



Nichols Gravel Limited
 P.O. Box 172 - Delhi, Ontario N4B 2W9
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October 22, 2007

Ombudsman of Ontario

ATTENTION: Mr. André Marin

Dear Sir:

Please be advised of this request to investigate the administration procedures of the Ontario Municipal Board as well as the biased and discriminatory Decision/Order 2729 as issued September 27, 2006 by Board Chairman M.C. Denhez on the appeal to the M.N.R. revoke of licence #103717 to Nichols Gravel Limited.

On April 1, 2003 the Ministry of Natural Resources issued a licence 18 months after directed by O.M.B. Decision/Order 1194 along with a letter dated March 31, 2003 directing that "23 Specific Pre Operational Conditions" must be satisfied **prior** to operation of the Quarry or removal of material from the property.

This direction cannot be identified in O.M.B. Decision/Order 1194 of July 25, 2001 or the licence as signed for issuance by the Minister March 25, 2003.

The licence was suspended April 14, 2003 for non completion of the Pre Operational Conditions illegally imposed, and charges were filed against Nichols Gravel Limited and its officers for operating an illegal quarry under A.R.A. S.57 (1).

On September 30, 2004 the Minister issued a revoke of licence order based on 7 uncompleted remaining Pre Operational Conditions **NOT** identified in the licence.

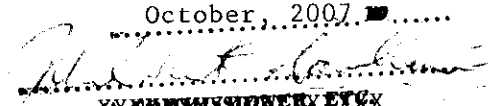
Under A.R.A. Section 20. (1) (4) the licensee has recourse to appeal this decision to the Ontario Municipal Board.

The O.M.B. conducted a Pre Hearing conference August 2, 2005, member J.A. Smout presiding. See Memorandum to the oral decision by J.A Smout and procedural order of the Board.

Madam Smout was seized of the case management of this case, but at the second Pre hearing conference Chairman D.R. Granger presided and denied a motion to defer hearing until after our Judicial Review to quash revoke order which overruled the previous order of Chairman Smout and ordered that the hearing start September 5, 2006.

Chairman Granger was **not** seized of this case.

THIS IS EXHIBIT " A "
REFERRED TO IN THE AFFIDAVIT OF
 Gary Ira Nichols

SWORN BEFORE ME THIS ...25th... DAY OF
 October, 2007. ■.....

~~XXXXXXXXXXXXXXXXXXXX~~
 A Notary Public in and for
 the Province of Ontario

Question: How and why did Chairman Smout become unseized of the case?

On September 5, without notification of change which seems to have been set up by Mr. Granger, Chairman M.C. Denhez attended and presided for the 5 day hearing.

Why was it necessary to have 3 different chairman to hear this appeal to this simple matter which took almost as long as the original O.M.B. Hearing which lasted 7 days?

Please review our Summary NICHOLS GRAVEL LIMITED APPEAL HEARING TO M.N.R. REVOKE OF LICENCE 103717.

SUBMISSION TO PROBABLE ERRORS IN LAW TO THE DECISION OF M.C. DENHEZ:

1. Failed initially to rule on the motion to recind the Revoke of Licence Order in consideration to the June 15, 2006 decision of Justice D. Reilly.
2. Continued throughout the hearing to disregard the fact that no Pre Operational Conditions can be identified in O.M.B Decision/Order 1194 or the licence signed and issued by the Minister March 25, 2003.
3. Steadfastly disregarded Justice Reilly's decision of June 15, 2003 prior to the hearing, and the January 28, 2004 decision of J. P. Casey which cited the M.N.R. for abuse of process.
4. Disregarded the fact that M.N.R. was in contravention of A.R.A. Legislations:
 - S 11 s (15) No Petition or Review of O.M.B decision.
 - S 13 (3) (A) (6) Change of Conditions.
 - S 16 (3) (5) (8) (9) Amendment to Site Plan.
 - Changed prescribed conditions to Pre Operational Conditions under Provincial Standard V.I.O. without legislative authority. All of this A.R.A. Legislation is enforceable on M.N.R. employees as well as all other persons under A.R.A. s. 57 s(2) (3).
5. **Mr. Denhez further violated procedure of the O.M.B. Act by disregarding legislated law under the O.M.B. Act. S. 96 (A) (B) and Section 86 (1) "Enforcement of Orders" which Mr. Denhez declined to enforce when he declined to recind the illegal M.N.R. Revoke of Licence Order based upon non compliance to Pre Operational Conditions which confirmed an authority of enforcement to M.N.R. of Pre Operational Conditions not so directed in Decision/Order 1194 or allowed under O.M.B. Act Section 86 (1).**

