

## DECISIONS 2004

04-001 and 04-002

**Appellant(s)** – Mr. Gary Moses, **Operator** – Ducks Unlimited Canada, **Location** – near Vermilion, **Type of Appeal** – As listed below

**Overview** - On April 13, 2004, the Board received a Notice of Appeal from Mr. Gary Moses dated April 12, 2004, appealing Preliminary Certificate No. 00082881-00-00 issued under the *Water Act* to Ducks Unlimited Canada. The Preliminary Certificate allows Ducks Unlimited Canada to divert up to 30,300 cubic meters of water annually from Deer Creek into a dam in NE 02-053-06-W4 with priority no. 200-04-17-001 for the purpose of habitat enhancement upon compliance with the conditions within the Preliminary Certificate; and *Water Act* Approval No. 00082878-00-00 authorizing the construction of a dam and related works on Deer Creek at NE 02-053-06-W4 and SE 02-053-06-W4, near Vermilion, Alberta.

**(04-001-ID1) Preliminary Motion:** Mr. Moses filed his appeal outside the 7-day timeline provided in the *Water Act*. The Board then established a written submission process to determine whether the Appellant's request for an extension of time to appeal should be granted. Upon review of the written submissions, the Board issued a Decision on November 29, 2004, advising that it would grant Mr. Moses' request for an extension of time to appeal, as Mr. Moses relied on the information provided in Alberta Environment's letter, stating he had 30 days to file an appeal.

Cite as: Preliminary Motion: *Moses v. Director, Central Region, Regional Services, Alberta Environment re: Ducks Unlimited Canada* (29 November 2004), Appeal No. 04-001-ID1 (A.E.A.B.)

**(04-001 and 04-002-R) Report and Recommendations** - The Board held a mediation meeting in Vermilion, Alberta on June 22, 2004, following which an agreement was reached by the parties. On June 28, 2004, the Board issued a Report and Recommendations recommending the Minister of Environment accept the agreement put forth by the parties. On June 30, 2004, the Minister approved the recommendation.

Cite as: *Moses v. Director, Central Region, Regional Services, Alberta Environment re: Ducks Unlimited Canada* (28 June 2004), Appeal Nos. 04-001 and 04-002-R (A.E.A.B.).

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04-003 and 04-004

**Appellant(s)** – Ms. Verna Loewen and Mr. Detlef Rottmerhusen, **Operator** – ARC Energy Resources Ltd., **Location** – near Valleyview, **Type of Appeal** – Report and Recommendations

On April 27, 2004, the Board received Notices of Appeal from Ms. Verna Loewen and Mr. Detlef Rottmerhusen with respect to Licence No. 00205559-00-00 issued under the *Water Act* issued to ARC Energy Resources Ltd. The Licence authorizes the diversion of 273,750 cubic metres of water annually from the wells in LSD 10-17-067-W5M, LSD 07-24-067-25-W5M, and LSD 06-20-067-24-W5M near Valleyview, Alberta for the purpose of industrial (injection) uses. The Board held a mediation meeting in Valleyview on November 8, 2004. As a result of the mediation, the participants reached an agreement that resulted in the allocation of water being reduced from 750 cubic metres per day to 650 cubic metres per day for a total annual allocation of 237,250 cubic metres. The agreement also requires that ARC conduct an investigation and prepare a report to be submitted to Alberta Environment into alternatives to the use of freshwater. Finally, the agreement also requests that ARC provide information about their operations to Ms. Loewen and Mr. Rottmerhusen. On November 10, 2004, the Board issued a Report and Recommendations recommending the Minister of Environment accept the resolution. On the same day, the Minister approved the recommendations.

Cite as: *Loewen and Rottmerhusen v. Director, Northern Region, Regional Services, Alberta Environment re: ARC Energy Resources Ltd.* (10 November 2004), Appeal Nos. 04-003 and 04-004-R (A.E.A.B.).

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04-005

**Appellant(s)** – Mr. Clarence Bohnet, **Operator** – Elkwater Park Golf Club, **Location** – near Medicine Hat, **Type of Appeal** – Discontinuance of Proceedings

On May 7, 2004, the Board received a Notice of Appeal from Mr. Clarence Bohnet appealing Preliminary Certificate No. 00206333-00-00 issued under the *Water Act* to Elkwater Park Golf Club. The Preliminary Certificate states that the Elkwater Park Golf Club will receive a licence to divert 10,649 cubic metres of water annually, for commercial purposes (golf course), from the well in SW 01-008-03-W4 with priority no. 2003-03-10-003 upon compliance with the conditions within the Certificate. The Board began processing the appeal, however, the Appellant withdrew his appeal. As a result, on October 6, 2004, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Bohnet v. Director, Southern Region, Regional Services, Alberta Environment re: Elkwater Park Golf Club* (6 October 2004), Appeal No. 04-005-DOP (A.E.A.B.).

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#### 04-006 and 04-007

**Appellant(s)** – Mr. Bill and Ms. Linda (Margaret) Heintz, and Ms. E.K. Atkinson-Place and Ms. Marjorie Bencz, **Operator** – Jaydel Farms Ltd., **Location** – near Carrot Creek, **Type of Appeal** – Decision

On May 17, 2004, the Board received Notices of Appeal from Mr. Bill and Ms. Linda (Margaret) Heintz and Ms. Marjorie Bencz on behalf of herself and Ms. E.K. Atkinson-Place, appealing Licence No. 00199977-00-00 issued under the *Water Act* to Jaydel Farms Ltd.. The Licence authorizes the diversion of 14,693 cubic meters of water annually from the well in NE 30-53-13-W5M for agricultural purposes, a confined feeding operation, near Carrot Creek, Alberta. At issue with respect to the Notices of Appeal was whether or not all of the issues were adequately dealt with by the Natural Resources Conservation Board (NRCB) in its hearing of the confined feeding operation application under the *Agricultural Operation Practices Act*. After reviewing the submissions and the NRCB review decision, the Board determined that all the matters raised in the Notices of Appeal were adequately dealt with by the NRCB. Therefore, on March 31, 2005, the Board issued a Decision dismissing the appeals.

Cite as: *Heintz et al. v. Director, Central Region, Regional Services, Alberta Environment re: Jaydel Farms Ltd.* (31 March 2005), Appeal Nos. 04-006 and 04-007-D (A.E.A.B.).

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#### 04-008

**Appellant(s)** – Messrs. Dick Baker, William Wowniar, Dan McLean and Jamie Wilson, **Operator** – Messrs. Dick Baker, William Wowniar, Dan McLean and Jamie Wilson, **Location** – near Gibbons, **Type of Appeal** – Discontinuance of Proceedings

On May 18, 2004, the Board Received a Notice of Appeal from Mr. Dick Baker, filed on behalf of himself, Mr. William Wowniar, Mr. Dan McLean and Mr. Jamie Wilson appealing the refusal of Alberta Environment to issue a licence under the *Water Act*. The licence would allow the Appellants to draw water from the Sturgeon River at NW 6-56-22-W4M, to water trees, gardens and lawns in Casa Vista Estates, near Gibbons, Alberta. The Board held a mediation meeting in Edmonton on July 6, 2004, following which a resolution was reached by the parties. As a result of the resolution, the Appellants decided to withdraw their appeal, and on July 7, 2004, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Dick Baker et al. v. Director, Northern Region, Regional Services, Alberta Environment* (7 July 2004), Appeal No. 04-008-DOP (A.E.A.B.).

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#### 04-009, 04-011, and 04-012

**Appellant(s)** – Mr. Mike Northcott, **Operator** – Lafarge Canada Inc., **Location** – near Calihoo, **Type of Appeal** – As listed below

On May 28, 2004, the Board received three Notices of Appeal and requests for a stay from Mr. Mike Northcott with respect to Licence Nos. 00192603-00-00 and 00206791-00-00 issued under the *Water Act*, and Amending Approval No. 76893-00-01 issued under the *Environmental Protection and Enhancement Act* to Lafarge Canada Inc.. The Licences and Amending Approval are in relation to a sand and gravel operation, commonly known as the Onoway Wash Plant, near Calihoo, Alberta. The wash plant has

existed since the mid-1950s and was originally authorized by way of a water licence issued in 1957, which it still holds today. The wash plant is located next to and uses water from Kilini Creek, a tributary of the Sturgeon River, which is in the North Saskatchewan River Basin.

