

Ministry of the
Attorney General

Legal Services
Ontario Municipal
Board

655 Bay St Suite 1500
Toronto ON M5G 1E5
Tel (416) 326-6800
Fax (416) 326-5370

Ministère du
Procureur général

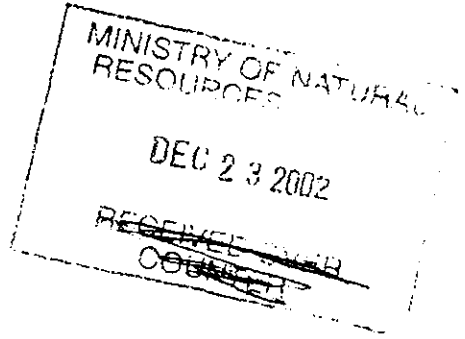
Services juridiques
Commission des affaires
municipales de l'Ontario

655 rue Bay Bureau 1500
Toronto ON M5G 1E5
Tél (416) 326-6800
Télééc (416) 326-5370



December 18, 2002

Mr. Paul G. Cutmore
Aggregate Resources Inspector
Ministry of Natural Resources
Aylmer District
Aylmer, ON N5H 2S5



Dear Mr. Cutmore:

**RE: OMB Case Number: PL990656
OMB File Numbers: Z990094 and M000002
Nichols Gravel Ltd.
Former City of Nanticoke**

I have been asked to respond to your letter dated October 21, 2002 to Joanne Hayes, Senior Case Manager at the Ontario Municipal Board (the "Board"), in which reference is made to the specifically enumerated condition, that is, condition "1" in the Board's Decision/Order No: 1194 (the "Order") that issued on July 25, 2001.

It is understood that on or about February 6, 2002 Mr. Andy Dawang of the Board's staff provided what purported to be a "clarification" of the Order to indicate that the Board required Nichols Gravel Limited ("Nichols") to obtain a long-term Water Taking Permit (the "Permit") issued by the Ministry of the Environment ("MOE") prior to the issuance of a licence to extract aggregates to Nichols.

* In the imposition of conditions on a licence that the Board directs the Minister of Natural Resources to issue under the provisions of the *Aggregate Resources Act*, it is my position, as counsel to the Board, that the Board does not intend that any condition imposed by it be incapable of being fulfilled by reason that a "technical impossibility" makes compliance with the conditions impossible or for any other reason that makes compliance with the Order impossible.

* M.N.R. MARCH 31/03 LETTER

It is understood that, in this case, MOE will not issue, and will not consider the issuance of a Permit, until such time as Nichols will have extracted aggregates to a level to the water table.

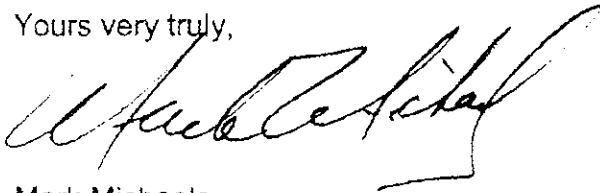
An interpretation of condition "1" that requires Nichols to have obtained the Permit prior to the issuance of a licence that would allow Nichols to extract aggregates from the subject site cannot reasonably be applied in this case where Nichols cannot obtain the requisite Permit until such time as Nichols will have extracted aggregates to the level of the water table.

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Accordingly, in order to give effect to the Order and the Board's having directed the issuance of a licence, condition "1" of the Order provides that the licence is to be issued (provided that all other conditions have been or are being fulfilled) subject to the requirement that, at the point where the water table is reached, Nichols is required to seek and obtain the Permit prior to Nichols' continuing any further extraction.

If you have any further questions, please contact the undersigned at your convenience.

Yours very truly,



Mark Michaels
Counsel

cc: Mr. Paul Odom, MOE

letters:cutmorenichols