

ALBERTA
ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – July 11, 2006

IN THE MATTER OF sections 91, 92 and 95 of the
Environmental Protection and Enhancement Act, R.S.A. 2000, c.
E-12;

-and-

IN THE MATTER OF an appeal filed by Darrell Breaker with
respect to *Environmental Protection and Enhancement Act*
Amending Approval No. 1190-01-13 issued to the Town of
Strathmore by the Director, Southern Region, Regional Services,
Alberta Environment.

Cite as: *Breaker v. Director, Southern Region, Regional Services, Alberta Environment*
re: *Town of Strathmore* (11 July 2006), Appeal No. 05-070-DOP (A.E.A.B.).

I. BACKGROUND

[1] On November 24, 2005, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”), issued Amending Approval No. 11901-01-13 (the “Amending Approval”), under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12; (the “Act”), to the Town of Strathmore (the “Approval Holder”), authorizing the construction, operation and reclamation of a wastewater system near Strathmore, Alberta.

[2] Between December 20, 2005 and January 17, 2006, the Environmental Appeals Board (the “Board”) received three Notices of Appeal with respect to the Amending Approval from Ms. Donna Breaker (EAB 05-053); Siksika Nation (EAB 05-054); and Mr. Darrell Breaker (EAB 05-070). Ms. Breaker and Siksika Nation also applied to the Board for a Stay, which was subsequently denied by the Board.¹

[3] This Discontinuance of Proceedings pertains to Mr. Darrell Breaker (the “Appellant”).

[4] On February 1, 2006, the Board wrote to the Appellant, the Approval Holder and the Director (collectively the “Participants”) 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 this appeal and that the Participants provide available dates for a mediation meeting or hearing.

[5] As the Amending Approval was issued on November 24, 2005 and the Notice of Appeal was filed on January 17, 2006, the Notice of Appeal appeared to have been filed outside the timeframe specified in section 91(4)(c) of the Act.² The Board’s February 1, 2006 letter to the Appellant requested he provide the Board with reasons for filing the Notice of Appeal late, and that he advise the Board whether he wished to request an extension of time to appeal. The Appellant was requested to provide this information to the Board by February 22, 2006.

¹ The Board issued a letter on March 16, 2006 denying the Stay Application of Siksika Nation and Donna Breaker as the “...Appellants have failed to meet the *prima facie* requirements for a stay...” The Board’s reasons for denying the Stay were issued in a letter dated May 26, 2006.

² Section 91(4)(c) of the Act states: “A notice of appeal must be submitted to the Board not later than 30 days after receipt of notice of the decision...”

[6] 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.

[7] The Board received the Record from the Director on January 30, 2006, and forwarded a copy to the Participants on February 1, 2006. On April 28 and March 24, 2006, the Board received additional documents from the Director with respect to these appeals, and provided copies to the Participants. On March 3, 2006 further documents were received from Siksika Nation, and the Board provided copies to the Participants on March 7, 2006.

[8] On February 24, 2006, the Board wrote to the Appellant again as it did not receive a response to its February 1, 2006 letter, in relation to the late filed appeal. The Board requested the Appellant provide a response to the Board by March 3, 2006 and advised that failure to respond to the Board in a timely manner may result in the dismissal of the appeal. A response was not received. On April 24, 2006 Board staff left a telephone message for the Appellant asking him to contact the Board regarding his response to the late filed appeal issue. No response was received from the Appellant.

[9] On March 22, 2006, the Board wrote to the Participants, advising that the Board had decided to proceed to an information/technical session and a mediation meeting, to deal with all of the appeals filed in relation to the Amending Approval. The Board advised that although a response from the Appellant had not been received, he would be permitted to participate in the information/technical session and mediation meeting. However, the Board would decide the status of the Appellant's appeal, if the appeals proceeded to a hearing.

[10] On April 25, 2006, the Board advised the Participants that, due to scheduling difficulties, the Board was unable to schedule the information/technical session and mediation meeting in April or May, 2006, and requested the participants provide further available dates during the week of June 19 – 23, 2006. Because a common date could not be found between the Participants for the information/technical session and mediation meeting, the Board scheduled a conference call with the Participants for May 17, 2006 to discuss scheduling.

[11] On May 16, 2006, the Board received an e-mail from Siksika Nation advising they intended to file a Judicial Review application with the Court of Queens Bench of Alberta. The Judicial Review was being filed in relation to the Director's decision to issue the Amending Approval, and the Board's March 16, 2006 decision denying the Stay application filed by Siksika Nation and Donna Breaker.

[12] On May 17, 2006, the Board wrote to the Participants, canceling the conference call scheduled to discuss scheduling for the information/technical session and mediation meeting, due to the filing of the Judicial Review. On May 24, 2006 the Board wrote again to the Participants advising it had decided to hold the appeals in abeyance pending the outcome of the Judicial Review. The Participants were requested to advise the Board, in writing, by May 29, 2006, if they had any objections.

[13] On May 25, 2006, the Board received a letter from the Director advising they were still willing to continue with the information/technical session and mediation meeting, if the other Participants were agreeable. The Board wrote to the Participants asking for comments with respect to the Directors suggestion.

[14] The Board was in the process of collecting comments with respect to proceeding with the information/technical session and mediation meeting, when on June 20, 2006, it received a letter from the Appellant advising the Board that he no longer wished to be involved in the appeal process. The Board also received a telephone call from counsel for Siksika Nation on June 23, 2006 confirming that the Appellant wished to withdraw his appeal.

II. DECISION

[15] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c.E-12, and based on the withdrawal of the appeal by the Appellant, the Board hereby discontinues its proceedings in Appeal No. 05-070 and closes its file.

Dated on July 11, 2006, at Edmonton, Alberta.

“original signed by”

Steve E. Hrudey, D.Sc. (Eng.), P.Eng.