**04-009, 04-011 and 04-012-R (Report and Recommendations)** The Board received submissions from the participants and held a hearing on November 5, 2004, in Edmonton, Alberta. At the hearing, Mr. Northcott expressed concern about his water well. However, the evidence before the Board indicated no connection between the Wash Plant and his well. The Wash Plant's water source is principally surface water and to some extent groundwater from a sand and gravel formation. Mr. Northcott's well is located on the other side of the creek, hydrologically up gradient by about one mile, with its water source being a shale bedrock formation. Mr. Northcott also expressed concern with the design of the Wash Plant. He wanted the on-stream dam and impoundment removed and the creek returned to a "natural" condition. The Board concluded the design of the Wash Plant was not before the Board since it is an existing facility, licenced in 1957. Even if the Board had recommended canceling the new Licences (which it did not), it would do nothing to address these concerns and it would not return the creek to a "natural" condition. The environmental impacts are not appreciably different with or without the new Licences. The Wash Plant used the same water repeatedly; the new Licences were not for new water, but merely permission to use the same water over again a few more times. Now that the Wash Plant has been properly regulated and monitored with the new Licences and new Amending Approval, the Board expected the environmental concerns, including those of Mr. Northcott, would be better addressed. Mr. Northcott also raised concerns regarding the wording of the Licences and argued for additional monitoring and reporting conditions. The Board accepted a number of Mr. Northcott's arguments on this point. Therefore, on January 6, 2005 the Board issued a Report and Recommendations recommending to the Minister of Environment that the Licences and Amending Approval be confirmed, subject to a number of variations. The Board recommended that a number of conditions be reworded and a number of monitoring and reporting conditions be added. In particular, the Board recommended requiring Lafarge to prepare and submit a Summary Water Balance Report annually. The report should help Alberta Environment ensure that the Wash Plant remains in compliance with its Licences and should assist Lafarge in addressing the concerns of Mr. Northcott and the local community. The Minister approved the recommendations on February 28, 2005.

Cite as: *Northcott v. Director, Northern Region, Regional Services, Alberta Environment re: Lafarge Canada Inc.* (6 January 2005), Appeal Nos. 04-009, 04-011 and 04-012-R (A.E.A.B.).

**04-009, 04-011, and 04-012-ID1 (Stay Decision)** On reviewing the submissions provided by the parties regarding the Stay application, the Board issued a Decision on January 11, 2005, advising that a Stay was not warranted, as there would be no irreparable harm to Mr. Northcott in the time the Board would require to hear the appeal, and the public interest did not support the granting of a Stay. Therefore, on January 11, 2005, the Board issued a Decision denying the stay request.

Cite as: *Stay Decision: Northcott v. Director, Northern Region, Regional Services, Alberta Environment re: Lafarge Canada Inc.* (11 January 2005), Appeal Nos. 04-009, 04-012-ID1 (A.E.A.B.).

**04-009, 04-011, and 04-012-CD (Costs Decision)** Before the close of the hearing on November 5, 2004, Mr. Northcott advised that he may wish to make an application for costs. Lafarge and Alberta Environment indicated they did not intend to make an application for costs. After the release of the Minister's decision, Mr. Northcott submitted a request for costs for the total sum of \$12,337.38. The Board determined legal counsel for Mr. Northcott did assist the Board in its process, and on December 23, 2005, the Board issued a Decision to award costs in the amount of \$5,071.17 to Mr. Northcott to be paid by Lafarge.

Cite as: *Costs Decision: Northcott v. Director, Northern Region, Regional Services, Alberta Environment re: Lafarge Canada Inc.* (23 December 2005), Appeal Nos. 04-009, 011 and 012-CD (A.E.A.B.).

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04-010

**Appellant(s)** – Mr. William and Ms. Martha Kashmere, **Operator** – Jaydel Farms Ltd., **Location** – near Carrot Creek, **Type of Appeal** – Decision

On May 31, 2004, the Board received a Notice of Appeal from Mr. William and Ms. Martha Kashmere with respect to Licence No. 00199977-00-00 issued under the *Water Act* to Jaydel Farms Ltd. authorizing the diversion of 14,693 cubic metres of water annually from the well in NW 30-53-13-W5M for agricultural purposes (confined feeding operation) near Carrot Creek, Alberta. The Appellant filed their appeal past the prescribed time limit of 30 days and did not provide sufficient reasons for granting an extension. As a result, the Board issued a Decision on October 8, 2004, dismissing the appeal.

Cite as: *Kashmere v. Director, Central Region, Regional Services, Alberta Environment re: Jaydel Farms Ltd.* (8 October 2004), Appeal No. 04-010-D (A.E.A.B.).

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04-013

**Appellant(s)** – Husky Oil Operations Limited, **Operator** – Husky Oil Operations Limited, **Location** – near Provost, **Type of Appeal** – Report and Recommendations

On June 10, 2004, the Board received a Notice of Appeal from Husky Oil Operations Limited with respect to the refusal of Alberta Environment to issue a Reclamation Certificate to Husky Oil Operations Limited for the Renaissance 15D Provost 15-36-39-3-W4M well near Provost, Alberta. The Board held a mediation meeting in Edmonton on August 26, 2004, following which a resolution was reached by the parties. On August 31, 2004, the Board issued a Report and Recommendations to the Minister recommending he accept the resolution. On September 23, 2004, the Minister accepted the recommendations.

Cite as: *Husky Oil Operations Limited v. Inspector, Central Region, Regional Services, Alberta Environment* (31 August 2004), Appeal No. 04-013-R (A.E.A.B.).

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04-014 – 04-017-DOP

**Appellant(s)** – Husky Oil Operations Limited, **Operator** – Husky Oil Operations Limited, **Location** – near Provost, **Type of Appeal** – Discontinuance of Proceedings

On June 10, 2004, the Board received Notices of Appeal from Husky Oil Operations Limited (“Husky Oil”) with respect to the refusal of Alberta Environment to issue reclamation certificates for the Pinnacle PCP Provost 13-19-38-9-W4M well, the Renaissance 6B Border 6-24-41-5-W4M well, the Husky Lloydminster 15-13-41-4-W4M well, and the Renaissance 15C Provost 15-13-41-4-W4M well near Provost, Alberta. The Board held a mediation meeting in Edmonton on August 26, 2004, and as a result, Alberta Environment and Husky Oil agreed to continue discussions. Further to the discussions, Alberta Environment issued reclamation certificates for the Pinnacle PCP Provost 13-19-38-9-W4M well, the Renaissance 6B Border 6-24-41-5-W4M well, the Husky Lloydminster 15-13-52-1-W4M well, and the Renaissance 15C Provost 15-13-41-4-W4M well. The Appellant subsequently withdrew the appeals and on November 25, 2004, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Husky Oil Operation Limited v. Inspector, Central Region, Regional Services, Alberta Environment* (25 November 2004), Appeal Nos. 04-014-04-017-DOP (A.E.A.B.).

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04-018

**Appellant(s)** – Talisman Energy Inc. **Operator** – Talisman Energy Inc., **Location** – Leduc, **Type of Appeal** – Decision

On June 2, 2004, the Board received a Notice of Appeal from the Talisman Energy Inc. with respect to the refusal of Alberta Environment to issue a Reclamation Certificate to the Appellant for the Ashland Pembina well located at 10-11-48-3-W5M located in Leduc County, Alberta. The appeal was filed past the prescribed time limit of 30 days and the Appellant did not respond to the Board’s request for a rebuttal submission. As the Appellant did not provide sufficient reasons for granting an extension for filing the Notice of Appeal and did not respond to the Board’s request for additional information, the Board issued a Decision on August 23, 2004 to dismiss the appeal.

Cite as: *Talisman Energy Inc. v. Inspector, Central Region, Regional Services, Alberta Environment* (23 August 2004), Appeal No. 04-018-D (A.E.A.B.).

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04-019 and 04-020

**Appellant(s)** – Dr. Barry Nault and Dr. Victoria Mitchell, **Operator** – Town of Canmore, **Location** – Canmore, **Type of Appeal** – As listed below

**Overview** - On June 16, 2004, the Board received Notices of Appeal from Dr. Barrie Nault and Dr. Victoria Mitchell, with respect to Approval No. 00206647-00-00 issued under the *Water Act* to the Town of Canmore for the construction of a boat launch on the Bow River in Canmore, Alberta.

