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ALBERTA  
ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

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Date of Discontinuance of Proceedings – February 1, 2001

**IN THE MATTER OF** sections 84, 85, and 87 of the *Environmental Protection and Enhancement Act*, S.A. 1992, c.E-13.3.

**-and-**

**IN THE MATTER OF** appeals filed on April 25, 2000 by Mr. Kenneth J. Byram and Mr. Patrick S. Kalita, on behalf Byram Industrial Services Ltd. by from Ms. Karin E. Buss, Ackroyd Piasta Roth and Day, on behalf of Dr. Rosalind Beacom, Dr. Michael Peyton and the Pembina Institute, with respect to Approval No. 47415-00-01 issued to the Drayton Valley Regional Sanitary Landfill Authority, by the Director, Parkland Region, Alberta Environment.

Cite as: *Byram Industrial Services Limited et al v. Director, Parkland Region, Alberta Environment, re: Drayton Valley Regional Sanitary Landfill Authority.*

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## **BACKGROUND**

[1] On March 25, 2000, the Director, Parkland Region, Alberta Environment (the “Director”) issued Approval No. 47415-00-01 (the “Approval”) to the Drayton Valley Regional Sanitary Landfill Authority (the “Approval Holder”). The Approval authorizes the construction, operation and reclamation of the Drayton Valley Regional Landfill.

[2] On April 25, 2000, the Environmental Appeal Board (the “Board”) received Notices of Appeal, dated April 20, 2000, from Mr. Kenneth J. Byram and Mr. Patrick S. Kalita, on behalf of Byram Industrial Services Ltd. (“Byram”), and from Ms. Karin E. Buss, Ackroyd Piasta Roth and Day, on behalf of Dr. Rosalind Beacom, Dr. Michael Peyton and the Pembina Institute (the “Appellants”), appealing the Approval.

[3] On April 26, 2000, the Board acknowledged receipt of the Notices of Appeal and, at that time, requested a copy of all records relative to the appeals from the Director (the “Records”). On that same date the Board advised the Approval Holder of the appeals.

[4] According to standard practice, on April 26, 2000, the Board wrote to the Natural Resources Conservation Board (the “NRCB”) and the Alberta Energy and Utilities Board (the “AEUB”) asking whether this matter has been the subject of a hearing or review under their respective legislation. A reply was received from the NRCB on May 3, 2000 stating that they did not hold any hearing or review under their legislation. On July 14, 2000, the Board received a response from the AEUB. The AEUB advised that they had neither reviewed nor held a public hearing relating to the appeals, however, the AEUB advised that there is a Memorandum of Understanding between the AEUB and Alberta Environment that allows the Drayton Valley Regional Sanitary Landfill to accept petroleum hydrocarbon contaminated soils. On July 18, 2000, the Board requested a copy of the Memorandum of Understanding from the AEUB and the Board subsequently received a copy on August 9, 2000.

[5] On July 4, 2000, the Board received the Records and on July 10, 2000, forwarded a copy of the Records to Byram, the Appellants and the Approval holder. In the Board's letter of July 10, 2000, to the parties, the Board also requested that the parties provide their available dates for a hearing.

[6] By letters of July 26 and 27, 2000, respectively, the Appellants and the Director provided their available dates for a hearing and both parties expressed a willingness to participate in a mediation meeting. The Appellants advised that they had been meeting with the Approval Holder and were close to resolving some of the outstanding issues between them. The Board responded by letter of July 27, 2000, and requested that Byram indicate their willingness or refusal to participate in a mediation meeting/settlement conference. The Board received a letter on August 1, 2000, from the Approval Holder advising that they were willing to participate in a Board assisted mediation.

[7] The Board, on August 2, 2000, wrote to the parties to requesting they reserve September 13, 2000 for a mediation meeting/settlement conference, pending the availability of Byram. On August 3, 2000, the Board received a letter from Byram advising that they were agreeable to participating in a mediation meeting/settlement conference on September 13, 2000.

