

12-035 & 036

Appellants – Robert Bresciani and Brero Holdings Ltd., **Operator** – Robert Bresciani and Brero Holdings Ltd., **Location** – Red Deer County

A Notice of Appeal and request for a stay were received from Robert Bresciani and Brero Holdings Ltd. on November 30, 2012. The appeal is in relation to the November 22, 2012 decision of Alberta Environment and Sustainable Resource Development (AESRD) to issue *Water Act* Enforcement Order No. WA-EO-2012/07-CR and *EPEA* Enforcement Order No. EO-2012/03-CR to Robert Bresciani and Brero Holdings Ltd. for contravening: section 49 of the *Water Act* by diverting water without a licence; clause 4.1.1 of the Approval for the unauthorized release of a substance from the wastewater system to the surrounding watershed; and clause 4.2.1 of the Approval for the operation of a water treatment plant and the wastewater collection system by, or under the direction of, a person holding a valid Small Wastewater System Operator certificate, at Les' Trailer Court, in Red Deer County.

The Board requested further information in relation to the Appellants' stay request prior to making a decision. As the Appellants felt they would suffer the consequences of the Orders that could not be undone, even if a stay was granted later and the Orders were overturned by the Board, the Appellants requested an interim stay.

The Board advised the parties on December 5, 2012 that the interim stay was denied, and on December 13, 2012 that the full stay application was denied. The Board's test for a stay, as stated in its previous decisions,¹ is adapted from the Supreme Court of Canada case of *RJR MacDonald*.²

Although the stay was denied because the Appellants would not suffer irreparable harm, the Board believed the public interest also supports the denial of the stay. Alberta Health Services (AHS) issued an order under the *Public Health Act*, R.S.A. 2000, c. P-37, containing a boil water advisory, requiring monitoring of the drinking water and provision of an alternate safe water supply, and requiring the operation of the sewage disposal system to prevent contamination of the water supply. The AHS order was issued in support of the concerns with safe drinking water for the tenants and the safe operation of the wastewater system. These are important public interest matters. Therefore, based on the information available before the Board at that time, the Board believed the public interest supports the denial of the stay because the Orders were intended to protect the health and safety of the tenants of the trailer court. The requirements to grant a stay were not met and the stay was denied.

On December 17, 2012, the Board received a copy of Amendment No. 1 to the Orders extending timelines within the Orders. The Appellants continued to take steps to comply with the Orders and on March 13, 2013 the Board received further status reports advising that Amendment No. 2 had been issued extending the date for the completion of the new well and reclamation of the existing well.

¹ *Stelter v. Director of Air and Water Approvals Division, Alberta Environmental Protection*, Stay Decision re: *GMB Property Rental Ltd.* (14 May 1998), Appeal No. 97-051 (A.E.A.B.).

² *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 ("RJR MacDonald"). In *RJR MacDonald*, the Court adopted the test as first stated in *American Cyanamid v. Ethicon*, [1975] 1 All E.R. 504. Although the steps were originally used for interlocutory injunctions, the Courts have stated the application for a stay should be assessed using the same three steps. See: *Manitoba (Attorney General) v. Metropolitan Stores*, [1987] 1 S.C.R. 110 at paragraph 30 and *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at paragraph 41.

On July 30, 2013, AESRD stated they were recently advised the Appellants had sold the property (land and trailer park) to a new owner. However, the Land Titles Office still reflected the Appellants as the current landowners, and all authorizations as issued by AESRD were still in the names of the Appellants. As a result, the Orders remained in place pending confirmation that the land and trailer park had been officially sold to a new owner. In the interim, AESRD had preliminary discussions with the alleged new owner of the site, and was continuing those discussions to ensure the Appellants and/or the new owner was aware of the outstanding matters of non-compliance with the Orders.

On October 1, 2013, AESRD advised the ownership status of the trailer park was currently unknown and the Appellants retained the obligations to comply with the Orders, and the associated infrastructure, including the wells and distribution system. AESRD noted that AHS had given the trailer park permission to connect the new water well to the distribution system.

Status reports were received from the parties on January 27, 2014 and the Board requested the parties advise if the Orders remained outstanding, and if so, who was responsible for the work. AESRD advised on February 26, 2014 that they may close the Orders with regards to the Appellants as they were dealing with the new owner on related matters.

On March 11, 2014, AESRD advised the Board that the Orders were now closed. In its letter of March 12, 2014 the Board stated that since the Orders were closed, the Appellants were requested to advise if their appeal would be withdrawn. The Appellants withdrew the appeal on March 21, 2014 and the Board discontinued its proceedings and closed its files.