**(04-019 and 04-020-ID1) Preliminary Motions Decision:** After reviewing the submissions, the Board determined that Dr. Nault and Dr. Mitchell were directly affected, as their property is approximately 120 metres from the proposed boat launch site and their use and enjoyment of their property includes watching wildlife in the area. As a result, the Board issued a Decision on November 29, 2004, granting a Stay until the Minister of Environment has made his decision regarding the Approval. If the appeals are successful and the boat launch was built prior to the Board making the decision, there would be additional detrimental effects to the environment if the project had to be removed.

Cite as: Preliminary Motions: *Nault and Mitchell v. Director, Southern Region, Regional Services, Alberta Environment re: Town of Canmore* (29 November 2004), Appeal Nos. 04-019 and 04-020-ID1 (A.E.A.B.).

**(04-019 and 04-020-ID2) Intervenor Decision:** In response to the notice of hearing, the Board received 45 intervenor requests (from 69 individuals and 3 organizations). The Board received submissions regarding the admissibility of the intervenor requests. Many of the issues raised by the intervenors were not within the Board's jurisdiction. However, the Board issued a Decision on November 16, 2004, which allowed 54 individual intervenors and 3 organizations to provide written submissions, as all of them reside in or based out of Canmore. The remaining intervenor requests (from 15 individuals) were denied as they did not live in the Canmore area or the requests were filed late.

Cite as: Intervenor Decision: *Nault and Mitchell v. Director, Southern Region, Regional Services, Alberta Environment re: Town of Canmore* (16 November 2004), Appeal Nos. 04-019 and 04-020-ID2 (A.E.A.B.).

**(04-019 and 04-020-R) Report and Recommendations** - Drs. Nault and Mitchell live near the proposed boat launch. Dr. Nault requested a Stay of the Approval, which was granted by the Board, pending the hearing of the appeals. In response to the notice of the hearing, the Board received 45 intervenor requests (from 69 individuals and three organizations). The Board allowed 54 of the individual intervenors and the three organizations to provide written submissions to be considered at the hearing. The remaining intervenor requests (from 15 individuals) were denied as they do not live in the area of the project or their requests were filed late. Many of the issues raised by Dr. Nault, Dr. Mitchell, and the intervenors were not within the Board's jurisdiction and were either municipal planning matters or matters within the jurisdiction of Transport Canada or the federal Department of Fisheries and Oceans. Most notably Dr. Nault, Dr. Mitchell, and the intervenors were concerned that the boat launch would encourage motorized boats, particularly jet boats, to use this part of the Bow River. The Board confirmed it did not have jurisdiction to prevent the use of motorized boats in the river as that is the jurisdiction of Transport Canada. The Board's jurisdiction was limited to the construction of the proposed boat launch and not its intended use. The Board also confirmed that Alberta Environment did not have the jurisdiction to prevent the use of motorized boats in the river, and that Alberta Environment's jurisdiction was also limited to the construction of the proposed boat launch and not its intended use. As a result, on August 17, 2004, the Board issued a Report and Recommendations to the Minister of Environment which determined that the construction of the boat launch would not have a detrimental effect on the environment, including the Bow River. The Board recommended that the Minister confirm the Approval, with a clause added to clarify that the width of each of the two boat launch ramps is not to exceed 4 metres. The addition of the clause is required to avoid any uncertainty in interpreting the Approval, which could have resulted from an error in the Town's application for the Approval. On August 24, 2004, the Minister approved the recommendations.

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Cite as: *Nault and Mitchell v. Director, Southern Region, Regional Services, Alberta Environment re: Town of Canmore* (17 August 2004), Appeal Nos. 04-019 and 04-020-R (A.E.A.B.).

**(04-019 and 04-020-CD) Costs Decision:** The Board received a request for final costs from Drs. Nault and Mitchell for a total of \$12,520.91. The Board determined the Appellants have a responsibility, as do all Albertans, to pay at least some costs involved in appearing before the Board. The Board found that not all of the costs claimed related directly to the identified issues and other costs were not directly and primarily related to presenting their evidence before the Board. As a result, the Board issued a Decision on November 17, 2004, denying all costs claimed.

Cite as: *Costs Decision: Nault and Mitchell v. Director, Southern Region, Regional Services, Alberta Environment re: Town of Canmore* (17 November 2004), Appeal Nos. 04-019 and 04-020-CD (A.E.A.B.).

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#### 04-021, 022, 023, 025 and 031-DOP

**Appellant(s)** – Mr. John Bergquist, Ms. Lou Anne Bergquist, Mr. Robert Bergquist, Mr. Allen Bergquist, Kelly Bergquist, Ms. Jennie Farthing, Mr. Travis Setter, Ms. Janice Setter, Ms. Margaret Hughes, Mr. Darrell Hughes, Mr. Wayne LeBlanc and Ms. Helen LeBlanc, **Operator** – Paragon Pork Management Ltd., **Location** – near Penhold, **Type of Appeal** – Discontinuance of Proceedings

On June 24 and 25, 2004, the Board received Notices of Appeal from Mr. John Bergquist, Ms. Lou Anne Bergquist, Mr. Robert Bergquist, Mr. Allen Bergquist, Kelly Bergquist, Ms. Jennie Farthing, Mr. Travis Setter, Ms. Janice Setter, Ms. Margaret Hughes, Mr. Darrell Hughes, Mr. Wayne LeBlanc and Ms. Helen LeBlanc. The Notices of Appeal were with respect to Licence No. 00204958-00-00 issued under the *Water Act* to Paragon Pork Management Ltd. authorizing the diversion of 26,830 cubic metres of water annually from the well in NW 33-035-22-W4M for agricultural purposes (confined feeding operation) near Penhold, Alberta. The Board held a mediation meeting on August 19, 2004, in Innisfail, Alberta following which a resolution was agreed to by the parties, and the Appellants subsequently withdrew their appeals. As a result, the Board issued a Discontinuance of Proceedings on August 23, 2004, and closed its file.

Cite as: *Bergquist et al. v. Director, Central Region, Regional Services, Alberta Environment re: Paragon Pork Management Ltd.* (23 August 2004), Appeal Nos. 04-021, 022, 023, 025 and 031-DOP (A.E.A.B.).

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#### 04-024, 04-026-030 and 04-035-040

**Appellant(s)** – 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, **Operator** – Yellowhead Aggregates and Lafarge Canada Inc., **Location** – near St. Albert, **Type of Appeal** – As listed below.

**Overview:** On June 23 and 24, 2004, 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 with respect to Amending Approval No. 15125-01-01 issued to Lafarge Canada Inc. for the opening up, operation, and reclamation of a pit on SW 16-54-26-W4M, and Amending Approval No. 0023878-00-02 issued under the *Water Act* to Yellowhead Aggregates for the diversion of water at SW 16-54-26-W4M near St. Albert, Alberta.

**Decision:** The Board received submissions regarding the Appellant's request for a Stay and the directly affected status of the Appellants. On January 11, 2005, the Board issued a Decision advising 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 company's operating under the terms and conditions of the approvals in the time required to hear the appeals. As the balance of convenience did not favour one party over the other, the status quo remained in effect and the Stay was denied.

Cite as: Stay Decision: *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.).

**Discontinuance of Proceedings:** The Board advised the parties that the appeals may be successfully mediated and requested they provide available dates for mediation. The Board held a mediation meeting 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 and on May 3, 2005, the Board issued a Discontinuance of Proceedings and closed its file.

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.).

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#### 04-032 and 04-033

**Appellant(s)** – View Mont Estates Ltd., **Operator** – View Mont Estates Ltd., **Location** – near Chauvin, **Type of Appeal** – Discontinuance of Proceedings

On July 7, 2004, the Board received two Notices of Appeal from Mr. G. Arnold Armstrong, filed on behalf of View Mont Estates Ltd. appealing the issuance of a Reclamation Certificate to View Mont Estates Ltd. with respect to the View Mont et al. Chauvs 15D-22-42-1 W4M well near Chauvin, Alberta. The Board began processing the appeal, however, on July 19, 2004, received a letter from the Appellant withdrawing the appeal. As a result, the Board issued a Discontinuance of Proceedings on July 28, 2004, and closed its file.

