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June 12, 2003

Ministry of Natural Resources  
Hon. Jerry Ouelette, Minister

Dear Sir:

Thank you for your letter of June 10<sup>th</sup>, 2003 in response to our April 2<sup>nd</sup>, 2003 letter. In respect to the various non responses, confrontation, and problems experienced with your Ministry and in review of the correlation of events which have transpired since the final O.M.B. decision/order was issued July 25<sup>th</sup>, 2001, we can now conclude without prejudice that the Ministry of Natural Resources has dealt with our company in bad faith.

We arrived at this conclusion based on the following fact:

Upon receiving the April 3<sup>rd</sup>, 2001 O.M.B decision/order, our consultant in consultation with M.N.R. immediately proceeded to amend the site plans to include certain recommendations and conditions of the decision/order so that there would be no delay in issuance of the Class A license, as we were starting our 2001 working season, and needed to start up as quickly as possible.

The site plans were amended and completed by May 25<sup>th</sup>, 2001 and the final O.M.B. decision/order was issued July 25<sup>th</sup>, 2001. However, there was no response from M.N.R. or M.O.E. which resulted in the loss of income for the 2001 season as we were unable to start as neither the license or Permit to Take Water was issued as directed.

Recent information indicates that there exists legislation which requires a response to an O.M.B. decision/order within 30 days of receiving that decision/order. Now we have to ask the question why did these two ministries not comply, and why did it take 1 year and 8 months to receive the Class A License from M.N.R. which now places us at this date into our 3rd working season **after** the O.M.B. decision, with very substantial losses for the 2 previous working seasons lost in year 2001 and 2002 and we are now still spinning with a license issued and immediately suspended and **not** operational from the date of receiving it April 1<sup>st</sup>, 2003. What kind of spin game is this?

In the March 6, 2002 letter to M.P.P. Toby Barrett copied to M.N.R, we identified our plans to proceed with development on the property in the year 2002. There was **no** response from Mr. Barrett and only from the M.N.R. after drilling and blasting had occurred on the property.

On. September 5<sup>th</sup>, 2002 we had the Trespass event by M.N.R. Inspectors Lumb and Cutmore to obtain information to issue a shut down order for an illegal quarry operation.

When this did not achieve the expected result, Mr. Cutmore immediately contacted O.M.B. case worker Andy Dawang and conspired the illegal reopening of the O.M.B. hearing to discuss the Permit to Take Water issue which we declined to participate in, subject to M.N.R. Aggregate Act legislation which prohibited an O.M.B. decision review under Provincial Statutes Section 43 Ontario Municipal Board Act.

The O.M.B. letter of October 10<sup>th</sup>, 2002 confirmed this legislation and clearly advised that the O.M.B. could **not** further intervene in this matter. The letter also confirmed the negligent misrepresentation of Mr. Cutmore in respect to his attempt to promote and arrange an illegal review contrary to his Ministries' **own** legislation. **See letter #1**

Then on November 13<sup>th</sup>, 2002 we received a registered letter from Mr. Cutmore and another negligent misrepresentation where he stated that he was working with the O.M.B. and M.O.E. to clarify the situation with respect to the sequence of the Aggregate License and Permit to Take Water approvals that were required. Mr. Cutmore further stated quote: "I have submitted a proposal to O.M.B. that I believe is technically workable and would permit M.N.R. to proceed with issuance of the Aggregate License." Unquote. No, not according to the October 10, 2002 O.M.B. letter of clarification signed by Joanne Hayes. This letter clearly indicated that the Board had issued its decision, and that it was the responsibility of the M.N.R. to act on that decision without further intervention by the Board.

The November 13<sup>th</sup> letter set out 15 conditions to be addressed stating that these conditions must be satisfied **prior** to any extraction taking place on the property. And my question is, by what authority was that determination made, in reference to the fact that this was **not** so stated in the final O.M.B. decision/order.

A review of the 55 conditions as approved by the O.M.B. identify **only 2** conditions which direct conditions **prior** to operation.

These are: Prescribed Condition #5 and Condition #14 both of which were addressed as directed.

The O.M.B. decision/order directed the Minister quote: "The Board directs the Minister, pursuant to Section 11(8) of the Aggregate Resources Act R.S.01990 to issue a Class A License for **removal of aggregate** from lands composed of Parts of Lots 10, 11, and 12, Concession 12, in the City of Nanticoke subject to the following conditions." unquote. The clear intent of the Board direction was for the issuance of a license for quote: "the **removal of aggregate**" and **not** the issuance of a license for the enforcement freeze on the license with **23** "pre operational conditions" which relates to the same thing as **no** license at all if it is not operational.

