



2013 SCREENINGS

VOLUME 12 / ISSUE 2

THE PUBLICATION OF THE BRITISH COLUMBIA STONE, SAND & GRAVEL ASSOCIATION

Dear members

We hope you enjoy our fall issue of Screenings

We would like to thank all of our advertisers and contributors to this issue. Please send us new ads, articles, photos or ideas by November 30th to be included in our winter issue. We look forward to hearing from you!

Have a happy, safe and productive fall season!

Sincerely, **BCSSGA**

Hazard Awareness Training Program H.A.T.

The BC Stone, Sand & Gravel Association (BCSSGA), in Partnership with the BC Construction Safety Alliance (BCCSA) and the Ministry of Energy & Mines has recently completed a test pilot of the online Hazard Awareness Training program designed to help workers identify potential hazards in the aggregate production workplace that could pose a danger to them and their coworkers.

The HAT online training program is intended as an introductory level educational tool for all workers in the aggregate industry, from management to labour. The program will help you learn to identify potential hazards in the workplace, assess the risk of injury, and determine methods to avoid getting hurt.

During the first two weeks of August, 15 BCSSGA members took part in the pilot program to give the online training program a test run. The 80-minute program was completed without any major problems and the feedback provided by the participants was overwhelmingly positive.

The three partners have developed the HAT program to be an accessible and adult education friendly training course that anyone can complete whether they are at the office or in the comfort of their home. On average, users take no more than 80 minutes to complete the program, from beginning to end.

The \$24.00 (plus GST) per user fee, will enable you and your employees to access the HAT program for an entire year. You will be able to access this training program from any computer, anywhere in the world!

This HAT program can provide a good basis of safety training for all your workers and the certificate of completion provides a way to ensure a record of training.

In order to sign up for the HAT program, please go to <https://bcssga.trainingden.com> to register and pay for the program and then get started!

If you have any questions, please direct them to Paul Allard at gravelbc@telus.net

Help keep you and your workers SAFE!!

BCSSGA Mission Statement

TO ENCOURAGE the formulation of government policies that support investment in the sustainable development of British Columbia's aggregate resource.

TO PROVIDE a network for the effective exchange of information within the aggregate industry throughout British Columbia.

TO COMMUNICATE the economic importance and environmentally responsible nature of the aggregate industry to the public and to government.

TO PROMOTE the exchange of information between the various mining-related associations throughout Canada.

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The Reclamation of Abbotsford Gravel Sales

SUBMITTED BY KENT ORROCK, CONTRACTOR RISK MANAGEMENT COORDINATOR, LAFARGE CANADA

Since 2005 Lafarge Canada has owned and operated a 30 acre sand and gravel reserve, located at 416 Clearbrook Road in Abbotsford. The site was an active gravel reserve for many years prior and was zoned as industrial, with no requirement for reclamation. With site reserves nearing completion Lafarge recognized a need for legal clean fill sites within the GVA and an opportunity to reclaim the land back into agricultural status. Dump sites at the time were largely uncontrolled and fill material was being dumped on agricultural land, destroying farmable land as well as causing issues to nearby fish bearing streams. Lafarge started working with the Agricultural Land Commission and the City of Abbotsford to reclaim a 7 acre parcel of land back to agricultural use.



In 2010 Lafarge had brought in enough clean fill to bring the property to 1.6m below grade level. The site was leveled with drainage tiles placed every 10m over the length of the property. Drainage was further facilitated by placing 0.8m of screened sand over the site followed by an additional 0.8m of screened top soil. Wells were also drilled to allow for irrigation and electricity was brought onto the site.

By the fall of 2010 Lafarge had reclaimed and planted 7 acres of winter wheat. The wheat was allowed to reseed itself and then tilled back into the soil. This was completed to reintroduce and rebuild nutrients back into the soil. Nitrates were further supplemented to the fields through the use of chicken, turkey and mushroom manures. In 2011 the first 7 acres showed strong growth and an additional 10 acres were reclaimed and seeded with tall fescue grass by the fall of 2011. In 2012 Lafarge harvested over 60 bales of fescue hay.



In the Fall of 2012 a 5 acre plot of reclaimed land was tilled and made ready for the introduction of raspberries crops. Raspberry plants were planted in Spring 2013. After approximately 4 months these plants are showing a robust plant growth and first year berry production.