Cite as: *View Mont Estates Ltd. v. Inspector, Central Region, Regional Services, Alberta Environment* (28 July 2004), Appeal Nos. 04-032 and 04-033-DOP (A.E.A.B.).

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#### 04-034

**Appellant(s)** – Messrs. Robert, William, Donald and James McCracken, **Operator** – Keland Holdings Ltd., **Location** – near Manning, **Type of Appeal** – Report and Recommendations

On July 8, 2004, the Board received a Notice of Appeal from Messrs. Robert, William, James, and Donald McCracken, with respect to Approval No. 00206965-00-00 issued under the *Water Act* to Keland Holdings Ltd. authorizing the development of an agricultural enhancement project near Manning, Alberta. A hearing was held in Grande Prairie, Alberta on November 5, 2004. After hearing the evidence and arguments of the parties, the Board did not believe the Appellants would suffer any adverse affects from the works allowed under the Approval, and in fact, the works may reduce the incidence and severity of flooding on the Appellants' lands. As a result, the Board issued a Report and Recommendations on November 17, 2004, that determined the Approval was properly issued, and recommended the Minister confirm the Approval as issued. The Minister approved the recommendations on November 19, 2004.

Cite as: *McCracken v. Director, Northern Region, Regional Services, Alberta Environment re: Keland Holdings Ltd.* (17 November 2004), Appeal No. 04-034-R (A.E.A.B.).

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#### 04-041 and 04-042

**Appellant(s)** – Talisman Energy Inc. **Operator** – Talisman Energy Inc., **Location** – near Brazeau, **Type of Appeal** – Discontinuance of Proceedings

On July 13, 2004, the Board received Notices of Appeal from Talisman Energy Inc. with respect to the refusal of Alberta Environment to issue a Reclamation Certificate to Talisman Energy Inc. for the Talisman Pembina 8-21-47-4W5 well and the Decalta B South Pembina 16-25-47-4W5M well, near Brazeau County, Alberta. The Board held a mediation meeting in Edmonton on October 4, 2004. As a result of the mediation, the Appellant withdrew their appeals. On October 5, 2004, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Talisman Energy Inc. v. Director, Central Region, Regional Services, Alberta Environment* (5 October 2004), Appeal Nos. 04-041 and 04-042-DOP (A.E.A.B.).

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04-043, 04-044, 04-045 and 04-046

**Appellant(s)** – Laebon Developments Ltd. and WNM Engineering Ltd., **Operator** – Laebon Developments Ltd. and WNM Engineering Ltd., **Location** – near Red Deer, **Type of Appeal** – Decision

On July 20, 2004, the Board received Notices of Appeal from Laebon Developments Ltd. and WNM Engineering Ltd. regarding Administrative Penalty No. 04/08-AP-CR-04-11 issued under the *Environmental Protection and Enhancement Act* (“EPEA”) and WA-04/04/03-AP-CR-04/04 issued under the *Water Act* to Laebon Developments Ltd. and WNM Engineering Ltd. The Administrative Penalties were issued for alleged contraventions in relation to a waterworks system for the River County Estates subdivision, near Red Deer, Alberta. The Board scheduled a hearing for October 14, 2004, however, Laebon Developments Ltd., WNM Engineering Ltd., and Alberta Environment reached an agreement reducing the *Water Act* Administrative Penalty from \$5,000 to \$3,000, and reducing the EPEA Administrative Penalty from \$19,500 to \$10,500. On November 3, 2003, the Board issued a Decision agreeing to the agreement.

Cite as: *Laebon Developments Ltd. and WNM Engineering Ltd. v. Director, Central Region, Regional Services, Alberta Environment* (3 November 2004), Appeal Nos. 04-043, 04-044, 04-045 and 04-046-D (A.E.A.B.)

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04-047

**Appellant(s)** – Mr. Myron and Ms. Tracey Fawcett, **Operator** – Calpine Canada Resources Company (now Viking Energy Trust), **Location** – near Consort, **Type of Appeal** – Discontinuance of Proceedings

On July 21, 2004, the Board received a Notice of Appeal from Myron and Tracey Fawcett, the landowners, appealing Reclamation Certificate No. 00190505-00-00 issued to Calpine Canada Resources Company (now Viking Energy Trust) for the surface of land held by Calpine Canada Resources Company within SE Sec. 13 Tp. 035 Rge. 04 W4M in connection with or incidental to the Encal Provost 7-13-35-7 well near Consort, Alberta. The Board held a mediation meeting in Consort on April 21, 2005, following which an agreement was reached by the parties. As a result, the Appellants decided to withdraw their appeal and on May 3, 2005, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Fawcett v. Inspector, Southern Region, Regional Services, Alberta Environment re: Calpine Canada Resources Company (now Viking Energy Trust)* (3 May 2005), Appeal No. 04-047-DOP (A.E.A.B.).

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04-048 and 04-049

**Appellant(s)** – Slave River Exploration Ltd., **Operator** – Slave River Exploration, **Location** – near Fort Smith, **Type of Appeal** – Decision

On July 21, 2004, the Board received Notices of Appeal from Slave River Exploration Ltd. appealing the cancellation of Reclamation Certificate Nos. NW2-03-00226 and NW2-03-00227 by Alberta Environment held by Slave River Exploration Ltd. in connection with the wellsite and access road at 30-86-11-W5M near Fort Smith, Alberta. As the appeals were filed past the 30-day legislated time frame, the Board requested the Appellant provide reasons why an extension should be granted. After reviewing the response, the Board determined no special circumstances existed to warrant an extension to file the appeals. As a result, the Board issued a Decision on September 16, 2004, dismissing the appeals.

Cite as: *Slave River Exploration Ltd. v. Director, Sustainable Resource Development* (16 September 2004), Appeal Nos. 04-048 and 04-049-D (A.E.A.B.).

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04-050

**Appellant(s)** – Mr. Merlin Tessman, **Operator** – Mr. Robert John Armitage, **Location** – near Kinsella, **Type of Appeal** – Discontinuance of Proceedings

On July 28, 2004, the Board received a Notice of Appeal from Mr. Merlin Tessman dated July 25, 2004, appealing Licence No. 00210248-00-00 issued under the *Water Act* to Mr. Robert John Armitage



authorizing the diversion of 9,955 cubic metres of water annually from the well in NE 05-047-10-W4 for agricultural purposes (confined feeding operation) near Kinsella, Alberta. The Board held a mediation meeting in Kinsella on November 2, 2004. As a result of the mediation, the Appellant withdrew his appeal and on November 3, 2004, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Tessman v. Director, Central Region, Regional Services, Alberta Environment re: Robert John Armitage* (3 November 2004), Appeal No. 04-050-DOP (A.E.A.B.).

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04-051

**Appellant(s)** – Hutterian Brethren of Neu Muehl, **Operator** – Hutterian Brethren of Neu Muehl, **Location** – near Drumheller, **Type of Appeal** – Discontinuance of Proceedings

On July 29, 2004, the Board received a Notice of Appeal from the Hutterian Brethren of Neu Muehl with respect to Alberta Environment's refusal to issue a *Water Act* Licence to the Operator to divert water and operating works at SE 12-029-17-W4, near Drumheller, Alberta. The Board began processing the appeal, however, the Appellant withdrew the appeal. As a result, on October 7, 2004, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Hutterian Brethren of Neu Muehl v. Director, Central Region, Regional Services, Alberta Environment* (7 October 2004), Appeal No. 04-051-DOP (A.E.A.B.).

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04-052

**Appellant(s)** – Mr. Donald Armitage, **Operator** – Mr. Robert John Armitage, **Location** – near Kinsella, **Type of Appeal** – Discontinuance of Proceedings

On August 26, 2004, the Board received a Notice of Appeal from Mr. Donald Armitage dated August 25, 2004 with respect to Licence No. 00210248-00-00 issued under the *Water Act* issued to Mr. Robert John Armitage. The Licence authorizes the diversion of 9,955 cubic metres of water annually from the well in NE 05-047-10-W4 for agricultural purposes (confined feeding operation) near Kinsella, Alberta. The Board began processing the appeal, however the Appellant withdrew his appeal. As a result, the Board issued a Discontinuance of Proceedings on October 4, 2004, and closed its file.

Cite as: *Armitage v. Director, Central Region, Regional Services, Alberta Environment re: Robert John Armitage* (4 October 2004), Appeal No. 04-052-DOP (A.E.A.B.).