[8] On August 11, 2000, the Board received a letter from the Director stating that although they were willing to participate in a mediation meeting, they requested the following:

“...the Department respectfully requests that the Board also consider, as a preliminary matter, the issue of standing pursuant to section 84(1)(a)(iv) of *the Environmental Protection and Enhancement Act*. Specifically, the Department requests that the parties be given an opportunity to address the issue of whether the Pembina Institute and Byram Industrial Services Ltd. are directly affected by the Director’s decision.”

[9] The Board responded to the Director’s letter on August 15, 2000. The Board proposed that the issue of standing of Byram and the Pembina Institute be addressed following the mediation meeting/settlement conference, should the mediation be unsuccessful. The Board would then receive motions concerning standing in the event that the matter would proceed to a hearing. The Board requested that parties advise of any objections to the Board’s proposal by August 23, 2000.

[10] The Board received a letter dated August 16, 2000, from Byram agreeing with the Board’s proposal. The Board received a further letter from Byram on August 22, 2000, stating in part:

“Regretfully, if the Board becomes of the opinion that a preliminary hearing is necessary to resolve the issue of standing prior to the mediation process, BISL will not be available to participate in the mediation, as our focus will be shifted to preparation for the hearing. Again we are in favour of the Board proposal that ‘standing’ can be addressed, prior to proceeding to a hearing, in the event that resolution of the issues cannot be achieved within the mediation process.”

[11] The Director responded to the Board’s August 15, 2000, letter on August 21, 2000, advising that it would be preferable to hold a preliminary meeting to determine the issue of standing by the Board prior to a mediation meeting.

[12] In an August 22, 2000 letter, the Appellants advised that they were in full agreement with the Board's proposal to deal with the issue of standing of Byram and the Pembina Institute following a mediation meeting. The letter also stated:

“In our view, it is clear that the Appellant's Drs. Beacom and Peyton are directly affected as it appears that the Director is not challenging their standing, there will be an Appeal hearing in any event. Therefore it seems reasonable to address the issue of standing at the Appeal, should this matter proceed to Appeal.”

[13] The Board, in view of the correspondence received from the parties, advised the parties that it had decided to cancel the mediation meeting and hold a preliminary meeting on the issue of standing. The Board requested that all parties provide written submissions concerning the standing of Byram and the Pembina Institute to the Board by September 14, 2000.

[14] On September 11, 2000, the Board received a letter from Byram requesting an extension of the September 14, 2000 deadline to submit written submissions. On that same date the Board advised that Byram's request for an extension was granted, and as long as there were no objections from the other parties, written submissions would now be due on October 16, 2000. The Board, at that time, also requested that the parties provide their available dates for a preliminary meeting for November/December, 2000. The Director, in a letter of September 13, 2000, objected to the request for extension to October, and instead, suggested the date of September 22, 2000. In a letter of September 14, 2000, the Approval Holder expressed concern regarding the October 16, 2000 extension, but agreed to the extension date of September 22, 2000. Having viewed responses on the issue of extension, the Board decided to grant Byram an extension to October 2, 2000 to file their written submission.

[15] The Appellants wrote to the Board on September 8, 2000, advising that they were actively engaged in informal mediation and hoped to reach an agreement shortly. The letter stated:

“In our view, providing detailed submissions on the standing of the Pembina Institute and attending a preliminary hearing is not an effective use of our client’s time nor the Board’s resources. There will be a hearing in any event (if this matter is not settled) and as the interests of all our clients are similar, it does not matter at the end of the day if all or some of them have standing.

We therefore decline to make submissions and attend the preliminary hearing on the question of standing of the Pembina Institute. The Institute represents its members including the Appellant Dr. Beacom and Dr. Peyton and has the right to appear, in any event, as agent and expert witness for the other Appellants.”

The Board acknowledged the letter on September 18, 2000 advising that the Pembina Institute’s absence from the preliminary meeting on the issue of standing may prejudice them should the informal mediation prove unsuccessful. The Board also strongly encouraged the parties to continue with the informal mediation.

