

THE MANITOBA CLEAN ENVIRONMENT COMMISSION

IN THE MATTER OF: The Manitoba Clean Environment Commission Technical Review and Public Hearing respecting the proposed Vivian Silica Sand Extraction Project Technical Review

AND IN THE MATTER OF: Section 6 of *The Environment Act*, CCSM c E125

AND IN THE MATTER OF: Rule 3.17.6 of the Manitoba Clean Environment Commission *Process Guidelines Respecting Public Hearings*

**NOTICE OF MOTION of THE MANITOBA ECO-NETWORK
and OUR LINE IN THE SAND**

BYRON WILLIAMS
bywil@legalaid.mb.ca
204.985.8533

CHRIS KLASSEN
chkla@legalaid.mb.ca
204.985.8540

Public Interest Law Centre
100-287 Broadway
Winnipeg, MB R3C 0R9

Barrister and Solicitor

THE MANITOBA CLEAN ENVIRONMENT COMMISSION

IN THE MATTER OF: The Manitoba Clean Environment
Commission Technical Review and
Public Hearing respecting the
proposed Vivian Silica Sand
Extraction Project Technical
Review

AND IN THE MATTER OF: Section 6 of *The Environment Act*,
CCSM c E125

AND IN THE MATTER OF: Rule 3.17.6 of the Manitoba Clean
Environment Commission *Process
Guidelines Respecting Public
Hearings*

NOTICE OF MOTION of THE MANITOBA ECO-NETWORK and OUR LINE IN THE SAND

TAKE NOTICE THAT a motion will be made on behalf of the Manitoba Eco-Network and Our Line in the Sand before the Manitoba Clean Environment Commission (the “CEC”, the “Commission”) on Monday, February 27, 2023 at the Mennonite Heritage Village, 231 PTH 12N, Steinbach, Manitoba, or on a day and at a location to be determined by the Panel of the Commission.

THIS MOTION is for:

1. An Order:

- a. Declaring that the January 14, 2022 Stantec Consulting Ltd. report titled *Geotechnical Analysis for Sio Silica Extraction Project* (the “Stantec Geotechnical Report”) does not contain confidential or proprietary information;
- b. Directing Sio Silica Corporation to provide Clean Environment Commission (“CEC”) hearing Participants with an unredacted version of the Stantec Geotechnical Report without requiring the execution of non-disclosure agreements; and
- c. Directing Sio Silica Corporation to produce the authors of the Stantec Geotechnical Report for cross examination in the public hearing regarding the proposed Vivian Silica Sand Extraction Project;

2. Or, in the alternative, an Order:

- a. Declaring that a portion of the Clean Environment Commission’s (“CEC”) public hearing regarding Sio Silica Corporation’s proposed Vivian Silica Sand Extraction Project be held as an “in-camera” session for the purpose of confidential

cross-examination by Participants of the authors of the Stantec Geotechnical Report; and

- b. Directing Sio Silica Corporation to produce the authors of the Stantec Geotechnical Report for cross examination in the in-camera portion of the public hearing.

THE GROUNDS FOR THIS MOTION ARE:

3. *The Environment Act*, CCSM c E125 is intended to “[provide] for public consultation in environmental decision-making...”;
4. The CEC has a statutory responsibility to “[develop] and [maintain] public participation in environmental matters”;
5. The Minister’s Terms of Reference respecting the CEC review of the proposed Vivian Silica Sand Extraction Project require the CEC to “provide members of the public the opportunity for input regarding the [Sio Silica] silica sand extraction project”;
6. The CEC’s *Process Guidelines Respecting Public Hearings* indicate at rule 1.06.5 that exceptions to the rule guaranteeing public access to hearings and hearing records will be “rare”;
7. The CEC’s *Process Guidelines Respecting Public Hearings* expressly state that information about “the environmental effects or associated

mitigation measures of a proposed undertaking” is not “proprietary information”;

8. The CEC has not issued an analysis and determination of the validity of the proponent’s claim of confidentiality over the Stantec Geotechnical Report;
9. Technical experts retained by the CEC have stated on the record of this proceeding that the Stantec Geotechnical Report contains information “that is necessary to evaluate whether the Project is likely to result in significant environmental impacts” and that in their professional experience, the redacted information would not “normally be classified as confidential”;
10. The Commission’s intended hearing process does not presently permit Participants to test the evidence contained in the Geotechnical Analysis Report prepared by Stantec Consulting Ltd., nor to address its contents in their submissions to the Commission;
11. Section 6(8) of *The Environment Act*, CCSM c E125 authorizes the Commission to “make rules governing its procedure”;
12. Rule 3.17.6 of the CEC’s *Process Guidelines Respecting Public Hearings* confirms the Commission’s authority to restrict public

access to portions of its hearings for the purpose of preserving confidentiality;

13. Rule 3.18.1 of the CEC's *Process Guidelines Respecting Public Hearings* confirms the Commission's authority to compel the production of witnesses; and

14. Such further and other grounds as counsel may advise and the CEC Hearing Panel may allow.

Statement of Facts

15. On July 23, 2021, CanWhite Sands Corporation (now Sio Silica Corporation) filed an Environment Act Proposal with the Environmental Approvals Branch of Manitoba Conservation and Climate.