Next steps

Lafarge will continue to cultivate berry growth on the 416 Clearbrook Road site. Berry production will be monitored over the next year. Providing the crop yield shows an average intake, Lafarge has plans to lease the land for commercial blueberry production. This confirms Lafarge's commitment and ability to restore depleted gravel reserves back to an improved state.



icba Courses

The Independent Contractors and Businesses Association (ICBA) is committed to providing the very best training possible through the BC Construction Training Centre. The BCCTC offers a comprehensive series of courses at a multi-classroom facility in Burnaby, including Gold Seal courses. They also offer safety, compliance, code and management courses and seminars. Courses are offered in other municipalities throughout the province, including Nanaimo, Victoria, Kelowna, Kamloops, Terrace, Prince George, Fort St. John, Cranbrook and even online!

Here are some examples of courses they offer that may be of interest to your company:

- Traffic Control Person Re-Certification Exam
- Construction Safety Training System
- Certificate of Recognition
- Spill Response
- Confined Space Awareness
- Leading People to Peak Performance
- Supervisors Bootcamp
- Sales Skills Workshop
- How to be a Better Foreman
- Cumulative Impact of Change Orders
- Communication Skills Training
- Electrical Safety for Non-Electricians
- Occupational First Aid Level 1
- Negotiation Skills
- Hazard Recognition and Control
- Construction Safety for Supervisors
- Fall Protection Awareness
- Time Management
- Small Business Growth Workshop
- Workplace Inspections
- Writing Effective Letters, Scope Documents, Reports and Proposals
- Cranes and Rigging Basics
- Delivering Legendary Customer Service
- WHMIS

For a complete listing of their courses, upcoming dates and registration information, go to www.icba.bc.ca/courses_events/courses.htm

Notice of Meeting:

**September 17
2013**

Dear BCSSGA Members

Please be advised that the next meeting of the BC Stone, Sand & Gravel Association will take place on **Tuesday September 17, 2013** at the Coast Capri Hotel, 1171 Harvey Avenue, Kelowna, beginning at 12:00pm.

Lunch will be served.

The guest speaker will be Stewart Guy, Senior Policy Analyst for Aggregates, from the Ministry of Forests, Lands and Natural Resource Operations.

Please let us know a.s.a.p. if you can attend, in order provide adequate seating and food.

Thank you,
BCSSGA



British Columbia Stone, Sand & Gravel Association

Membership Benefits

Government Representation

Legislative and regulatory issues are faced on an ongoing basis. This is your opportunity to help advance the industry's interests before the Provincial and Municipal Governments.

Networking Opportunities

The association provides the opportunity for companies to grow and prosper. Expand your knowledge of the industry and help shape the Industry with your knowledge and experience.

Communications

Screenings newsletter is published three times per year for the benefit of our members. We also broadcast via email to BCSSGA members our board meeting minutes and other bulletins. Our website also keeps members up to date on industry news.

Annual Awards

We host an Annual Awards Luncheon for our members to celebrate the accomplishments of those who have excelled at reclamation projects and who have performed extraordinarily in community relations. We also recognise those companies who have promoted safety in the workplace, indicated by the lack of lost-time injuries in their company.

Benefits Package

Liability Insurance, which includes: rip and tear coverage for concrete or paving contractors; forest fire fighting expenses, blasting and excavating; pollution coverage for third party liability; all risks property coverage; and equipment insurance, including replacement with equivalent good used equipment.

Our Members

We are proud to have the following companies as members of our association:

- Amix Group, New Westminster
- Arthon Contractors Inc., Kelowna
- Atlantis Aggregates Ltd., Hope
- BC Bearing Engineers Ltd.,
- Buckman Canada, Pitt Meadows
- Burnco Rock Products Ltd., Abbotsford
- Butler Brothers Supplies Ltd., Saanichton
- Canadian Western Bank, Coquitlam
- Caterpillar Financial Services Limited, Dewdney
- Chevron Canada Limited, Vancouver
- Coast Aggregates Ltd., Squamish
- Copcan Contracting Ltd., Nanaimo
- Cranberry Construction Services Ltd., Powell River
- DeBench Sand & Gravel Ltd., White Rock
- Diamond Equipment Group Inc., Delta
- Ekset Contracting Ltd., Surrey
- Elphinstone Aggregates Ltd., Gibsons
- Elrus Aggregate Systems, Surrey
- Emerson Industrial Automation, Vancouver
- Ensign Bros. Enterprises Ltd., Kelowna
- Fasken Martineau DuMoulin LLP, Vancouver
- Finning (Canada), Surrey
- Finning Canada – On-Highway Truck Sales, Surrey
- Flatland Equipment Sales & Service Inc., Abbotsford
- Foreman Equipment Ltd., Clearbrook
- Fountain Tire, Surrey
- Fraser Valley Aggregates Ltd., Surrey
- GE Capital Solutions, Vancouver
- Glacier Concrete Ltd., Kitimat
- Golder Associates Ltd., Burnaby
- Great West Equipment, Vernon
- Groeneveld Group, Surrey
- Haver & Tyler Rocky Mountains, Chilliwack
- Hein, Lehmann Canada Inc., Vancouver
- Highland Quarry, Abbotsford
- Hub City Paving Ltd., Nanaimo
- ICBA Benefit Services Ltd., Burnaby
- Imperial Paving Ltd., Burnaby
- Innovative Mining Services Inc., Abbotsford
- Interoute Construction Ltd., Surrey
- Island Crushing Co. a Division of O.K. Industries Ltd., Victoria
- IronPlanet, Richmond
- Jack Cewe Ltd., Coquitlam
- J.L's Excavating Ltd., Terrace
- Jim Sanderson Group, Toronto
- Jordan River Gravel, Victoria
- Kal Tire Ltd., Langley and Vernon
- L & A Equipment Ltd., Squamish
- Lafarge Canada Inc., Construction Materials Group, Langley
- Lehigh Hanson Materials Ltd., Vancouver
- LNS Services – A Division of Lexspan L.P., North Vancouver
- Levelton Consultants Ltd., Nanaimo
- Levick Enterprises Ltd., Lone Butte
- Liebherr Canada, Richmond
- Little Rock Quarries Group Inc., Abbotsford
- Lonetrack Equipment Inc., BC
- Mainland Sand & Gravel Ltd., Surrey
- Martin Sprocket & Gear Canada Inc., Coquitlam
- McAdam Machinery Supply, Calgary
- Metso Minerals & Construction Technology, Edmonton
- Mormak Equipment Ltd., Vernon
- Ozero Bros. Contracting Ltd., Qualicum Beach
- Pacific Site Concrete Ltd., Parksville
- Parker Pacific Equipment Sales, Langley
- Parksville Heavy Equipment, Qualicum Beach
- Peninsula Rock Products Ltd., Saanichton
- Petro Canada / Coastal Mountain Fuels, Vancouver
- Pitt River Quarries Ltd., Langley
- Polaris Minerals Corporation, Vancouver
- Quality Chain Canada, Surrey
- Sepro Mineral Systems Corp., Langley
- Sholinder & Mackay Sand & Gravel Ltd., Invermere
- SkreenQuip Sales & Rentals, Delta
- SMS Equipment, Surrey
- South Cariboo Sand & Gravel Co. Ltd., Lone Butte
- Texada Quarrying Ltd., Van Anda
- The Supply Post, Langley
- Thurber Management Ltd., Vancouver
- Tirecraft BC, Surrey
- Trans Carrier Ltd., Fort St. John
- United Lock-Block Ltd., Richmond
- Valley Gravel Sales Ltd., Abbotsford
- Valley Testing Services Ltd., Abbotsford
- Van-Ed Equipment - Division of Van-Ed Distributors Ltd., Surrey
- Wells Fargo Equipment Finance Company, Vancouver
- Western Belting & Hose (1986) Ltd., Burnaby
- Western Construction Services Ltd., Harrison Hot Springs
- Western Explosives Ltd., Chilliwack
- Westerra Equipment, Abbotsford
- Westlake Paving and Aggregates Ltd., Kelowna
- WestRidge Contracting, Fanny Bay
- Westridge Rock Ventures Ltd., Armstrong
- Whistler Aggregates Ltd., Burnaby
- Williamson & Associates Professional Surveyors, Nanaimo
- Wilson M. Beck Insurance Services, Burnaby
- Woodbrook Aggregates Ltd., Abbotsford
- Zorbie Products Ltd, Mission



Alternate means of escape from mobile equipment

Mobile equipment rollovers or upsets can put operators at risk if they can't escape to safety. Operators have had close calls when doors were blocked or didn't work after equipment they were operating

- Tipped over on uneven ground
- Rolled into a trench
- Slipped off a road they were building

In some cases (e.g., where equipment caught fire or the cab was submerged), these incidents have led to tragic results.