[16] On September 19, 2000, the Board wrote to the Appellants and the Director seeking confirmation on issues in relation to the Appellants as follows:

“First, it is the Board’s understanding that the Director has not challenged the standing of Dr. Rosalind Beacom and Dr. Michael Peyton. As indicated in Ms. Buss’ letter to the Board of August 22, 2000 she brought this matter forward and no response was received from the Director. The Board asks Ms. Veale [counsel for the Director] for her comments on this issue by **September 21, 2000**. Other parties may also provide any comments they may have on this issue by this date.

Secondly, on April 25, 2000 the Board received one Notice of Appeal filed by Ms. Karin Buss, on behalf of Dr. Rosalind Beacom, Dr. Michael Peyton and the Pembina Institute. The Board is now of the understanding that there are three individual parties being represented. The Board requests that Mr. Marr-Laing [representing the Appellants] confirm the number of separate appeals by **September 21, 2000**. The Board also requests that other parties to these appeals provide any concerns on this issue by **September 21, 2000** as well.” [Emphasis added in original.]

[17] On September 21, 2000, the Board received a letter in response from the Director. The Director confirmed that he was not challenging the standing of Dr. Beacom and Dr. Peyton. The Director also stated:

“Section 84 of the *Environmental Protection and Enhancement Act* (“EPEA”) appears to contemplate that a separate Notice of Appeal may be filed by each person that filed a statement of concern in accordance with section 70 of the EPEA and is directly affected by the Director’s decision. Section 5 of Alberta Regulation 114/93 also appears to support this approach. Furthermore, I note that Rosalind and Michael Peyton and Tom Marr-Laing, on behalf of the Pembina Institute, filed two separate statements of concern with the Director. Although the current Notice of Appeal may be defective in its form, I do not believe the defect impacts the Director’s ability to challenge the standing of the Pembina Institute.”

[18] The Board acknowledged the Director’s letter on September 22, 2000, and advised that it was waiting for a response to its September 19, 2000, letter from the Appellants.

[19] The Board received a response to its September 19, 2000 letter from the Appellants on September 22, 2000. The letter advised that it was the intent of the Appellants – the Pembina Institute, Drs. Beacom and Peyton - to “participate collectively under a single Notice of Appeal.” Among other reasons, the letter explained that as the Appellants’ grounds of appeal and requested disposition were the same, it was more expedient to record the Notice of Appeal in one document. The letter also stated:

“We would note that the Appellants and the Authority have made considerable progress in resolving the issues of concern. We look forward to meeting soon with Alberta Environment to present a proposal for dealing with these matters and, subsequently, being in a position to withdraw our Appeal.”

[20] The Board responded to the letter on September 26, 2001, advising of the following:

“The Board notes that while your Notice of Appeal was submitted jointly with Drs. Beacom and Peyton, the Pembina Institute is in fact a distinct Appellant. Given that the Department is challenging the standing of the Institute and not Drs. Beacom and Peyton, the Board notes the decision of the Pembina Institute not to appear at a preliminary meeting on the issue of standing. The Board wishes to make it clear that the Institute’s absence from the preliminary meeting may jeopardize its ability to participate as a party in these proceedings.”

The Board went on to encourage discussions between the Appellants and the Approval Holder and requested a status report by October 16, 2000.

[21] On September 27, 2000, the Board received a letter from the Appellants. The letter advised that terms of agreement had been reached between the Approval Holder, Byram and the Appellants on “resolving outstanding issues of concern.” The letter advised that the Appellants intended to meet with Alberta Environment to review the issues and that if the meeting was successful that the Appellants “would then look forward to being in a position to withdraw their Appeals.” The Board acknowledged the letter on September 27, 2000, and again requested a status report by October 16, 2000.

[22] On September 28, 2000, Byram submitted their written submission as requested in the Board’s letter of September 18, 2000. On October 2, 2000, the Board received the Director’s and the Approval Holder’s written submissions. No submission was received from the Appellants.

