

ALBERTA  
ENVIRONMENTAL APPEAL BOARD

Decision

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Date of Decision – January 23, 2003

**IN THE MATTER OF** sections 91, 92 and 95 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 and section 115 of the *Water Act*, R.S.A. 2000, c. W-3.

**-and-**

**IN THE MATTER OF** an appeal filed by R. Douglas Herdman with respect to *Water Act* Approval No. 00186924-00-00 issued to the City of Airdrie by the Director, Southern Region, Regional Services, Alberta Environment.

Cite as: *Herdman v. Director, Southern Region, Regional Services, Alberta Environment*  
re: *City of Airdrie* (23 January 2003) Appeal No. 02-084-D (A.E.A.B.).

## EXECUTIVE SUMMARY

Alberta Environment issued an Approval under the *Water Act* to the City of Airdrie authorizing the realignment of Nose Creek at the 1<sup>st</sup> Avenue North Vehicle-Crossing site in Airdrie, Alberta.

The Board received a Notice of Appeal from Mr. R. Douglas Herdman appealing the Approval.

The Board began processing the appeal; however Mr. Herdman failed to respond to any of the Board's letters or telephone messages. Therefore, the Board has dismissed Mr. Herdman's appeal for failure to respond to the Board in a timely manner, pursuant to section 95(5)(a)(iv) of the *Environmental Protection and Enhancement Act*.

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## I. BACKGROUND

[1] On November 18, 2002, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”) issued Approval No. 00186924-00-00 (the “Approval”) under the *Water Act*, R.S.A. 2000, c. W-3, to the City of Airdrie (the “Approval Holder”) authorizing the realignment of Nose Creek at the 1<sup>st</sup> Avenue North Vehicle-Crossing site in Airdrie, Alberta.

[2] On November 26, 2002, the Environmental Appeal Board (the “Board”) received a Notice of Appeal from Mr. R. Douglas Herdman (the “Appellant”) appealing the Approval.

[3] On November 27, 2002, the Board wrote to the Appellant, the Approval Holder and the Director (collectively the “Parties”) acknowledging receipt of the Notice of Appeal and notifying the Approval Holder and the Director of the appeal. The Board also requested the Director provide the Board with a copy of the records (the “Record”) relating to the appeal and requested that the Parties provide available dates for a mediation meeting or hearing.

[4] According to standard practice, the Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board asking whether this matter had been the subject of a hearing or review under their respective legislation. Both Boards responded in the negative.

[5] On December 11, 2002, the Board received a copy of the Record from the Director and on the same date, forwarded a copy to the Appellant and the Approval Holder.

[6] As the Board did not receive a response from the Appellant to its November 27, 2002 letter, the Board wrote again to the Appellant on December 18, 2002 and asked that he provide his available dates for a mediation meeting or hearing. The Board advised the Appellant that failure to respond to the Board in a timely manner could result in the dismissal of his appeal, pursuant to section 95(5)(a)(iv) of the *Environmental Protection and Enhancement Act*.<sup>1</sup> The

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<sup>1</sup> Section 95(5) The Board

(a) may dismiss a notice of appeal if

(iv) the person who submitted the notice of appeal fails to comply with a written notice...

Board also attempted to contact the Appellant by telephone on December 17, 18, and 23, 2002 leaving messages for him to contact the Board.

[7] The Appellant did not respond to the Board's letter of December 18, 2002 or the Board's telephone messages of December 17, 18, and 23, 2002. The Board again attempted to contact the Appellant by letter on January 6 and 14, 2003 and by telephone on January 14, 2003. A response was not received by the Board.

## **II. DECISION**

[8] Pursuant to section 95(5)(a)(iv) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, the Board hereby dismisses Appeal No. 02-084 for the Appellant's failure to comply with a written notice.

Dated on January 23, 2003, at Edmonton, Alberta.

"original signed by"  
William A. Tilleman, Q.C.  
Chair