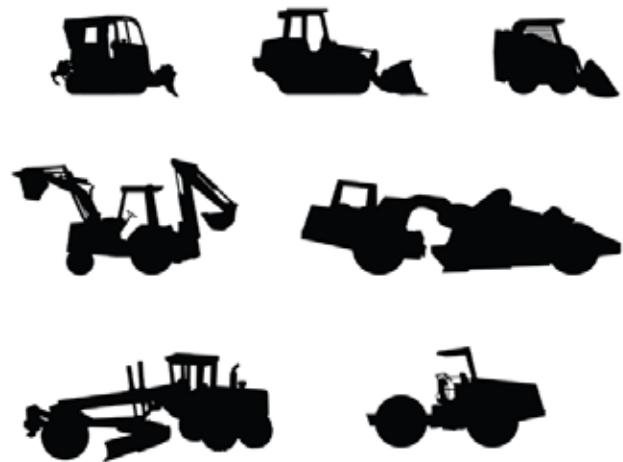
It is crucial that mobile equipment have adequate emergency means of escape.

Key regulatory requirements

All mobile equipment with a single cab entrance door must have an alternate means of escape. Equipment with a single cab entrance door, manufactured after January 1, 2000, must have an adequately sized alternate means of escape that is clearly marked and can be opened from both the inside and outside without the use of tools. The means of escape must be usable regardless of the position of movable components, accessories, or protective structures. See sections 4.3(4), 16.17, 16.24, and 28.34 of the Occupational Health and Safety Regulation for some of the specific requirements.

Solutions

1. When purchasing a machine, look for manufacturers who have designed and already include a secondary exit that meets the requirements of the Regulation.



Examples of mobile equipment types that require alternate means of escape

2. Ensure that all mobile equipment is equipped with an easily accessible and fully functioning alternate means of escape (sometimes referred to as a secondary escape hatch). Bent or damaged hatches, corrosion, rotten rubber seals, over-tightened bolts, or even heavy repainting can make escape hatches difficult or impossible to open. Check that the external cab protection (FOPS/ROPS) doesn't block the hatch or make it difficult to access and open. Any necessary work on ROPS must be done (and certified) following manufacturer's or a professional engineer's instructions. Pay extra attention to older machines where damage could have occurred or modifications may have been made. Any modification of the equipment must be carried out in accordance with manufacturer's instructions (if available), safe work practices, and the requirements of the Regulation.



Injury Management: The Importance of Return to Work

BY MIKE MCKENNA, EXECUTIVE DIRECTOR, BC CONSTRUCTION SAFETY ALLIANCE

Injury Management programs are based on the philosophy that many injured workers can safely perform productive work during their recovery. Having an Injury Management program helps prevent long term disability. Research confirms that people who never lose time from work have better outcomes than people who lose some time from work – American College of Occupational and Environmental Medicine, Sept 2006.

Having a game plan for dealing with injuries is operationally important for any company. If you don't have a process in place then you could be left out of the loop when it comes to knowing about and assisting your worker with their injury. Here are some helpful steps employers can follow when developing an injury management plan:

Step 1: First Response

Your company's first response is to ensure the injured worker receives first aid as soon as possible. The first aid attendant will either assess and treat the worker at work, or assess and stabilize the worker and refer them to further medical aid.

Step 2: Stay at Work or Return to Work plan

Is the worker able to stay at work and return to regular duties? If so, monitor the worker during the shift. If a worker needs to leave work give them a return to work package, which may include a letter to worker, a letter to physician, and a physician's Stay-At-Work/Return-To-Work Planning Form.

Step 3: Determine Temporary Limitations

A physician's report may outline temporary limitations, you may want to ask the worker which tasks or job duties they feel they can do, or you can call the WorkSafeBC Construction Nurse Line and they can provide you with the guidelines for typical limitations.

Step 4: Establish a Modified Work Agreement

The employer should make a written offer to the worker using a modified work offer form. Collaborate with the injured worker to create a modified work agreement that is mutually beneficial.