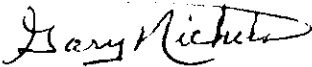
There are no provisions in O.M.B. legislation by which M.C. Denhez was provided with the authority to change conditions, or allow M.N.R. to change conditions of O.M.B. Decision/Order 1194 to "Pre Operational Conditions" for enforcement to the Revoke of Licence 103717.

In effect with this decision M. C. Denhez actually overruled and rendered O.M.B. Decision/Order 1194 null and void by providing approval to M.N.R. to Revoke the Licence based upon Pre Operational Conditions not so directed in O.M.B. Decision/Order 1194.

We request a complete review of the work performance record of M.C. Denhez by the O.M.B. Administrative Executive in order to determine if Mr. Denhez has complied with O.M.B. legislation in the administration of his responsibilities to his position of Public Trust as required in his capacity as an O.M.B. Chairman.

Thank you for your consideration in this matter.

Yours sincerely,



Gary Nichols

9. enforcement of fraud which the M.N.R. has manipulated to enforcement through the courts and the O.M.B. Decision/Order September 27, 2006 of M.C. Denhez. This appears to be an abuse of process, and was so stated in the January 28, 2004 decision of J.P.W. Casey.

Mr. Denhez selectively chose tidbits of evidence from 5 days of evidence to weave a story that would reflect Nichols Gravel Limited as rogue operators in the aggregate industry which required a supreme penalty of having your investment in land and machinery, cost of approval through the public planning process, as well as your Charter Right to make your livelihood, and efforts to establish a business and employ people, all completely irrelevant and all in the name of protecting the public interest. In 5 days of hearings there was not one shred of evidence presented to confirm that the operation of this Quarry had caused any damage or adverse impact to anyone.

There are a number of corrections required to statements made and recorded in this decision of M.C. Denhez:

1. Gary and Margaret Nichols purchased Nichols Gravel property in 1962 **NOT** 1974.
2. The Company operated several pits in the Region from 1960 **without** any record of suspension or comparable difficulties for 25 years under A.R.A.
3. The Company developed and proposed 55 Conditions of Approval **NOT** 56 at the O.M.B. Hearing of 2000.
4. The licence after the O.M.B. Decision/Order 1194 of approval was **NOT** issued in due course. The Licence issuance was delayed by M.N.R. and **NOT** issued until 18 months after July 25, 2001 Board Order.

This in fact contributed to the loss of 2 working seasons with an estimated loss of 1 and a half million dollars, and now this illegal enforcement has continued in total for 4 years and six months with the last M.N.R.'s falsified submissions to the court, to obtain an injunction order to prevent this Quarry from operating using the decision of M.C. Denhez as justification for the injunction order.

5. **Denhez:** There was confusion as to whether a Permit to Take Water had to be issued from the M.O.E. **before** the quarry licence could issue.

Comment: The Board Order stated quote: The Applicant shall obtain a long term Water Taking Permit from the Ministry of the Environment, unquote.

What is confusing about that direction? Which was stated as the reason for a delay of issuance of the licence for 2 working seasons and loss of income of 1.5 million dollars. This was **not** justified and is clearly unacceptable.

6. **Denhez:** There was mention of a subcontractor taking 10,000 tonnes of aggregate to Brant County prior to issuance of the licence.

Comment: This comment is false and has no basis in fact.

