

# ALBERTA ENVIRONMENTAL APPEALS BOARD

## Discontinuance of Proceedings

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Date of Mediation Meetings – November 19, 2004 & April 29, 2005

Date of Discontinuance of Proceedings – May 3, 2005

**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** appeals filed by Willem and Mieke Spaans; Andre and Trish Lema; Glen Blaylock; Leo and Valerie Belanger; Robert and Kathryn Lema; and Gary and Doris Labrecque with respect to *Water Act* Amending Approval No. 0023878-00-02 issued to Yellowhead Aggregates, and *Environmental Protection and Enhancement Act* Amending Approval No. 15125-01-01 issued to Lafarge Canada Inc. by the Director, Northern Region, Regional Services, Alberta Environment.

Cite as: *Spaans et al v. Director, Northern Region, Regional Services, Alberta Environment re: Yellowhead Aggregates and Lafarge Canada Inc.* (3 May 2005), Appeal Nos. 04-024, 04-026-030 and 04-035-040-DOP (A.E.A.B.).

**MEDIATION MEETING BEFORE:**

Dr. M. Anne Naeth, Board Member.

**APPEARANCES:**

**Appellants:**

Mr. Willem and Ms. Mieke Spaans; Mr. Andre and Ms. Trish Lema; Mr. Glen Blaylock; Mr. Leo and Ms. Valerie Belanger; Mr. Robert and Ms. Kathryn Lema; and Mr. Gary and Ms. Doris Labrecque.

**Director:**

Mr. Park Powell, Director, Northern Region, Regional Services, Alberta Environment, Mr. Alan Hingston, Approval Coordinator, Alberta Environment, Mr. Geoff Foy, Conservation and Reclamation Specialist, Alberta Environment, represented by William McDonald, Alberta Justice.

**Approval Holders:**

Mr. Mike Kager, Lafarge Canada, Inc., Mr. Brendan J. Vickery, Lafarge Canada Inc., Ms. Marlea Sleeman, Yellowhead Aggregates, Mr. Darren Tomecek, Westerra Environmental, and Mr. Jason Gardiner, Sureway Construction.

**Board Staff:**

Ms. Marian Fluker, Senior Research Officer.

## EXECUTIVE SUMMARY

Alberta Environment issued a *Water Act* Amending Approval to Yellowhead Aggregates for the temporary diversion of up to 80 acre-feet (21.7 million Canadian gallons) of water from the aquifer at SW 16-54-26-4 near St. Albert, Alberta, and an *Environmental Protection and Enhancement Act* Amending Approval to Lafarge Canada Inc. for the opening up, operation and reclamation of a pit on SW 16-54-26-W4M near St. Albert, Alberta.

The Environmental Appeals Board received Notices of Appeal from Mr. Willem and Ms. Mieke Spaans; Mr. Andre and Ms. Trish Lema; Mr. Glen Blaylock; Mr. Leo and Ms. Valerie Belanger; Mr. Robert and Ms. Kathryn Lema; and Mr. Gary and Ms. Doris Labrecque appealing the Amending Approvals and requesting a Stay.

The Board received submissions regarding the Stay request and the directly affected status of the appellants. The Board determined all of the appellants are directly affected as they live within one kilometre of the project site. However, the Board denied the Stay request as the appellants would not suffer irreparable harm by the companies operating under the terms and conditions of the approvals in the time required to hear the appeals.

The Board advised the parties that it was of the view that the appeals may be successfully mediated and requested they provide available dates for a mediation meeting. The Board held mediation meetings in Edmonton, Alberta on November 19, 2004 and April 29, 2005. Following successful discussions at the April 29, 2005 mediation meeting, the Appellants withdrew their appeals. The Board therefore closes its file in these matters.

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## **I. BACKGROUND**

[1] On June 7, 2004, the Director, Northern Region, Regional Services, Alberta Environment (the “Director”), issued Amending Approval No. 0023878-00-02 under the *Water Act*, R.S.A. 2000, c. W-3, to Yellowhead Aggregates (the “Yellowhead Amending Approval”), for the temporary diversion of up to 80 acre-feet (21.7 million Canadian gallons) of water from the aquifer at SW 16-54-26-4 near St. Albert, Alberta. On June 4, 2004, the Director, Northern Region, Regional Services, Alberta Environment (the “Director”), issued Amending Approval No. 15125-01-01 under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, to Lafarge Canada Inc. (the “Lafarge Amending Approval”) for the opening up, operation and reclamation of a pit on SW 16-54-26-W4M near St. Albert, Alberta. Collectively, Yellowhead Aggregates and Lafarge Canada Inc. are referred to as the Approval Holders.