Step 5: Monitor the Progress

Communication is key between an injured worker and their supervisor and should be consistent and regular throughout their recovery. Regular face-to-face contact with the worker can eliminate misunderstandings or confusion.

Step 6: Documentation

Throughout all of the steps, it is important to document communication between all parties, using the modified work agreement as your guide. This communication must be maintained as a confidential file.

Hopefully, by implementing some of these tips and tools your company will be better able to keep workers safe and connected to the workplace even after an injury.

The BCCSA is the construction industry funded safety association. The BCCSA has a free hands-on guide for construction supervisors called the The Supervisor's Role in Injury Management handbook. Request your copy today at info@bccsa.ca or for more information visit www.bccsa.ca.

Is Your Company Prepared for the WorkSafeBC Experience Rating Changes?

BY MIKE MCKENNA, EXECUTIVE DIRECTOR, BC CONSTRUCTION SAFETY ALLIANCE

There is the saying that “safety pays”, but for years safety has been seen as just another operational expense for some in the B.C. construction industry. Now, a change to WorkSafeBC’s Experience Rating (ER) System means the safer you are, the fewer premiums you pay.

Employers who have fewer serious injuries, and whose employees Return To Work (RTW) sooner after an injury, can earn discounts on their base rate of up to 50 per cent over time.

Alternatively, firms with more frequent and more serious injuries and inefficient RTW systems may face surcharges of up to 100 per cent on their base rate over time.

Starting in 2013 WorkSafeBC’s experience rating system for construction (currently capped at 33.3 per cent surcharge and 33.3 per cent rebate) will begin to rise, eventually reaching the 100 per cent surcharge and 50 per cent discount mark by 2016. The change will align construction with all other provincial industries.

While the vast majority of construction employers are expected to experience a smooth transition to the new rates (indeed, many will benefit from higher discounts) there are those who will pay significantly more, as the surcharge ceiling is raised.

That is, unless they take action to improve current safety and injury management systems.

Many contractors are glad about the change.

Some contractors feel there have been many years that companies, who operate with health and safety excellence, have had to pay for companies with poor safety or for whom safety is not a priority.

The B.C. Construction Safety Alliance (BCCSA) is concerned with reducing injuries all-together and improving safety, with worker safety as their number one priority.

As the construction industry’s non-profit safety association the BCCSA provides construction, aggregate and ready-mixed companies with no-cost services designed to help reduce injuries and improve safety.

To help companies prepare for the experience rating changes to come the BCCSA has Regional Safety Advisers who provide free consultative service. Advisers can visit the jobsite to help employers identify ways to reduce accidents and improve safety. They can also help companies to become certified in the Certificate of Recognition (COR) program.

For companies worried about the cost of doing business, especially in light of the WorkSafeBC premium changes, COR could help. COR is a program that encourages companies to implement health and safety and injury management systems that meet regulatory requirements and maintain them through annual independent audits.

It recognizes and rewards employers through up to a 15 per cent incentive payment that is applied to a company’s WorkSafeBC base assessments. For a COR Certified company with a payroll of \$750,000 this means an incentive payment of about \$4,800 dollars annually.

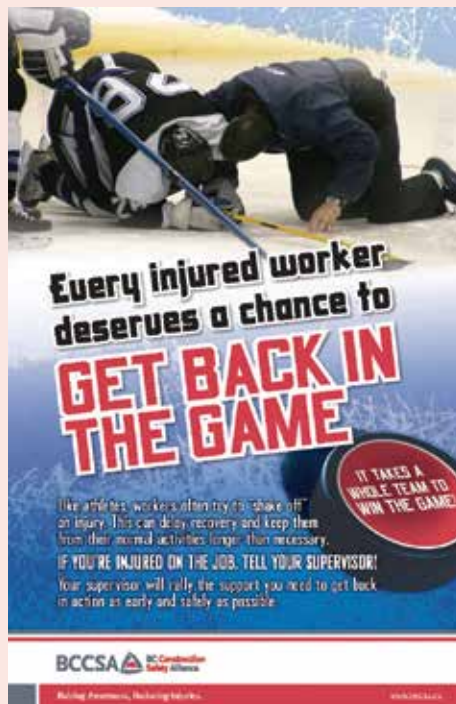
Another effective way to prevent injuries and reduce injury duration is to develop and implement an injury management program. Having a game plan for dealing with injuries is operationally important for any company. If you don’t have a process in place then you could be left out of the loop

when it comes to knowing about and assisting your worker with their injury.