7. The M.N.R. of course provided information concerning a hearing of the Environmental Review Tribunal of Nichols Appeal to another falsified and fraudulent production by the Ministry of the Environment whereby a Permit to Take Water was issued June 20, 2003 comparable and after the M.N.R. Pre Operating Licence Conditions, whereby Nichols was required to complete 24 Pre Dewatering Conditions **prior** to pumping **any** water. This was not a permit which permitted anything. The M.O.E. and Haldimand County did not comply with rules of disclosure **prior** to the hearing and our appeal which was dismissed, with the Chairman stating that **Nichols** had failed to provide disclosure.
8. On April 14, 2003 M.N.R. proceeded to suspend the licence, which had never been operational and charged the Company and Gary, Margaret, and Dwayne Nichols with operating an illegal quarry.
9. On January 28, 2004 the M.N.R. charges were stayed by the Courts and M.N.R. was cited for abuse of process which they successfully appealed and then dropped the charges.
10. **Denhez:** It was not disputed that the Quarry continued operations not withstanding the suspension.

Comment: This is another false statement of fact.

After the Suspension Order of April 14, 2003 Nichols attempted to proceed with the Quarry Operation and had contracted with Morcon Construction to crush aggregate at the Quarry. Morcon began setting up crushing machinery on site, and at that point M.N.R. Inspectors attended at Morcons Office and threatened charges and prosecution if they performed any work at Nichols Quarry. Morcon broke their contract for crushing and moved their machinery out, and as a result Nichols Gravel had **no** product to sell so there was **no** quarry operation in 2003. This information was provided in evidence and conveniently disregarded by Mr. Denhez. If there are **no** sales there is **no** quarry operation.

11. The description of the October 5, 2004 event was also selectively referred to by Mr. Denhez to M.N.R. advantage. He neglected to relate **WHY** M.N.R. staff were stopped and told to leave the property, when they had intruded into our crushing work area **without** permission and created a dangerous situation for themselves and an extremely serious liability situation for our Company, under the Occupational Health and Safety Act. From this event we have now been charged with obstructing an inspector in performance of their duty, and spent the last 3 months in Court defending our right to protect our company from this pathetic performance by O.H.S.A untrained M.N.R. inspectors.
12. Mr. Denhez again misquotes the testimony of Gary Nichols where by he states: "Mr. Nichols testified that he advised M.N.R. that he intended to continue operating the quarry." I informed an official that we wouldn't allow any government to take our land on those terms.

Comment: No, Gary Nichols testified that he informed an M.N.R. official that we would not allow any level of government to prevent this family from making our living.

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13. **Denhez:** The Company would first dig to the bottom of the Bois Blanc formation at 1 location area 1 (a) in the initial hole of 2 acres **before** moving to the next area.

Comment: Mr. Denhez has a misconception of what is physically possible in a quarry operation.

It is not possible to extract to a depth of 48' within a confined area of 2 acres. The ramp to get aggregate up out of the hole to the surface would be so steep it would be impossible to get up and down with heavy machinery.

Progressive rehabilitation is in the Act, and mainly applies to dry bottom gravel pits, and is not possible in all quarries until extraction is completed.

Almost all quarries extract from below the water table and rehabilitation cannot be completed until all aggregate has been extracted as the quarry would fill with water when pumping is stopped and no extraction would be possible.

Page 7: Mr. Denhez with the help of M.N.R. misinterprets the conditions of site plan stating that the Company was supposed to extract down to the sandstone immediately to a depth of approximately 45' to 48'. This is another false misrepresentation of fact.

The site plan states: Extraction of stone will take place up to two 7.6 meter benches. Benches (may be combined but will not exceed 18 meters in height). Our extraction at 23' **complies** with the site plan as it is within the first bench as stated in the site plan and with no water contact.

The consultants best observations from 1999 over 6 years ago are not conclusive to actual extraction conditions encountered prior to this hearing and that is not in my perception, evidence by which it can be implied by the Chairman or the M.N.R. that Gary Nichols was lying under oath about contacting the water table when there was no subjective evidence provided to prove otherwise, except projections of consultants report that could not definitely project conditions to be encountered after quarry extraction began and into the future.

SUBSTANTIVE ISSUES.

Denhez: Revocation Reasons Licence Condition #27 **no** monitoring well nests.

Comment: Not required at this time. No dewatering for extraction. Nothing to monitor like trying to monitor wind speed with **no** wind. Quite impossible.