16. The Minister of Conservation and Climate (now Environment, Climate and Parks) directed the CEC on November 21, 2021 to undertake a technical review and a public hearing regarding the Proponent's application for a license under *The Environment Act*.

17. On January 14, 2022, Sio Silica Corporation filed responses to public comments on its proposal with the Environmental Approvals Branch of Manitoba Conservation and Climate.

18. Attachment A to Sio Silica Corporation's January 14, 2022 submission is a document titled "Geotechnical Analysis for Sio Silica Extraction Project – Public Version" (the Stantec Geotechnical Report). In this document, seventeen lines of text over two pages are redacted.
19. By letter dated July 19, 2022, the CEC informed participants that the Hearing Panel and CEC technical advisors had access to a non-redacted version of the Stantec Geotechnical Report, and that same would be made available by Sio Silica Corporation to individuals who entered non-disclosure agreements.
20. The CEC's July 19, 2022 letter did not assess or make any determinations respecting the validity of Sio Silica's claims that the redacted content was confidential or proprietary in nature.
21. The CEC received a request by letter dated July 25, 2022 from Participant Mr. Dennis LeNeveu for distribution of a version of the Geotechnical Analysis Report in which only proprietary information, and not technical information, was redacted.
22. The CEC received a request by letter dated August 9, 2022 from the Participant Municipal Silica Sand Advisory Committee ("MSSAC") agreeing with the July 25, 2022 request of Mr. LeNeveu

and stating that “the Stantec Reports should be made available in their entirety to all Participants in advance of the Hearings.”

23. The CEC did not respond to these requests.

24. On September 26, 2022, the reports of the CEC technical advisors were released. The report prepared by Arcadis Canada Inc. focuses closely on geotechnical issues and states that:

“...the *Geotechnical Analysis for Sio Silica Extraction Project* Stantec (2022), contains information that is necessary to evaluate whether the project is likely to result in significant environmental impacts. Despite the importance of this information, the document is currently classified as confidential by the Proponent. We are unaware of any reasons for withholding this or any other document that has been provided to date from the Public Registry. In the opinion of Arcadis, doing so has the potential to limit the use of the information as evidence during the EA decision-making process. It also has the potential to unnecessarily erode public trust that the EA process is open and transparent.”

25. Arcadis Canada Inc. further stated that in their professional experience, “none of the information provided to Arcadis...would normally be classified as confidential.”

26. On October 14, 2022, the CEC received a Motion filed by the MSSAC seeking, among other relief, an Order directing the Proponent to provide Participants with the Stantec Geotechnical Report a minimum of 60 days prior to the setting of dates for the Hearing.

27. The Motion Brief filed by the MSSAC on October 19, 2022 confirmed that the Participant was seeking release of the document in full, without redaction and without the requirement of non-disclosure agreements.
28. The CEC's decision issued November 16, 2022 in response to this Motion accepted the Proponent's assertion that "the Stantec Report is available to the participants" and did not assess the merits of the proponent's claims of confidentiality over the Stantec Geotechnical Report.
29. The hearing process and schedule proposed to date by the CEC does not contemplate an opportunity for Participants to address the contents of the Stantec Geotechnical Report presently deemed proprietary by the proponent.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Stantec Consulting Ltd. "Table 2, Attachment A: Geotechnical Analysis for Sio Silica Extraction Project – Public Version" (January 14, 2022), online: <
https://www.gov.mb.ca/sd/eal/registries/6119/tab2_responses.pdf>;
2. "Technical Review of Sio Silica Corporation's Environment Act Project Proposal" prepared by Arcadis Canada Inc.;

3. Manitoba Clean Environment Commission, July 19, 2022 Letter to Participants;
4. Participant Mr. Dennis LeNeveu Letter to the Clean Environment Commission (July 25, 2022);
5. Municipal Silica Sand Advisory Committee Letter to the Clean Environment Commission (August 9, 2022);
6. Municipal Silica Sand Advisory Committee, Notice of Motion (October 14, 2022);
7. Municipal Silica Sand Advisory Committee, Motion Brief (October 19, 2022)
8. Manitoba Clean Environment Commission, Decision of the Hearing Panel (Motion of MSSAC)(November 16, 2022); and
9. Such further and other materials as counsel may advise and the CEC Hearing Panel may permit.

DATED this 19th day of February, 2023.



Byron Williams / Chris Klassen

Counsel to the Manitoba
Eco-Network and Our Line in
the Sand