One way the BCCSA can help companies establish and improve their injury management systems is through the BCCSA’s Injury Management consultation service which provides companies with no cost one-one-one consultation. The BCCSA’s in-house Safety and Injury Management Adviser provides personalized consultation, including job site visits to help employers develop and implement a policy and program that is suited to their company.

Construction employers in B.C. need to recognize that the best way to reduce insurance costs is to prevent injuries. But, ultimately, keeping workers safe is just the right thing to do.

For more about the BCCSA and how they can help your company call toll-free 1-877-860-3675, email info@bccsa.ca or visit us at www.bccsa.ca.





Mining Your Future is the first ever reality TV mini-series about careers in BC's mining industry. Its first season showcased 24 diverse careers and offered viewers a look inside our province's mining industry.

The TV series was filmed with the support of companies in mining operations and development, the British Columbia Government, the Mining Association of BC, Association for Mineral Exploration BC and

the BC HR Task Force: Mineral Exploration, Mining, Stone, Sand, & Gravel (BC Mining HR Task Force).

"The Mining Your Future TV mini-series provides a unique opportunity for British Columbians from the comfort of their own couch, to discover the industry that has some of the Province's highest paying jobs (average combination of salary and benefits is over \$110,000)," says Dave Bazowski,

representing the BC Mining HR Task Force.

Season One has been airing again since July due to popular demand. Check your local TV listings for the multiple networks and channels. Each episode showcases three different careers, a 'Fact Digging' segment by BCIT that reveals a fun fact about the industry, and a 'Mining Gives Back' segment by Goldcorp that depicts the 'heart' of the industry in BC.

BEHIND THE SCENES with Maggie Dorf, Executive Producer of Mining Your Future

How did it feel for the TV series to be awarded an HR Diversity Award by the Mining Association of BC (MABC) and the BC Mining HR Task Force earlier this year?

Every honour we receive for this TV miniseries is so amazing. Our team gets so excited every time our hard work and the unique nature of our show gets recognized.

Mining Your Future just re-aired for the third time? Is this because of the popularity of the show? Tell me about its success.

We (our crew) believed whole-heartedly in what we were creating and knew it would do very well, there was nothing like it out there, but we had no idea it would become as successful as it did. Countless high schools from around the province approached us to receive the DVD sets to implement into their mining or career curriculum, we received stacks of emails from executives and high level management in the industry thanking us for finally showing their sector in such a true and genuine light, and most importantly I constantly hear from strangers and the public: "Wow, I never knew that kind of job was out there!", which is basically the essence of our show, to educate in the most entertaining way possible.

What has it been like exploring the different careers in mining?

I read once that if you love what you do, you never have to work a day in your life – I could not agree more. There are many parts of my job that I love; however, by far a favourite is being able to meet so many amazing people and get such an in-depth look at their professional lives. It is truly astonishing how wide the spectrum is, of careers, in just one single industry. Most of the careers are challenging but a ton of fun and extremely rewarding.

Can you tell me about how much work goes into creating a show like this?

Between the coordinating, paperwork, legalities, creative planning, gear prep, travel, filming and post production, the creation of this TV mini-series takes nearly a year. Our film crew travels for days at a time together putting in long days. Despite the hard work though, and crazy irregular hours, you'll be hard pressed to find a member on our crew who'd rather be doing anything else.

What has been one of your most memorable "off camera" memories?

You know that moment where you've been working 12 or 14 hours straight, you are

absolutely dead tired but the adrenalin and fun of what you are doing and the company you are in, keeps you going... Well those moments make for the most hilarious and memorable times. Our small crew gets along so well, we're like close siblings, so when we hit that point of goofy exhaustion, it's nothing but laughs and chuckles. I live for those moments; they are so pure and genuine.

What can we look forward to in season 2 airing this fall?

We are so thrilled to be able to bring the public a new season filled with more exciting jobs and facts – We ended season one with a jaw dropping young female master blaster, and I can promise season two will leave everyone just as breathless. Season two will be the final season of Mining Your Future, at which point we will make the shift to our newest series called "Job Hunters". Essentially the same type of show, but not focused only on the one industry.