Denhez: #49 inadequate internal water collection system

Comment: Another false statement of fact. There is an adequate internal water collection system with capture within the quarry extraction area and pumping to the settling pond prior to drain and outlet to the Harrop Drain.

Denhez: #50 Gaps in berming allowing water to escape.

Chairman misinterpretation. The berms are to keep water **out** of the quarry **not** to keep water in.

Denhez: #51 Inadequate rock check dams.

Comment: Not physically possible. Not enough landfall to drain and would back water up and possibly flood neighbouring properties.

Denhez: #52 No storm water holding plan.

Comment: None required. Surface water runs by landfall as it always has.

Storm water run in to the Quarry is captured **within** the Quarry and has to be pumped out.

Denhez: #53 No approval under Drainage Act for diverting **extra** water to county drain.

Comment: There is no **extra** water as there is no dewatering for extraction. The surface water surrounding the Quarry extraction area flows with the landfall to the Harrop Drainage and water trapped within the Quarry extraction area would otherwise flow at the same previous rate to the Harrop Drain as if the Quarry extraction area was **not** there. There is **no difference until** it becomes necessary to dewater for extraction.

Denhez: #55 Inadequate grading/seeding of berms.

Comment: Berms have been graded and seeded and are in on going construction process.

Denhez: Inadequate fencing.

Comment: Fencing was completed **before** the licence was revoked.

Denhez: Road and scale in wrong location.

Comment: This was reviewed with Inspector Cutmore **prior** to M.N.R. receiving site plans February 14, 2003, which could have been amended then. Inspector Cutmore did **not** object until **after** issuance of licence. The Site Plans were accepted without amendment.

Defences Page 8

The statement of Mr. Denhez quote: "That testimony disclosed that in only one category was there a dispute of fact." unquote.

Comment: I find this to be a false statement of fact. This entire Hearing resulted from the false presentation by M.N.R. in the March 31, 2003 letter. That letter was disputed based on the legislation of the Aggregate Resources Act which these officials contravened in order to promote the enforcement which they had absolutely no legislative authority to enforce. All of this information was presented at the Hearing and disregarded by Chairman Denhez.

Pre Operation Question and Statutory Criteria. Page 11

Mr. Denhez makes reference to the decision of Justice D. Reilly but fails to reveal that this was an **Administrative Judicial Review** with the **express** purpose to define the elements of the licence once and for all. This in fact was 3 years after this disputed enforcement began and this decision should in fact have been the end of this story. There should have been no O.M.B. Hearing of Appeal to the Revoke of Licence at that point. This is where both the M.N.R. and Mr. Denhez misdirected this hearing. First, the M.N.R. did **NOT** acknowledge or Appeal the June 15, 2006 decision of Justice Reilly and proceeded in contempt of court to this O.M.B. appeal and secondly Mr. Denhez attached **no** weight to the letter itself although the letter itself and **nothing** else caused **all** of these problems in the first place. Justice Reilly declared that the list of Pre Operational Conditions do **NOT** form part of the licence except to the extent that those conditions are included in the 56 conditions that **do** form part of the licence as Schedule A and B, which Justice Reilly attached to his decision to ensure no misunderstanding of his decision to the licence as ordered under O.M.B. Decision/Order 1194.

Mr. Denhez manages like M.N.R. to make the jump over from "Pre Operational Conditions" to "Conditions of Licence" when he states on Page 11. However, the Revocation Order did not accuse the Company of non-compliance with the covering letter: It accused Nichols Gravel Limited of non-compliance with the conditions of licence.

This in fact was another M.N.R. falsified document as the Revoke Order contained 7 uncompleted Pre Operational Conditions from the Original 23 imposed in the March 31, 2003 letter **none** of which can be identified in O.M.B. Decision/Order 1194 or the licence signed by the Minister March 25, 2003.

Pre Operational Conditions are **NOT** conditions of Licence 103717, they are conditions added improperly and illegally under A.R.A. legislation by the March 31, 2003 letter by Alec Denys and Paul Cutmore from the M.N.R. Aylmer District Office **after** the fact of the Minister signing the licence on March 25, 2003.