[2] On June 23 and 24, 2004, the Environmental Appeals Board (the “Board”) received Notices of Appeal and requests for a Stay from Mr. Willem and Ms. Mieke Spaans; Mr. Andre and Ms. Trish Lema; Mr. Glen Blaylock; Mr. Leo and Ms. Valerie Belanger; Mr. Robert and Ms. Kathryn Lema; and Mr. Gary and Ms. Doris Labrecque (the “Appellants”) appealing the Amending Approvals and requesting a Stay.

[3] On June 29, 2004, the Board wrote to the Appellants, the Approval Holders and the Director (collectively the “Parties”) acknowledging receipt of the Notices of Appeal and notifying the Approval Holders and the Director of the appeals and requests for a Stay. The Board also requested the Director provide the Board with a copy of the records (the “Record”) relating to these appeals, and 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 July 21, 2004, the Board received a copy of the Record from the Director, and on July 27, 2004, forwarded a copy to the Appellants and the Approval Holders.

[6] On June 29, 2004, the Board wrote to the Appellants, requesting answers to the following questions:

- “1. What are the serious concerns of [the Appellants] that should be heard by the Board?
2. Would [the Appellants] suffer irreparable harm if the Stay is refused?
3. Would [the Appellants] suffer greater harm if the Stay was refused pending a decision of the Board, than Lafarge Canada Inc. and Yellowhead Aggregates would suffer from the granting of a Stay?
4. Would the overall public interest warrant a Stay?
5. Are [the Appellants] directly affected by Alberta Environment’s decision to issue the Approvals/Amending Approvals to Lafarge Canada and Yellowhead Aggregates? This question is asked because the Board can only grant a Stay where it is requested by someone who is directly affected.

[7] On August 4, 2004, the Board wrote to the Parties informing them that the Board had reviewed the initial submissions from the Appellants with respect to their request for a Stay. Before making its final decision with respect to the Stay, the Board requested written response submissions from the Approval Holders and the Director. The Board received submissions from the Approval Holders and the Director.

[8] On September 14, 2004, the Board wrote to the Parties informing them the Board had decided to deny the Stay requests of the Appellants, as they failed to demonstrate they would suffer irreparable harm during the time these appeals are heard. Although the Appellants showed there was an important issue to be heard, they did not demonstrate the public interest warrants the granting of the Stay. The Board’s written reasons followed.<sup>1</sup>

[9] On September 24, 2004, the Board advised the Parties that it was of the view that these appeals may be successfully mediated and requested them to provide available dates for a

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<sup>1</sup> *Spaans et al. v. Director, Northern Region, Regional Services, Alberta Environment re: Yellowhead Aggregates and Lafarge Canada Inc.* (11 January 2005), Appeal Nos. 04-024, 04-026-030 and 04-035-040-ID1 (A.E.A.B.).

mediation meeting. On the same date, the Board responded to Mr. Ian Skinner, who requested third party intervenor status, and advised that if these matters were to go to a hearing that a Notice of Hearing would be advertised in the newspapers and he could then make an application to the Board.

[10] On October 20, 2004, the Board advised the Parties that a mediation meeting would take place on November 19, 2004, and would be held at the Board's office in Edmonton, Alberta.

[11] On October 27, 2004, the Board confirmed the mediation meeting with the Parties and responded to Mr. Blaylock's concerns regarding the location of the venue.

[12] On November 19, 2004, the Board held a mediation meeting in Edmonton, and as a result of the mediation, the appeals were held in abeyance until March 31, 2005 with written status reports due on January 15, 2005.

[13] On February 9, 2005, the Appellants provided the Board with a status report. The Board requested the Director and the Approval Holders provide comments. On March 15 and 30, 2005, the Board received comments from the Director and Approval Holders. On March 30, 2005, the Board reviewed the status reports and decided to schedule a second mediation meeting for April 29, 2005, in Edmonton, Alberta.

## **II. THE MEDIATION MEETING**

[14] Pursuant to section 11 of the Environmental Appeal Board Regulation, A.R. 114/93, the Board conducted mediation meetings in Edmonton, Alberta on November 19, 2004 and April 29, 2005 with Dr. Anne Naeth as the presiding Board Member (the "Mediator").

[15] In conducting the mediation meetings, the Mediator reviewed the appeals and the mediation process and explained the purpose of the mediation meeting. She then circulated copies of the Participants' Agreement to Mediate. All persons in attendance signed the Agreement and discussions ensued. Following the April 29, 2005 mediation meeting, the Appellants withdrew their appeals.

### **III. DECISION**

[16] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c W-3, and based upon the withdrawal of the appeals by the Appellants, the Board hereby discontinues its proceedings in these appeals and closes its file.

Dated on May 3, 2005, at Edmonton, Alberta.

*“original signed by”*

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William A. Tilleman, Q.C.  
Chair