The clear intent here is to have this company spend more mega bucks in the property, but don't **dare** attempt to get a return on the investment to help pay for it.

Clearly Inspector Cutmore's crowning achievement of negligent misrepresentation was the March 31, 2003 letter signed by District Manager Alec Denys which identified the 23 "pre operational conditions" and 4 stated infractions received with the Class A License on April 1<sup>st</sup> 2003.

We contend that the 23 “pre operational conditions” imposed before the license became operational is contrary to Aggregate Act Legislation and the O.M.B. decision/order and therefore have no authority in law and can be considered a conspired fraud.

In particular of the 4 infractions listed, we find infraction #4 to be negligent misrepresentation and a complete fraud.

This matter concerning these berms was identified and discussed with our consultant prior to release of the site plans to M.N.R. The question was whether the site plans should be amended to relocate the berm farther west of the access road entrance **before** the site plans were released to M.N.R.

Our consultant discussed this question with Mr. Cutmore on February 3<sup>rd</sup>, 2003 and reported no concern by Mr. Cutmore at this time, as these berms were **not** required until the drills were working within 350 metres of the nearest residence, and that this could be addressed later **when** required.

See fax dated February 5<sup>th</sup>, 2003 from our consultant confirming this discussion and conclusion, and a follow up fax from our consultant **April 22, 2003** reaffirming the previous discussion after my inquiry after the March 31, 2003 letter. 2, 3

In this regard the site plans state quote: “ Initial Excavation Area 1A. Drilling may proceed in this area without the berms around R1, R2, R3. This area may be extended to within 400 m from R1, R2, and R3 provided the interim barrier is within 50 m from the drill.” unquote. **See Site Plan.**

However, in spite of what is indicated on the site plan and the documented conversations between Mr. Cutmore and our consultant Bernie Janssen, Mr. Cutmore makes the comment under infraction #4 quote: “The roadway entrance and weigh scales should be moved eastward of the existing location, as an acoustic berm is required along the boundary of the adjacent farm residence.”

If ever there was an underhanded conspired snake in the grass event directed to impact our company, this has to be it. Sure we will move our access road over, and move our scales and destroy and replace \$10,000.00 worth of concrete footings. No, I don't think so. **No** suggestion such as amending the site plan to accommodate and save this useless unnecessary expense.

We have now spent thousands of dollars constructing berms which are **not** required at this time in an attempt to accommodate this order, although we project these berms will not be required for at least 4 or 5 years.

All of this information confirms that for whatever reason, this direction by Mr. Cutmore under infraction number 4 was an intentional and conspired fraud. We have now been made aware of another interference by Mr. Cutmore when he contacted Roads Director David Anderson of Haldimand County to try to further restrict and complicate matters concerning our access to the Harrop drain for dewatering the quarry. I suggest such actions **far** exceed Mr. Cutmore's responsibilities for enforcement of the Aggregate Act.

Please be advised at this time, that in respect to Mr. Cutmore's bad faith interferences and fraudulent performances directed to this company, the officers of this company shall have **no** further business dealings with Mr. Cutmore. If he should again enter any of our properties, we shall file Trespass and Harassment charges along with conspiracy and fraud charges with the courts to the illegal interference with economic and business relations of Nichols Gravel Limited.

I suggest in respect to Inspector Cutmore's pathetic overpowering performances and as well, the complete loss of credibility of the Ministry of Natural Resources, that it would be most appropriate if Mr. Cutmore were to resign his position with the Ministry, or in the alternative have his employment terminated.

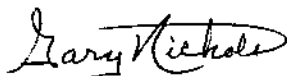
Please further be advised that our lawyers are researching whether we shall proceed to file contempt of an O.M.B. decision/order charges against the Minister of Natural Resources and the Minister of the Environment and staff, and for monetary damages as well, due to the extended unnecessary delay in issuance of the Class A License and the Permit to Take Water, and the further delay imposed with the License suspension order.

As a final comment in respect to your letter of June 10, 2003 I would advise you, that I previously served a three year term as a Haldimand-Norfolk Regional Councillor for the Township of Delhi, and in the experience received my education as to how government **really** works. Been there, done that.

It would be my suggestion, that this Provincial government enforce the elected authority of the people, and **direct** staff, instead of staff **directing** the government. This really **does** work, if anyone is interested in stopping the spinning process.

Thank you for your consideration in this matter.

Yours sincerely,



Gary Nichols

c.c. Premier Hon. Ernie Eves  
c.c. Alec Denys, M.N.R. Aylmer District  
c.c. Crown Law Office  
c.c. Toby Barrett

*September 5/03 no response received, to this letter. Gary Nichols*