

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 PARTICIPANT DLN

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PREAMBLE:

On Jan. 24, 2023 Sio Silica issued a revised extraction plan to the CEC Hearing that was deficient in many aspects. The revised plan does not give the well cluster spacing or the planned extraction year. The plan included a revised layout of well clusters containing between one and five extraction wells. The revised extraction plan stated; *“The number of wells in each well cluster has also been reduced from seven wells to a variable number of wells, but less than six, depending upon cap rock thickness in the extraction area.”* Stantec Table 9 of the public version of the geotechnical analysis given in the response to public comments on the Manitoba Approvals Project registry 6119.00 contains data on the long term allowable extraction cavity span based on limestone and overburden thickness not just on limestone thickness. There is no information in Stantec Table 9 that relates the number of wells per cluster to the maximum allowed cavity span. Sio Silica has not provided methods or calculations on the determination of cavity span from the number of wells per cluster. No data has been given on the limestone and overburden thickness used to determine the revised extraction plan of Jan. 24.

NOTICE OF MOTION of the PARTICIPANT DLN

TAKE NOTICE THAT a motion will be made on behalf of the participant DLN before the Manitoba Clean Environment Commission (the “CEC”, the “Commission”) on a day to be determined by the Panel of the Commission and at a location to be determined by the Panel of the Commission.

THIS MOTION is for:

An Order:

- a. Directing Sio Silica Corporation to provide Clean Environment Commission (“CEC”) Hearing Participants and third party technical experts with all the limestone and overburden thickness data, calculations, methods and information used to determine the number of wells per cluster given in the Sio Silica revised extraction plan of Jan 24, 2023. The names, locations, and dates of construction of all the wells and boreholes used to obtain the limestone thickness and overburden data and the overburden, limestone, and shale aquitard thickness for each borehole and/or well must be provided. Missing information on the spacing between well clusters, how this spacing was determined, and the projected year of extraction must be provided.

THE GROUNDS FOR THIS MOTION ARE:

1. The Environment Act, CCSM c E125 is intended to “[provide] for public consultation in environmental decision-making...”;
2. The CEC has a statutory responsibility to “[develop] and [maintain] public participation in environmental matters”;
3. 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”;
4. 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”;
5. 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”;

6. Section 6(8) of The Environment Act, CCSM c E125 authorizes the Commission to “make rules governing its procedure”;
7. 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;
8. Rule 3.18.1 of the CEC’s Process Guidelines Respecting Public Hearings confirms the Commission’s authority to compel the production of witnesses;
9. The revised extraction plan was filed after the termination of the Hearing information request period therefore the missing information to support the revised extraction plan cannot be obtained through the information request procedure.; and
10. Such further and other grounds as counsel may advise and the CEC Hearing Panel may allow.

Statement of Facts.

11. 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.
12. 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.
13. 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.
14. On Jan. 24, 2023 the second round of information request responses by the proponent were due and the information request period terminated.
15. On January 24, 2023, Sio Silica Corporation filed a revised extraction plan with the CEC Hearing.
16. There is no time, provision or sufficient detailed information in the plan for the participants and the third party technical experts to review the major geotechnical alterations embodied in the revised extraction plan.
17. The Mines and Minerals Act, Drilling Regulation, 1992 in section 8, Log and plan of borehole, requires; “*every borehole licensee shall submit to the recorder, in duplicate, within 90 days after completion of drilling or such longer period of time as the director may under the Act stipulate, a detailed log of the portion of each borehole passing through the Phanerozoic, containing all geological, geophysical, hydrogeological and geochemical data collected in relation to the Phanerozoic portion and accompanied by a plan showing the location of each borehole.*” Data on well construction is publically available from the Manitoba Groundwater Branch. Forty four Sio Silica well information reports have already been obtained from Manitoba Groundwater. Data on many Sio Silica boreholes have been obtained from the Manitoba Mines Branch. Therefore the requested data on limestone and overburden thickness is not proprietary.
18. THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion: 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>;

DATED this 22th day of February, 2023.



Dennis M. LeNeveu