[23] On October 16, 2000, the Board received a letter from the Approval Holder advising that they were attempting to arrange meetings with the interested parties during the week of October 23, 2000, and believed they were reasonably close to reaching an agreement. The Board acknowledged the letter on October 16, 2000, and requested status reports from all the parties by October 27, 2000.

[24] On October 24, 2000, the Board received a status report from the Approval Holder advising that although progress was being made, there were outstanding issues upon which additional information was to be provided to them by November 5 and 15, 2000. Further, they requested the Board keep December 8, 2000 available for a preliminary meeting to deal with the issue of standing, in the event that a resolution was not possible. On October 24, 2000, Byram submitted a status report. The report advised that “a small measure of progress” had been made and requested additional time to enable the parties to work through the remaining issues. The letter stated in part: “It is our hope that a resolution of the outstanding issues may be achieved within the upcoming weeks.” The Director advised, by letter of October 30, 2000, that he was agreeable to an abeyance of the appeals until January 2, 2001. As all parties were in agreement, the Board granted the extension and requested status reports from the parties by January 4, 2001.

[25] On January 8, 2001, the Board received the following letter from the Director:

“In the event the Appellants are not prepared to withdraw their appeals, Alberta Environment respectfully requests that the Environmental Appeal Board proceed with the appeal process, beginning with the issue of standing.”

[26] On January 4, 2001, the Board received a letter from the Approval Holder stating:

“The Drayton Valley Regional Sanitary Landfill Authority has taken steps to address the concerns raised by the Appellants in this appeal. Specifically the Landfill Authority has:

- (a) revised the Drayton Valley Landfill Operations Plan to address concerns regarding off-site contamination.
- (b) voluntarily agreed to stop accepting petroleum contaminated hydrocarbon soil for a period of two years. This decision will be reviewed at that time.
- (c) proposed and reviewed with Drayton Valley Power Ltd. a scheduled reduction in the amount of wood ash to be disposed of at the landfill. There was a 65% reduction in amount of ash disposed of in the landfill between 1999 volumes and 2000 volumes.

(d) confirmed and agreed to construct cell 3d and 3e before Phase 4a of the landfill.

The Landfill Authority believes it has positively addressed the issues raised by the Appellants. If the Appellants are not prepared to now withdraw their appeals, the Landfill Authority requests that the Board proceed with the appeal process, initially resolving the issue of standing.”

[27] The Board requested in a letter dated January 8, 2001, that the parties provide their comments with regard to the Approval Holder’s letter, specifically if the issues raised in the letter sufficiently addressed the concerns of the Appellants and Byram, by January 19, 2001.

[28] On January 10, 2001, the Board received a letter from Byram stating:

“Although we are disappointed that resolution of the outstanding issues could not be achieved within the approval framework, that is, incorporation of specific clauses that address the issues as related to this site, our concerns appear to have been addressed with the DVRL Operations Plan.

Please consider this formal notification that Byram Industrial Services Ltd. is withdrawing the appeal of the DVRL Approval.”

[29] On January 24, 2001 the Board received a letter dated January 10, 2001, from the Appellants. The letter stated:

“As a result of non-formal mediation between the Landfill Authority, the Appellants, and Alberta Environment a series of actions and commitments have been implemented by the Authority which have assisted in addressing the concerns of the Appellants. On the basis of these actions and commitments, the signators to this letter have agreed to withdraw our appeal regarding the Drayton Valley Regional Landfill Authority Amending Approval No. 47415-00-01.”

**DECISION**

[30] Pursuant to section 87(7) of the *Environmental Protection and Enhancement Act*, and based on letters dated January 10, 2001 from Byram and the Appellants, the Board hereby discontinues its proceedings in Appeal Nos. 00-017 and 00-018 and will be closing its files.

Dated February 1, 2001 at Edmonton, Alberta.

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Dr. William A. Tilleman