

ALBERTA
ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – February 25, 2009

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 the Métis Nation of Alberta-Local 1935 with respect to *Water Act* Licence No. 00048398-01-00 and *Water Act* Approval No. 00251073-00-00 issued to Syncrude Canada Ltd. by the Director, Northern Region, Environmental Management, Alberta Environment.

Cite as: *Métis Nation of Alberta-Local 1935 v. Director, Northern Region, Environmental Management, Alberta Environment, re: Syncrude Canada Ltd. (25 February 2009)*, Appeal No. 08-025 & 08-026 (A.E.A.B.).

I. BACKGROUND

[1] On October 28, 2008, the Director, Northern Region, Environmental Management, Alberta Environment (the “Director”), issued Licence No. 0048398-01-00 (the “Licence”) and Approval No. 00251073-00-00 (the “Approval”) under the *Water Act*, R.S.A. 2000, c. W-3, to Syncrude Canada Ltd. (“Syncrude”). The Licence permits the operation of works and the diversion of up to 20,130,000 cubic meters of water annually for industrial, domestic, and diversion (drainage and flow control) purposes from surface runoff and groundwater. The Approval authorizes Syncrude to carry out activities as defined by the *Water Act* for the purpose of developing and operating the Aurora North Oil Sands Mine subject to certain conditions.

[2] On December 2, 2008, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from the Métis Nation of Alberta-Local 1935 (the “Appellant”) appealing the Licence and Approval.

[3] On December 2, 2008, the Board wrote to the Appellant, Syncrude, and the Director (collectively the “Participants”) acknowledging receipt of the Notice of Appeal and notifying the Director of the appeals. The Board also requested the Director provide the Board with a copy of the records (the “Record”) in relation to the Licence and Approval, and that the Participants provide the Board with available dates for a mediation meeting, a preliminary motions hearing or a hearing, by January 5, 2009.

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

[5] On January 5, 2009, the Board received a letter from the Director stating:

“The submissions and the relief claimed in the Notice of Appeal are directed in their entirety to a determination of questions of constitutional law. Pursuant to section 11 of the *Administrative Procedures and Jurisdiction Act*, the Board has no jurisdiction to determine a question of constitutional law. Accordingly, the appeals must be dismissed.”

The Director also stated that in the circumstances, it was only submitting extracts from the Record at this time documenting the Director's interaction with the Métis Nation of Alberta-Local 1935.

[6] On January 12, 2009, the Board acknowledged letters dated December 30, 2008 from Syncrude, January 5, 2009 from the Director and the Appellant, and a fax from the Appellant dated January 7, 2009 requesting a copy of a document from the Record as noted on the Director's letter of January 5, 2009.

[7] On January 26, 2009, the Board addressed two preliminary matters relating to the Board's jurisdiction to hear the appeals.

[8] First, the Board noted that an appeal of an approval issued under the *Water Act* must normally be filed within 7 days of receiving notice from Alberta Environment of the issuance of the approval. In this case, the Approval issued to Syncrude was issued on October 28, 2008 and the Notice of Appeal was filed on December 2, 2008. Further, the Board noted that the letter from Alberta Environment to the Métis Nation of Alberta dated October 28, 2008 advises that the timeframe for appealing is not later than 30 days. Based on this letter, the appeal of the Approval will not be challenged on the grounds that it was filed past the legislated timeframe. If the participants disagreed they were to advise the Board.

[9] Secondly, with respect to the Director's position in his January 5, 2009 letter that the Notice of Appeal in its entirety relates to constitutional issues that are not within this Board's jurisdiction, the Board set a schedule to receive written submissions. The Board further stated it was not designated under section 11 of the Administrative Procedures and Jurisdiction Act, the Authorities Designation Regulation and the Designation of Constitutional Decision Makers Regulation, to hear constitutional matters, and that constitutional issues related to the Approval and Licence are a matter that must be addressed in the courts.

[10] The Board's January 26, 2009 letter outlined a schedule for submissions, with the Appellant's initial submission due on February 17, 2009, the Director and Syncrude's response submissions due by March 3, 2009, and the Appellant's rebuttal submission due by March 17, 2009.

[11] On February 3, 2009, the Board acknowledged a February 2, 2009 letter from Syncrude regarding additional preliminary motions and stated that it would like to decide the constitutional motion raised by the Director prior to addressing Syncrude's preliminary motions, and that if any of the Participants had concerns with the Board holding Syncrude's motions in abeyance, they should advise the Board immediately.

[12] As the Board did not receive an initial submission from the Appellant on February 17, 2009, by fax on February 18, 2009 the Board requested that the Appellant provide their initial submission by February 20, 2009, and rescheduled the response and rebuttal submissions accordingly.

[13] On February 23, 2009, the Board acknowledged receipt of a letter from the Appellant, dated February 17, 2009 and received via fax on February 20, 2009, withdrawing the appeal.

II. DECISION

[14] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, and based upon the withdrawal of the appeal by the Appellant, the Board hereby discontinues its proceedings in Appeal Nos. 08-025 and 08-026 and closes its file.

Dated on February 25, 2009 at Edmonton, Alberta.

“original signed by”

Ron V. Peiluck, Vice-Chair