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04-053

**Appellant(s)** – Ms. Barbara A. Higgins, **Operator** – Cardinal River Coals Ltd., **Location** – near Hinton, **Type of Appeal** – As listed below

**Overview:** On September 3, 2004, the Board received a Notice of Appeal from Ms. Barbara A. Higgins with respect to Approval No. 00205213 issued under the *Water Act* to Cardinal River Coals Ltd. for the placement, construction, operation, maintenance, and removal of works within the fence line of the Cheviot Creek Pit for the purpose of the diversion and management of water, construction of rock drains and sedimentation facilities, and the development of an end-pit lake and fisheries enhancement ponds on a tributary of the McLeod River, near Hinton, Alberta.

**(04-053-D) Decision:** The Appellant filed the appeal past the 7-day time frame and the Board requested that Ms. Higgins provide reasons why an extension should be granted. After reviewing the response, the Board determined that no special circumstances existed to warrant an extension and on October 27, 2004, issued a Decision dismissing the appeal.

Cite as: *Higgins v. Director, Central Region, Regional Services, Alberta Environment re: Cardinal River Coals Ltd.* (27 October 2004), Appeal No. 04-053-D (A.E.A.B.).

**(04-053-RD) Reconsideration Decision:** Ms. Higgins filed a reconsideration request of the Board's decision. After reviewing the parties' submissions regarding the request, the Board issued a Decision on January 11, 2005, which determined that she did not provide any new evidence that was not available at the

time of the original decision or identified any error in law. As a result, the Board denied the Appellant's reconsideration request.

Cite as: Reconsideration Decision: *Higgins v. Director, Central Region, Regional Services, Alberta Environment re: Cardinal River Coals Ltd.* (11 January 2005), Appeal No. 04-053-RD (A.E.A.B.).

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04-054

**Appellant(s)** – Ms. Barbara A. Higgins, **Operator** – Cardinal River Coals Ltd., **Location** – near Cadomin, **Type of Appeal** – see below

**Overview** - On July 29, 2004 Alberta Environment issued EPEA Amending Approval 46972-00-02 to Cardinal River Coals Ltd. for the opening up, construction, operation, and reclamation of the Cheviot Creek coal mine, more specifically the development of a particular pit, near Cadomin, Alberta. The Board received a Notice of Appeal on September 3, 2004 from Ms. Barbara Higgins appealing the issuance of the Amending Approval.

**Decision** - Alberta Environment raised a preliminary motion that Ms. Higgins did not file a valid Statement of Concern, a prerequisite to filing a valid Notice of Appeal, and therefore, the appeal should be dismissed. Alberta Environment originally rejected the Statement of Concern on the basis that Ms. Higgins did not live or own property in the area of the coal mine. In her Statement of Concern, Ms. Higgins did mention she had a home in the area, and this was confirmed in her submissions. She believed she was directly affected by the project. Alberta Environment argued the information provided by Ms. Higgins was insufficient to determine her concerns and how she was affected by the proposed project. After reviewing the submissions and the relevant sections of the records from Alberta Environment, the Board issued a Decision on August 26, 2005, determining that the information provided in Ms. Higgins' letters to Alberta Environment was sufficient to fulfill the requirements of a Statement of Concern for the purposes of filing an appeal. The Board made no determination as to whether Ms. Higgins was directly affected by the project, but Alberta Environment's motion to dismiss the appeal on the basis of not filing a valid Statement of Concern was denied.

Cite as: *Higgins v. Director, Central Region, Regional Services, Alberta Environment re: Cardinal River Coals Ltd.* (26 August 2005), Appeal No. 04-054-D (A.E.A.B.).

**Decision** - On September 13, 2004 Alberta Environment raised a preliminary motion that Ms. Higgins was not directly affected, she had an opportunity to participate in a hearing held by the Alberta Energy and Utilities Board (AEUB) at which all of the issues raised in her Notice of Appeal were adequately dealt with, and the Government of Alberta participated in a hearing under the *Canadian Environmental Assessment Act* (CEAA), and therefore, the appeal should be dismissed. Under section 95(5)(b)(i) EPEA, the Board must dismiss an appeal if the appellant had the opportunity to participate in an AEUB hearing or review at which all of the issues in the Notice of Appeal were adequately dealt with, or if the Government of Alberta participated in a hearing under CEAA and the matters in the Notice of Appeal were included. Submissions were received from the participants between November 15, 2005 and March 3, 2006. After reviewing the submissions, the Board issued its Decision on March 30, 2007, stating it found that Ms. Higgins might be directly affected by the displacement of grizzly bears caused by the open-pit mining operations, but she provided no viable argument that anything in the Amending Approval, as opposed to the original approval of the mine operations, could result in grizzly bear displacement. The Board found Ms. Higgins also had the opportunity to participate in and did participate in an AEUB hearing. Although the issue of grizzly bear displacement may not have been adequately dealt with by the AEUB, the Government of Alberta participated in the joint review panel under CEAA and the matters included in the Notice of Appeal were heard. Therefore, because the Appellant is not directly affected by the Amending Approval and pursuant to section 95(5)(b)(ii) of EPEA, the Board dismissed the appeal.

Cite as: *Higgins v. Director, Central Region, Regional Services, Alberta Environment re: Cardinal River Coals Ltd.* (30 March 2007), Appeal No. 04-054-D2 (A.E.A.B.).

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04-055

**Appellant(s)** – Mr. Doug Emerson, **Operator** – Ducks Unlimited Canada, **Location** – near Eaglesham, **Type of Appeal** – Discontinuance of Proceedings

On September 27, 2004, the Board received a Notice of Appeal from Mr. Doug Emerson with respect to Approval No. 00200318-00-00 issued to Ducks Unlimited Canada authorizing the construction of a wetland stabilization project on an unnamed water body at SW 05-078-25-W5, near Eaglesham, Alberta. The Board began processing the appeal, however, the Appellant withdrew his appeal. As a result, on November 3, 2004, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Emerson v. Director, Northern Region, Regional Services, Alberta Environment re: Ducks Unlimited Canada* (3 November 2004), Appeal No. 04-055-DOP (A.E.A.B.).

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04-056

**Appellant(s)** – Mr. Kevin Armitage, **Operator** – Mr. Don Armitage, **Location** – near Kinsella, **Type of Appeal** – Discontinuance of Proceedings

On September 27, 2004, the Board received a Notice of Appeal from Mr. Kevin Armitage appealing Approval No. 00210258-00-00 issued to Mr. Don Armitage authorizing the drainage of groundwater from the gravel pit at NW 11-047-11-W4M near Kinsella, Alberta. The Board held a mediation in Camrose, Alberta on December 8, 2004. As a result of the mediation, the Appellant withdrew his appeal and on December 9, 2004, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Kevin Armitage v. Director, Central Region, Regional Services, Alberta Environment re: Don Armitage* (9 December 2004), Appeal No. 04-056-DOP (A.E.A.B.).

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04-057

**Appellant(s)** – Byram Industrial Services Ltd., **Operator** – Wasteworks Inc., **Location** – near Carrot Creek, **Type of Appeal** – Decision

On October 21, 2004, the Board received a Notice of Appeal from Byram Industrial Services Ltd. appealing Approval No. 203668-00-00 issued to Wasteworks Inc.. The Approval authorized the construction, operation and reclamation of a facility consisting of a landfill where more than 10,000 tonnes per year of waste is disposed of and a fixed facility where waste is treated by biological processes, near Carrot Creek, Alberta. The facility is commonly known as the Tower Road Waste Management Facility. The Board scheduled a Preliminary Meeting to deal with the following preliminary issues: 1. The directly affected status of Byram Industrial Services Ltd; 2. The effect of the Director not accepting the Statement of Concern of Byram Industrial Services Ltd; 3. The issues to be considered at a hearing, should one be held; and 4. Mootness, in relation to some or all of the grounds for appeal. The Board determined Byram Industrial Services Ltd did not provide sufficient evidence to support its argument that being economically impacted would result in an environmental effect. Therefore, on April 28, 2005, the Board issued a Decision dismissing the appeal, as the appellant was not directly affected.

Cite as: *Byram Industrial Services Ltd. v. Director, Central Region, Regional Services, Alberta Environment re: Wasteworks Inc.* (28 April 2005), Appeal No. 04-057-D (A.E.A.B.).

