

SHAWNIGAN LAKE INVESTIGATION BACKGROUNDER

Introduction

- Active Earth Engineering (AEE) was retained by South Island Aggregates and Cobble Hill Holdings (SIA/CHH) to act as the “Qualified Professional” for the application by SIA/CHH to obtain a permit from the Ministry of Environment to operate a long-term storage facility for contaminated soil in Shawnigan Lake.
- Starting in July 2015, APEGBC received multiple complaints alleging that APEGBC members employed at AEE were in an undisclosed conflict of interest because they entered into a profit-sharing agreement with SIA/CCH for the operation of the proposed contaminated soil storage facility. In response, APEGBC initiated an investigation into the conduct of five APEGBC Professionals employed by AEE.
- The investigation was conducted by APEGBC’s Investigation Committee pursuant to the *Engineers and Geoscientists Act*. The investigation included analyzing the role that the AEE professionals performed in the permitting process and the nature of the financial relationship between AEE and SIA/CCH. The Investigation Committee reviewed extensive evidence including the documents submitted by the complainants, numerous public documents including sworn affidavits, AEE’s internal and external communications, the decision of the Environmental Appeal Board (EAB) and the judicial review. APEGBC also conducted its own interviews.

The Permitting Process, the Environmental Appeal Board, the Judicial Review

- The “Delegate” of the Ministry of Environment is the person responsible for the decision to issue the permit to operate the contaminated soil storage facility.
- The Investigation Committee confirmed that, at an early stage in the permitting process, the AEE Professionals informed the Delegate that AEE might take an ownership interest in the project. In response, the Delegate advised AEE that he was not concerned that it would be improper, from the Ministry of Environment’s perspective, for them to serve as “Qualified Professionals” for the permitting process while at the same time having an ownership interest in the project.
- The evidence gathered by the Investigation Committee from the Delegate – which refutes the allegation that the AEE Professionals did not disclose their possible interest in the project to the Delegate – does not appear to have been available to Mr. Justice Sewell before the pronouncement of his judgment on January 24, 2017. The AEE Professionals and AEE were not parties to the court proceeding.
- During the permitting process, the Ministry of Environment engaged three independent experts to assess the merits of the technical assessments provided to the Ministry by the AEE Professionals. During the EAB proceeding that followed, the independent experts

were cross-examined. In addition, the Shawnigan Residents Association called six experts, the SIA/CHH introduced an expert report, and the Cowichan Valley Regional District called three experts. The AEE Professionals did not provide expert advice at the EAB hearing. Rather, as reflected in the decision of the EAB, the AEE Professionals were recognized as “advocates” for the project.

- The EAB determined the design provided by the AEE Professionals for the project was conservative with due regard to the protection of the environment and human health.
- On February 23, 2017, the Ministry of Environment cancelled the permit held by SIA/CHH on the basis that SIA/CHH failed to comply with its financial obligations under the permit.

The Results of the APEGBC Investigation

- APEGBC did not duplicate the technical assessment of the EAB but rather focused on the alleged conflict of interest.
- AEE and SIA/CHH discussed a joint venture agreement over a period of time but no joint venture agreement was ever reached.
- The APEGBC Investigation Committee found it significant that the AEE Professionals did not provide expert testimony during the EAB proceeding and were recognized as advocates for the project.
- The Investigation Committee concluded that the conduct of the AEE Professionals was distinguishable from a prior APEGBC disciplinary situation where an engineer’s compensation was dependent on the engineer reaching a preconceived conclusion as an expert witness in a court proceeding.
- Based on its thorough investigation, APEGBC’s Investigation Committee concluded that, in the matter of the potential conflict of interest, there were no reasonable or probable grounds to believe that any of the AEE Professionals demonstrated unprofessional conduct or contravened the APEGBC *Code of Ethics* particularly given they disclosed their possible financial interest in the project to the Delegate who advised that there was no Ministry policy against a Qualified Person having an ownership interest.

Note: APEGBC adheres to the privacy provisions in the *Engineers & Geoscientists Act* and the *Freedom of Information and Protection of Privacy Act* which apply to APEGBC Professionals subject to complaints. In this instance, the AEE Professionals have consented to APEGBC releasing this statement, given the broad public attention this controversy has received.