by the Unauthorized Activity,
- evidence of the wetland dates back to the earliest air photograph from 1952 and is visible in all available historical air photographs, and
- wetland area lost must be returned to its previous condition;

**WHEREAS** between June 15, 2022 and July 6, 2022, correspondence between the EPO and representatives of the Parties regarding the options for restoration of the Impacted Wetlands proposed by the Parties Consultant/QWAP (the "Consultant"), including;

1. restore the Impacted Wetlands to their respective conditions prior to the Unauthorized Activities, including both wetland area and classification, in the same location the loss occurred;
2. replace the Impacted Wetlands at a 1:1 ratio within the Lands, including wetlands of equal area and classification as those lost as a result of the Unauthorized Activities; or
3. retain a third party wetland replacement agent to meet the remedial requirements of the Parties to replace the Impacted Wetlands at a 1:1 ratio within Relative Wetland Value Assessment Unit 3;

**WHEREAS** on July 29, 2022, the EPO received a report, titled "Compliance Wetland Assessment Report from Basin Environmental (the "Report"), and Authenticating Wetland Professional, on behalf of the Parties. The Report stated the Unauthorized Activities had impacted 0.263 hectares ("ha") of a wooded coniferous fen;

**WHEREAS** the Report details the remedial actions considered to replace the area of Impacted Wetlands because of the Unauthorized Activities, including:

- the Alberta Wetland Rapid Evaluation Tool-Actual ("ABWRET-A") score from the Consultant was determined to be a "D" value wetland;
- a statement from the QAWP indicating that restoration of the Impacted Wetlands was not possible due to the project utilizing an existing undeveloped government road allowance;
- a statement from the QAWP indicating that replacement wetlands of equal area and classification on the Lands was not possible; and

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- a request for consideration of payment to the AEP Wetland Replacement Program for services to undertake the required wetland replacement of the Impacted Wetlands on behalf of the Parties;

**WHEREAS** on August 5, 2022, the EPO sent a supplementary information request email to the Parties and the Consultant outlining the Report does not provide adequate justification as to why the permittee-responsible replacement is not a viable option and that additional justification as to why the only option is for the proposed wetland replacement fee;

**WHEREAS** on August 15, 2022, the EPO received email correspondence from the Consultant from the August 5, 2022 request. The replacement strategy (replacement fee) selected by the Parties under the Mitigation Directive based on the following considerations:

- the Parties do not currently own or have access to lands that could be dedicated to wetland habitat construction at this time, and
- the Parties do not have expertise in this area;

**WHEREAS** on August 22, 2022, an AEP Wetland Specialist provided the Consultant, the Parties, and the EPO through email that based on the information in the Report provided by the Consultant and the additional rationale provided in email on August 15, 2022, using the wetland replacement fee option is acceptable;

**WHEREAS** the Alberta Wetland Mitigation Directive ("Mitigation Directive") identifies the replacement value ratio for a "D" value wetland as 1:1;

**WHEREAS** the impacted wetland is located in AEP's Relative Wetland Value Assessment Units ("RWVAU") 3 and has a replacement rate of \$19,100/ha as presented in the Alberta Wetland Mitigation Directive;

**WHEREAS** the Impacted Wetlands are a water body as defined in Section 1(1)(ggg) of the *Water Act*;

**WHEREAS** each of the Unauthorized Activities is an "activity" as defined in Section 1(1)(b) 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** AEP has not issued an approval under the *Water Act* to the Parties or any other person authorizing any of the Unauthorized Activities, and these activities are not otherwise authorized under the *Water Act*;

**WHEREAS** the Parties are a person responsible for the Unauthorized Activities pursuant to section 1(1)(kk) of the *Water Act* and section 1(5) of the Water (Ministerial) Regulation (AR 205/1998);

**WHEREAS** based on the findings of the Report and advice from the AEP Wetland Specialist, the Director is of the opinion that the Unauthorized Activities have compromised the viability and function of 0.236 ha of the Impacted Wetland, thus the wetland must be replaced;

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**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 the Unauthorized Activities without an approval;

**WHEREAS** Heather Dent, Compliance Manager, has been appointed a Director for the Purpose of issuing enforcement orders under the *Water Act* (the "Director");

**THEREFORE**, I, Heather Dent, Director, pursuant to Section 135(1) and 136(1) of the *Water Act*, **HEREBY ORDER THAT**:

- 1) The Parties must replace 0.263 ha of wetland area by paying a wetland restoration service fee to the AEP Wetland Replacement Program to compensate for the Impacted Wetland at a 1:1 ration at a compensation rate of \$19,100 RWVAU Rate, resulting in \$5,023.30, to be paid to the Wetland Replacement Program Dedicated Revenue Initiative.
- 2) No later than October 18, 2022, the Parties shall submit confirmation of agreement to the Director to pay the AEP Wetland Replacement Program a service fee of \$5,023.30 for the replacement of 0.263 ha of wetland area as a result of the Unauthorized Activity on the Impacted Wetlands.
- 3) Payment as described in Clause 1 must be completed within 30 days of the issuance date of this Order.
- 4) Within 7 days of receiving confirmation of payment receipt acceptance, the Parties will provide the confirmation to the Director.
- 5) The Parties shall only complete the actions described within the Compliance Wetland Assessment Report in accordance with the Director's written authorization.

DATED at the City of Edmonton, in the Province of Alberta, this 2<sup>nd</sup> day of September 2022.

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Heather Dent, Director  
Compliance Manager  
Boreal District- East Region

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Section 115 of the *Water Act* may provide a right of appeal against this decision to the Alberta Environment 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 shall obtain all other necessary approvals or authorizations required to comply 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.

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