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04-058

**Appellant(s)** – Mr. Hubert Honeycotte, **Operator** – County of Thorhild No. 7, **Location** – near Boyle, **Type of Appeal** – Report and Recommendations

On November 7, 2004, the Board received a Notice of Appeal from Mr. Hubert Honeycotte with respect to Licence No. 00199667-00-00 issued under the *Water Act* to the County of Thorhild No. 7, authorizing the diversion of 91,000 cubic metres of water annually from Long Lake in NW 23-063-19-W4M for commercial purposes (snowmaking) at the Long Lake ski hill near Boyle, Alberta. The Board held a mediation meeting in Boyle on January 13, 2005, following which an agreement was reached by the parties. As a result, the Board issued a Report and Recommendations on January 18, 2005, recommending the Minister of Environment accept the agreement. On January 25, 2005, the Minister approved the recommendations.

Cite as: *Honeycotte v. Director, Northern Region, Regional Services, Alberta Environment re: County of Thorhill No. 7* (18 January 2005), Appeal No. 04-058-R (A.E.A.B.).

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04-059-04-071-R

**Appellant(s)** – Mr. David and Ms. Carol Johnson, Mr. Dave and Ms. Ann Davidson, Mr. William Davidson, Mr. Terry and Ms. Marlene Capton, Mr. Gary Evans, Mr. Wayne Wilkie, Mr. Chester Black, Mr. Harold D. Waldron and Ms. Jean Riess, Mr. Kevin Sosnowski, Mr. Darrell and Ms. Karen Davidson, Ms Dale Brawn, Mr. Ron and Ms. Linda Taylor, and Mr. Haldon and Ms. Marion Waldron, **Operator** – Barbra Wiens-Eeltink (Immink Farms), **Location** – near Clive, **Type of Appeal** – Report and Recommendations

Between November 8 and 22, 2004, the Board received Notices of Appeal from Mr. David and Ms. Carol Johnson, Mr. Dave and Ms. Ann Davidson, Mr. William Davidson, Mr. Terry and Ms. Marlene Capton, Mr. Gary Evans, Mr. Wayne Wilkie, Mr. Chester Black, Mr. Harold D. Waldron and Ms. Jean Riess, Mr. Kevin Sosnowski, Mr. Darrell and Ms. Karen Davidson, Ms Dale Brawn, Mr. Ron and Ms. Linda Taylor, and Mr. Haldon and Ms. Marion Waldron (collectively the “Appellants”). The Notices of Appeal were with respect to Licence No. 00207490-00-00 issued under the *Water Act* to Ms. Barbra Wiens-Eeltink, operating as Immink Farms, authorizing the diversion of 9,642 cubic metres of water annually from the well in NW 29-38-24-W4M for agricultural purposes (stock water for a confined feeding operation) near Clive, Alberta. The Board held a mediation meeting in Red Deer, Alberta on February 24, 2005, following which an agreement was reached by the participants. On February 28, 2005, the Board issued a Report and Recommendations recommending the Minister of Environment accept the resolution. On March 7, 2005, the Minister accepted the recommendations.

Cite as: *Johnson et al. v. Director, Central Region, Regional Services, Alberta Environment re: Barbra Wiens-Eeltink (Immink Farms)* (28 February 2005), Appeal Nos. 04-059-04-071-R (A.E.A.B.).

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04-072

**Appellant(s)** – Mr. Geoffrey and Ms. Dorothea Broadbent, **Operator** – Wolf Creek Golf Resort Ltd., **Location** – near Ponoka, **Type of Appeal** – Discontinuance of Proceedings

On November 25, 2004, the Board received a Notice of Appeal from Mr. Geoffrey and Ms. Dorothea Broadbent (the “Appellants”) with respect to Licence No. 00191827-00-00 issued under the *Water Act* to Wolf Creek Golf Resort Ltd. authorizing the diversion of 34,537 cubic metres of water annually from the well in SE 03-042-26-W4M for commercial purposes (golf course), near Ponoka, Alberta. The Board held a mediation meeting in Ponoka on February 17, 2005. As a result of the mediation meeting, a resolution was reached between the participants and the Appellants withdrew their appeal. On February 22, 2005, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Broadbent v. Director, Central Region, Regional Services, Alberta Environment re: Wolf Creek Resort Ltd.* (22 February 2005), Appeal No. 04-072-DOP (A.E.A.B.).

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04-073

**Appellant(s)** – Mr. Ken Smulski, J. Smulski Estate, S.V. Farms of Gibbons, and 267554 Alberta Ltd., **Operator** – Agrium Products Inc., **Location** – near Redwater, **Type of Appeal** – Decision

On December 17, 2004, the Board received a Notice of Appeal from Mr. Ken Smulski, on behalf of himself, the J. Smulski Estate, S.V. Farms of Gibbons, and 267554 Alberta Ltd. with respect to Approval No. 00212558-00-00 issued under the *Water Act* to Agrium Products Inc. (Agrium). The Approval authorized the construction, operation, management, and maintenance of modifications to the surface drainage and northern extension of the phosphogypsum storage area of Agrium’s fertilizer manufacturing facility near Redwater, Alberta. Mr. Smulski filed his appeal after the 7-day time limit for filing appeals of approvals issued under the *Water Act*. He argued the *Water Act* approval was in addition to the approval issued under the *Environmental Protection and Enhancement Act* for the same project, and therefore, he should have the same 30-day period in which to file his appeal. The Board disagreed with this analysis, and on March 18, 2005, issued a Decision dismissing the appeal with respect to the *Water Act* approval for

being filed out of time, as that no special circumstances existed to warrant an extension of the appeal deadline.

Cite as: *Smulski v. Director, Northern Region, Regional Services, Alberta Environment re: Agrium Products Inc.* (18 March 2005), Appeal No. 04-073-D (A.E.A.B.).

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04-074-082

**Appellant(s)** – Mr. Ken Smulski (on behalf of the estate of J. Smulski, S.V. Half Diamond Ranch, 267554 Alberta Ltd., and S.V.Farms Ltd.), Mr. Ward and Ms. Connie Sawatzky, Ms. Tia, Mr. Ken and Ms. Alysha Bartlett, Mr. Barry and Ms. Sharon Ziegeman, Mr. Percival and Ms. Martha Henkelman, Mr. Erich and Ms. Evelyn Marquardt, Ms. Cheryl Henkelman, Mr. Brent and Ms. Cindy Marquardt, and Ms. Sylvia and Ms. Heather Garon, **Operator** – Agrium Products Inc., **Location** – near Redwater, **Type of Appeal** – Decision

On November 19, 2004, Alberta Environment issued an Amending Approval under the *Environment Protection and Enhancement Act* to Agrium Products Inc. (Agrium), with respect to a fertilizer manufacturing plant, near Redwater, Alberta. The Amending Approval allowed for the expansion of the fertilizer manufacturing plant's phosphogypsum storage area. Phosphogypsum, commonly referred to as gypsum, is a by-product of manufacturing phosphorus-based fertilizers and is usually stored in a controlled area adjacent to the plant. On December 17, 2004, the Board received nine Notices of Appeal from Mr. Ken Smulski (on behalf of the estate of J. Smulski, S.V. Half Diamond Ranch, 267554 Alberta Ltd., and S.V.Farms Ltd.), Mr. Ward and Ms. Connie Sawatzky, Ms. Tia, Mr. Ken and Ms. Alysha Bartlett, Mr. Barry and Ms. Sharon Ziegeman, Mr. Percival and Ms. Martha Henkelman, Mr. Erich and Ms. Evelyn Marquardt, Ms. Cheryl Henkelman, Mr. Brent and Ms. Cindy Marquardt, and Ms. Sylvia and Ms. Heather Garon regarding the Amending Approval. The Board held a preliminary meeting to determine whether the issues included in the appeals had been adequately dealt with by the Natural Resources Conservation Board (the NRCB), and to determine the issues to be heard at a hearing of these appeals should one be held. The Board's legislation requires that the Board dismiss an appeal if the person filing the appeal had an opportunity to participate in an NRCB hearing (full participation was conceded in this case) at which all of the issues raised in the appeal were adequately dealt with. After hearing from the parties, the Board issued a Decision on April 29, 2005, concluding that all of the persons who filed the Notices of Appeal participated in an NRCB hearing at which all of the matters included in the Notices of Appeal were adequately dealt. Thus, all of the appeals were dismissed and the Board did not have to determine the issues to be heard at a hearing. The Board noted that there appeared to be renewed interest in Agrium and the local residents working together to better address a number of the concerns relating to the phosphogypsum storage area. The Board strongly encouraged this, particularly with the various studies to be conducted pursuant to the Amending Approval. Further, the Board noted that some of the concerns raised in these appeals were based on a broader land-use conflict in the area that is not within the Board's jurisdiction. The Board encouraged all of the stakeholders to work cooperatively to address this conflict.