Page 14: More misstatements of fact by Mr. Denhez concerning the testimony of Gary Nichols.

At no time at the Hearing did Gary Nichols state that all extractable reserves above the water table would be extracted **before** entering the water table.

M.N.R. made that unsupported supposition. In fact Gary Nichols stated that at the point that it was required to produce high quality aggregate for asphalt or concrete, it would become necessary to go deeper and extract into the water table.

Page 16: Mr. Denhez states M.N.R cannot be blamed for reliance on Site Plan Documents produced by Nichols' own consultants. Mr. Denhez misses the point. M.N.R. can be blamed for unilaterally changing conditions of the Site Plan to "Pre Operational Conditions" in contravention of A.R.A. Legislative Process S.16 (8) (9) **without** required notification. This fact of M.N.R. contravention of its own legislation was made known to Chairman Denhez at the hearing and disregarded.

1: **Denhez:** It cherry picked through its licence.

Comment: No, it was M.N.R. that cherry picked 23 Specific Pre Operational Conditions out of 56. Why did M.N.R. not make all 56 conditions Pre Operational Conditions?

1A: **Comment:** Under "illegal" suspension and revocation.

Denhez: The Board found no evidence of any concerted effort at trying for consensus.

Comment: Another misstatement of fact by the Chairman. How about the fact that at the time of Revocation 23 Pre Operational Conditions had been reduced down to 7 which were impossible to complete without operating a quarry.

Page 17: False statement of fact presented by M.N.R. lawyer Mr. Adamson. At no time did Gary Nichols say there was no intention of extraction below the water table for 20 years.

3rd paragraph another Denhez misstatement of fact quoting M.N.R.. M.N.R. Counsel added that in other revocation cases, the quarry operators at least expressed some interest in bringing themselves into compliance: This was **not** the case here.

As stated before, in 12 operating months, **23** Specific Pre Operational Conditions were reduced to **7**. **This was not an attempt to comply with these unlawfully imposed Pre Conditions to accommodate the M.N.R. enforcement to compliance?**

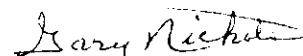
Can we have some truth and fact please?

Comment: The Site Plan and conditions of licence represent exactly the intent of the Company. The Company proposed the conditions, the Company consultant prepared the Site Plans. The Company complied with the conditions proposed and drafted for licence approval.

It is the M.N.R. who have failed and declined to comply with the A.R.A. and O.M.B. Decision/Order 1194 and the licence as issued by the Minister, March 25, 2003.

NOT Nichols Gravel Limited.

This review and comments to O.M.B. Decision/Order 2729 was prepared by Gary Nichols and sworn by affidavit to be truth and fact.

A handwritten signature in cursive script that reads "Gary Nichols".



Nichols Gravel Limited
P.O. Box 172 - Delhi, Ontario N4B 2W9
Phone (519) 582-3354 Fax (519) 582-2143

SUPPORTING DOCUMENTATION

Ombudsman Ontario

TO LETTER OF OCTOBER 22, 2007 AND DECISION/ORDER 2729

Chairman M. C. Denhez

1. Memorandum and Order O.M.B. Chairman J.A. Smout.
Memorandum and Order Chairman D.R. Granger.
2. June 15, 2006 decision Justice D. Reilly
3. O.M.B. Decision/Order 1194 March 31, 2003 Letter and Licence.
4. Legislation of the Aggregate Resources Act.
S 11 s(15) No Petitioner Review.
S 13 (3) (A) (6) Change of Conditions.
S 16 (3) (5) (8) (9) Amendment to Site Plan.
S 20 (1) (4) Revoke Licence
S 57 (2) (3) Offences and Penalties
Provincial Standard V.I.O. Prescribed Conditions.
5. O.M.B. Act S. 96 (4) (A) (B)
O.M.B. Act S. 86 (1)
6. Factum to Appeal of Revoke of Licence O.M.B. Decision Dismissal of Appeal by
Divisional Court of Appeal at Osgoode Hall.
7. O.M.B. Decision/Order 2729 M.C. Denhez.