When will season 2 begin to air?

Our first episode of this season is scheduled for Wednesday, September 25th at 10:30pm.

"Top 20 Under 40" Contest

Rock to Road magazine (formerly known as Aggregates and Roadbuilding) is in the process of providing recognition for the next generation of the workforce with their "Top 20 under 40" contest. This award recognizes the best and brightest workers in Canada's Rock to Road industry, from contractors and equipment operators to technicians and site planners.

The BC Stone, Sand and Gravel Association has already made the following nominations:

- Mainland Sand and Gravel Ltd.: Gerrod McAuley, Production Foreman; Richard Vernon, Plant Operator; and Dustin McAuley, Loader Operator. All were nominated by Ewan Moir, General Manager, Cox Station Quarry.
- Westlake Paving and Aggregates Ltd.: Kris Watrich, Aggregates Manager, BC Interior for Lafarge was nominated by Roy Bertram, General Manager.
- Mission Ridge Aggregates Ltd.: Tyson Craigg, V.P. of Sales, Distribution and Pit Operations was nominated by Claire Hancock.

Thank you to all the companies that submitted their employee's names for this very prestigious award. The final results of the "Top 20 Under 40" will be published in the September-October issue of Rock to Road magazine.

Good luck to all nominees!

(Contd. From page 9)

MINING YOUR FUTURE

"The BC Mining HR Task Force fundamentally supported this pilot TV mini-series because BC is hitting a critical labor shortage with the aging demographic (40% of our industry is 50 years+), additionally our industry will need over 10,000 new recruits by 2021," explains Dave Bazowski. "It is important that British Columbians are provided the opportunity to explore the many career opportunities our industry provides throughout BC."

For further general information about the Mining Your Future TV mini-series visit

www.miningyourfuture.com

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Case Summary:

The Corporation of the District of Peachland v. Peachland Self Storage Ltd.

COUNSEL FOR THE PEACHLAND SELF STORAGE LTD.:

Brook Greenberg and Joel V. Payne
Fasken Martineau DuMoulin LLP, Vancouver

In June 2007 Peachland Self Storage Ltd. (“PSS”) applied for a permit under the provincial Mines Act to extract 100,000 m³ of aggregate per year from its property in Peachland, B.C. In August 2007, the District of Peachland (the “District”) amended its Earthworks Control Bylaw to limit soil removal on a single parcel of land to 200 m³ per year (the “Bylaw”). In 2009, the Province granted PSS its permit (the “Permit”).

When PSS began operating its aggregate mine, the District sued PSS for breach of the Bylaw and obtained an interim injunction preventing PSS from removing more than 200 m³ per year from its property. PSS filed a counterclaim against the District alleging that the Bylaw was invalid because it prohibited soil removal but was passed without approval from the Minister of Energy and Mines, which was required for any bylaw that “prohibits” soil removal pursuant to ss. 9(1)(e)(i) and 9(3)(c) of the Community Charter.

At trial, PSS presented expert and other evidence demonstrating that the 200 m³ soil removal limit made it practically and economically impossible for it to operate its aggregate mine as authorized by the Permit. The trial judge accepted this evidence. He concluded that the purpose of

the requirement for ministerial approval was to protect the value of provincial permits. Because the 200 m³ limit made it impossible for PSS to operate under the Permit, rendering the Permit valueless, the Bylaw “prohibited” soil removal and was invalid because the District did not obtain ministerial approval.

The District appealed the decision to the Court of Appeal. The Court of Appeal agreed with the trial judge that the purpose of the requirement for ministerial approval for bylaws that prohibit soil removal is “to safeguard ‘the Provincial interest’” (at para. 20). The “Provincial interest” includes the Province’s interest in “extraction industries, which are a key component of British Columbia’s economy” (at para. 21). The Court of Appeal held that the 200 m³ limit was “so low that no industrial-scale extraction is possible” (at para. 29). This was a practical prohibition of soil removal, for which ministerial approval was required. The appeal was dismissed.

Trial decision: *Peachland (District) v. Peachland Self Storage Ltd.*, 2012 BCSC 1872.

Appeal decision: *Peachland (District) v. Peachland Self Storage Ltd.*, 2013 BCCA 273.

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