Cite as: *Smulski et al. v. Director, Northern Region, Regional Services, Alberta Environment re: Agrium Products Inc.* (29 April 2005), Appeal Nos. 04-074-082-D (A.E.A.B.).

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04-083

**Appellant(s)** – Talisman Energy Inc., **Operator** – Talisman Energy Inc., **Location** – near Fairview, **Type of Appeal** – Discontinuance of Proceedings

On December 23, 2004, the Board received a Notice of Appeal from Talisman Energy Inc. (the "Appellant") with respect to Environment's refusal to issue a reclamation certificate to Talisman Energy Inc. for the Talisman 102 Dunvegan 16-2-81-4 W6 well near Fairview, Alberta. The Board held a mediation meeting in Calgary, Alberta on March 14, 2005. As a result of the mediation meeting, a resolution was reached between the parties and the Appellant withdrew the appeal. On March 18, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Talisman Energy Inc. v. Director, Northern Region, Regional Services, Alberta Environment* (18 March 2005), Appeal No. 04-083-DOP (A.E.A.B.).

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04-084

**Appellant(s)** – Whitecourt Power Limited Partnership, **Operator** – Whitecourt Power Limited Partnership, **Location** – Woodlands County, **Type of Appeal** – Discontinuance of Proceedings

On January 27, 2005, the Board received a Notice of Appeal from Whitecourt Power Limited Partnership with respect to Approval No. 291-01-00 issued to Whitecourt Power Limited Partnership authorizing the construction, operation and reclamation of the Whitecourt Thermal Electric Power Plant in Woodlands County. While the Board was processing the appeal, Alberta Environment and Whitecourt Power Limited Partnership requested a one-year abeyance of the appeal. The Board held a conference call to discuss the matter with the parties, and as a result, the Appellant withdrew the appeal. On May 6, 2005, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Whitecourt Power Limited Partnerships v. Director, Northern Region, Regional Services, Alberta Environment re: Whitecourt Power Limited Partnership* (6 May 2005), Appeal No. 04-084-DOP (A.E.A.B.).

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04-085

**Appellant(s)** – Mr. Irvin R. Macklin, **Operator** – Talisman Energy Inc., **Location** – near Wanham, **Type of Appeal** – Discontinuance of Proceedings

On February 1, 2005, the Board received a Notice of Appeal from Mr. Irvin R. Macklin with respect to Reclamation Certificate No. 00193575-00-00 issued to Talisman Energy Inc. for the Talisman Belloy 5-31-78-2 well near Wanham, Alberta. The Board held a mediation meeting on May 19, 2005, in Spirit River, Alberta. At the mediation an agreement was reached by all the participants, and the Appellant withdrew his appeal. On May 20, 2005, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Macklin v. Inspector, Northern Region, Regional Services, Alberta Environment re: Talisman Energy Inc.* (20 May 2005), Appeal No. 04-085-DOP (A.E.A.B.).

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04-086-89, 04-092-121

**Appellant(s)** – Mr. Rod Shaigec, Mr. Fred Shaigec, Ms. Helen Shaigec, Ms. Cheyanne Lovli, Ms. Jane Anne Smith, Mr. Andrew Smith, Mr. Conrad Robichaud, Mr. Wade Thordarson, Ms. Lori Robichaud, Mr. Steve Zelych, Ms. Lynne Eleniak, Mr. Stan Chruszcz, Mr. Charles Arlinghaus, Ms. Nancy Arlinghaus, Mr. Don Erechuk, Ms. Misty Erechuk, Ms. Susan Erechuk, Mr. Don Erechuk, Mr. Pat Steinke, Mr. Richard Hewson, Mr. Shawn Chruszcz, Ms. Wendy Chruszcz, Mr. Paul Boyd, Mr. Wayne Eleniak, Ms. Alice Risselada-Hogan, Mr. Ron Gray, Ms. Judy Monea, Mr. Dwight Monea, Ms. Valeen Duncan, Ms. Denise Locher, Mr. Dominique Locher, Mr. Doug Hawkins, Ms. Shelly J. Hawkins, Ms. Sue Allen,  
**Operator** – EPCOR Power Development Corporation, **Location** – Leduc, **Type of Appeal** – Letter

Between February 9 to 18, 2005, the Board received Notices of Appeal from Mr. Rod Shaigec, Mr. Fred Shaigec, Ms. Helen Shaigec, Ms. Cheyanne Lovli, Ms. Jane Anne Smith, Mr. Andrew Smith, Mr. Conrad Robichaud, Mr. Wade Thordarson, Ms. Lori Robichaud, Mr. Steve Zelych, Ms. Lynne Eleniak, Mr. Stan Chruszcz, Mr. Charles Arlinghaus, Ms. Nancy Arlinghaus, Mr. Don Erechuk, Ms. Misty Erechuk, Ms. Susan Erechuk, Mr. Don Erechuk, Mr. Pat Steinke, Mr. Richard Hewson, Mr. Shawn Chruszcz, Ms. Wendy Chruszcz, Mr. Paul Boyd, Mr. Wayne Eleniak, Ms. Alice Risselada-Hogan, Mr. Ron Gray, Ms. Judy Monea, Mr. Dwight Monea, Ms. Valeen Duncan, Ms. Denise Locher, Mr. Dominique Locher, Mr. Doug Hawkins, Ms. Shelly J. Hawkins, Ms. Sue Allen. The Notices of Appeal were with respect to EPCOR's Application No. 012-773 filed with Alberta Environment for the Genesee Power Plant in the County of Leduc, Alberta. On February 18, 2005, Alberta Environment wrote to the Board advising that Alberta Environment had yet to issue a decision regarding the merits of EPCOR's approval renewal application, and "any appeal at this juncture is premature." On March 1, 2005, the Board wrote to the individuals who submitted Notices of Appeal to advise that since Alberta Environment had not yet made a decision on the application, the appeals were filed prematurely. The Board also noted that the Notices of Appeal appealed the decision of Alberta Environment to refuse to accept the letters as statements of concern in relation to EPCOR's application, and advised that Alberta Environment's decision to deny statements of concern could not be directly appealed to the Board, unless an appeal is properly before the Board. As a result, the Board dismissed the appeals via its letter of March 1, 2005, as they were not properly before the Board.

Cite as: *Shaigec et al. v. Director, Central Region, Regional Services, Albert Environment re: EPCOR Power Development Corporation* (1 March 2005), Appeal Nos. 04-086-89, 04-092-121 (A.E.A.B.).

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04-090

**Appellant(s)** – Mr. Ted Ganske, **Operator** – CCS Inc., **Location** – near Bonnyville, **Type of Appeal** – as listed.

**Overview:** On February 10, 2005, the Board received a Notice of Appeal from Mr. Ted Ganske with respect to EPEA Approval No. 204916-00-00 issued to CCS Inc. authorizing the construction, operation and reclamation of the Bonnyville Waste Management Facility, a Class II Industrial Landfill, located at NE 9-61-3-W4M, near Bonnyville, Alberta.

**Report and Recommendations:** The Board held a mediation meeting on April 27, 2005, in Bonnyville, Alberta; however a resolution was not reached. Therefore, a hearing took place on July 21 and August 10, 2005, where Mr. Ganske expressed concern that the landfill would result in the contamination of groundwater and deterioration of air quality at his residence, negatively affecting his family's health. Based on the information before the Board, which included that there was a restriction on the type of waste that would be accepted, and that the processing of waste was prohibited, the Board concluded that the landfill would not pose a risk to the air quality at Mr. Ganske's residence. The Board also concluded that the hydrogeological assessment on which the selection of the site was based and the design of the landfill met or exceeded Alberta Environment's standards for landfills. These standards are designed to protect the environment and the public's health and safety. Accordingly, the Board determined that the landfill would pose no health risks to the Ganske family. Mr. Ganske also expressed concern with the landfill's surface water management, and that alterations to surface water drainage at the landfill would result in flooding on his land and contaminated surface water entering on to his land and into the creek and the Beaver River. The Board was satisfied that the design of the surface water management system, including a leachate collection system and a stormwater collection pond with pre-release sampling, adequately addressed these concerns. Mr. Ganske also raised concerns about the effect of the landfill on wildlife in the area. The Board concluded that landfill is not part of a significant wildlife corridor in that it is not unique within the region and there are several other corridors in the area available to wildlife. Mr. Ganske was concerned that noise from the operation of the landfill would negatively affect his quality of life. The Board, based on CCS Inc.'s extensive operating experience of similar landfills, concluded that the landfill would likely have minimal noise impacts on Mr. Ganske. The Board noted that CCS Inc. has a formal complaint process in place should issues arise. On September 9, 2005, the Board issued a Report and Recommendations recommending the Approval be confirmed subject to several amendments. Several of these amendments were agreed to by Alberta Environment and CCS Inc. which recommended clarification of several conditions and the addition of a number of conditions related to the landfill's construction and operation. To respond to Mr. Ganske's concerns about groundwater, the Board recommended the Approval be amended to include monitoring of his water well and a water well belonging to the nearby Cold Lake First Nation, if the respective landowners agree to provide access. The Board also recommended Mr. Ganske and the Cold Lake First Nation be provided with the results of the groundwater monitoring programs undertaken at the landfill and that CCS Inc. be required to submit an investigative plan to Alberta Environment if a complaint related to the interference with a domestic water source is received. Mr. Ganske expressed a lack of trust in the Approval's monitoring conditions, stating that such monitoring is susceptible to tampering. The Board accepts the rationale for Alberta Environment's self-monitoring approach. Moreover, there was no evidence presented to cause the Board to doubt the integrity of CCS Inc. To address the type of concern raised by Mr. Ganske, the Approval already contains a condition requiring an environmental compliance audit, to be conducted by an independent third party every three years. To improve this condition, the Board recommended the Approval be amended to require Alberta Environment's approval of the choice of a third party auditor. The Minister agreed with the Board's recommendations and issued a Ministerial Order on October 11, 2005, reflecting the recommendations.

Cite as: *Ganske v. Director, Northern Region, Regional Services, Alberta Environment re: CCS Inc.* (9 September 2005), Appeal No. 04-090-R (A.E.A.B.).

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**Costs Decisions:** At the close of the hearing, all of the parties indicated they would not be claiming costs. Approximately five weeks after the hearing, Mr. Ganske informed the Board that he would not be seeking costs, but Ms. Sally Ulfsten, who assisted him at the hearing, would be submitting a costs application. The Board asked the parties to address whether the Board should consider Ms. Ulfsten's costs application given the statements made by Mr. Ganske at the hearing that he was not going to request costs. Submissions were received in November 2005, and on January 29, 2007, the Board determined the costs application was not properly before the Board, as Ms. Ulfsten was not a party to the appeal and the appellant, Mr. Ganske, specifically stated that he did not intend to ask for costs. The Board also found that even if they had accepted the application, there was insufficient information provided to determine the reasonableness of the costs asked for and how the costs were related to the preparation and presentation of the arguments at the hearing.

Cite as: *Costs Decision: Ganske v. Director, Northern Region, Regional Services, Alberta Environment re: CCS Inc.* (29 January 2007), Appeal No. 04-090-CD (A.E.A.B.).

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04-122

**Appellant(s)** – Canadian Natural Resources Limited, **Operator** – Canadian Natural Resources Limited, **Location** – near Lindbergh, **Type of Appeal** – Discontinuance of Proceedings

On February 24, 2005, the Board received a Notice of Appeal from Canadian Natural Resources Limited, appealing the Director of Alberta Environment's refusal to issue a reclamation certificate to Canadian Natural Resources Limited for the CNRL et al Lindbergh 2-8-57-7-W4M well near Lindbergh, Alberta. The Board held a mediation meeting in Elk Point, Alberta on May 4, 2005. Following productive and detailed discussions at the mediation meeting, the Appellant withdrew the appeal. On May 6, 2005, the Board issued a Discontinuance of Proceedings and closed its files.

Cite as: *Canadian Natural Resources Limited v. Director, Northern Region, Regional Services, Alberta Environment* (6 May 2005), Appeal No. 04-122-DOP (A.E.A.B.).

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04-123 and 124

**Appellant(s)** – Tartan Energy Inc., **Operator** – Tartan Energy Inc., **Location** – Sturgeon County, **Type of Appeal** – As listed below

**Overview:** On March 23, 2005, the Board received Notices of Appeal and a request for a Stay from Tartan Energy Inc. with respect to two Environmental Protection Orders No. EPO-2005/03-NR and EPO-2005/04-NR issued to Tartan Energy Inc. for seven well sites in Sturgeon County, Alberta.

**(04-123 and 124-ID1) Preliminary Motions:** On January 27, 2005, the Board held a preliminary meeting to hear oral arguments on the following issues: 1. the party status of Ms. Vivian Visscher, Mr. Brian Cornelis, Mr. John Peet, Mr. Robert Halvorson, and the Orphan Well Association, in these appeals; 2. the appellant's request for a stay; 3. the issues to be dealt with at a future hearing of these appeals; and 4. whether the hearing of these appeals should be held via written submission and agreed statement of facts. The Board issued a decision regarding the preliminary motions on June 30, 2005, advising that Mr. and Ms. Visscher and Visscher Farms Ltd., Mr. Cornelis, Mr. Peet, and Mr. Halvorson, as landowners of the affected lands, were full parties to the appeals. The Board also determined the Orphan Well Association was a full party to the appeal on the basis that it was liable for the off-site remediation associated with three of the wells that are the subject of one of the EPOs. The Board denied the Stay request with respect to one of the EPOs (EPO 2005/03-NR) as the balance of convenience and the public interest favoured denying the request. The Board granted the Stay request with respect to the other EPO (EPO 2005/04-NR) until June 1, 2005, as the balance of convenience and public interest favoured granting the request. The Board reserved the right to extend the Stay at that time. The issues that will be heard by the Board at an oral hearing will be: 1. were the Environmental Protection Orders properly issued? 2. was rescission an available remedy in these circumstances to nullify the regulatory authority underlying the Environmental Protection Orders?

Cite as: *Preliminary Motions: Tartan Energy Inc. v. Director, Central Region, Regional Services, Alberta Environment re: Tartan Energy Inc.* (30 June 2005), Appeal Nos. 04-123 & 124-ID1 (A.E.A.B.).



**(04-123-R) Report and Recommendations:** On May 31, 2005, a mediation was held with respect to five of the seven wells, following which an agreement was reached by the parties with respect to the EPO 2005/03-NR (04-123). The Board issued a Report and Recommendations on June 13, 2005, recommending the Minister of Environment accept the agreement and vary the Environmental Protection Order. On June 30, 2005, the Minister approved the recommendation.

Cite as: *Tartan Energy Inc. v. Director, Northern Region, Regional Services, Alberta Environment* (13 June 2005), Appeal No. 04-123-R (A.E.A.B.).

**(04-123-A) Addendum:** On October 11, 2006 the Board distributed an Addendum to the Report and Recommendations (04-123-R) attaching a new Ministerial Order replacing the Ministerial Order issued in relation to 04-123-R. Specifically, the lease area of Site 7 of 21 was reduced from 1.39 acres to 0.14 acres.

Cite as: Addendum: *Tartan Energy Inc. v. Director, Northern Region, Regional Services, Alberta Environment* (11 October 2006), Appeal No. 04-123-A (A.E.A.B.)

**(04-124-DOP) Discontinuance of Proceedings:** On May 31, 2005, an Interim Agreement was reached with respect to EPO No. 2005/04-NR (04-124). The Appellant and Director agreed to continue discussions and provide a status report to the Board by September 14, 2005. The Board received letters from the Appellant requesting an extension of time, which was granted until December 1, 2005. On February 28, 2006, the Board received a letter from the Appellant withdrawing the appeal for EPO 2005/04-NR. On March 10, 2006, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Tartan Energy Inc. v. Director, Northern Region, Regional Services, Alberta Environment* (10 March 2006), Appeal No. 04-124-DOP (A.E.A.B.).