
ALBERTA
ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

Date of Discontinuance - September 19, 1997

IN THE MATTER OF Sections 84, 85, 86 and 87 of the
Environmental Protection and Enhancement Act, (S.A. 1992, ch. E-
13.3 as amended);

-and-

IN THE MATTER OF an appeal filed by Mr. Steven G. Hertzog of
BPCO, a division of Emco Limited with respect to Approval No.
9956-01-01 issued by the Acting Director of Chemicals Assessment
and Management, Alberta Environmental Protection to Canadian
Turbo (1993) Inc.

Cite as: BPCO v. Acting Director of Chemicals Assessment and Management,
Alberta Environmental Protection.

BACKGROUND

On September 19, 1996, Mr. Steven G. Hertzog of BPCO, a division of Emco Limited, (the Appellant) represented by Ms. Andrea Moen, filed a Notice of Appeal to the Environmental Appeal Board (the Board) with respect to Approval No. 9956-01-01 issued by the Acting Director of Chemicals Assessment and Management Division, to Canadian Turbo (1993) Inc. Approval No. 9956-01-01 is for the decommissioning and reclamation of the Edmonton Used Oil Recycling Plant at 9830 - 34 Street, Lot 2, Edmonton, AB, (NE 1/4 36-52-24 W4M).

By copy of a letter dated September 20, 1996, the Board requested the Department of Environmental Protection (the Department) provide all related correspondence, documents and materials. On that same date, the Board wrote to Canadian Turbo (1993) Inc. informing them that an appeal was received by Mr. Hertzog and that the Board would be in contact with them when material was received from the Department.

On April 23, 1997, all correspondence requested by this Board was received from the Department and on April 25, 1997, a copy was sent to Ms. Andrea Moen, on behalf of Mr. Hertzog, and Mr. Shawn Denstedt, on behalf of Canadian Turbo.

Prior to receiving the Department documents several requests were made from the Appellant for the appeal to be held in abeyance as discussions were taking place with the Department in an attempt to reach a resolution.

In a letter dated January 23, 1997, Mr. Denstedt stated:

“We understand the BPCO, a division of Emco Limited, has requested that the Board hold its appeal, dated September 19, 1996 in abeyance for an additional two months. As the holder of the approval being objected to Canadian Turbo is directly affected by BPCO’s appeal and has a right to have this matter determined in a timely fashion. By permitting BPCO to hold this appeal in abeyance indefinitely is contrary to the

intention of the legislation and is a de facto breach of the prescribed time frames within which an appeal must be heard. By permitting the appeal to “cloud” Canadian Turbo’s approval, Canadian Turbo’s rights are being prejudiced. Canadian Turbo is opposed to this appeal being held in abeyance for an additional two months . . .

. . . In summary, if a resolution cannot be reached by February 15, 1997, Canadian Turbo requests that the Board set this matter down immediately for hearing and schedule a pre-hearing meeting in a timely fashion. Should this matter proceed to a hearing, Canadian Turbo will require BPCO to provide any and all information that is in the possession or control of BPCO in relation to its site and the characterization of contamination on its site in order to address the matters which BPCO has raised.”

In response to Mr. Denstedt’s letter, the Board advised all parties on January 23, 1997, that the appeal would be brought forward on February 15, 1997, and in the event that no resolution was reached, the Board would proceed to a hearing.

Additional adjournment requests were made in February and March by the parties; with proper consent, the Board granted these requests and parties were requested to provide a status report to the Board by March 31, 1997.

On March 31, 1997, Ms. Moen advised the Board that no resolution was reached and requested that the appeal proceed. On April 18, 1997, the Board set a hearing date for June 12, 1997.

As correspondence dated May 5, 1997, was received from Mr. Brian O’Ferrall, on behalf of Canadian Turbo (1993) Ltd., advising that it was not clear on what issues are being raised by the Appellant, the Board decided to set a mediation meeting for May 27, 1997, in order to clarify these issues.

On June 9, 1997, counsel for the Appellant requested an adjournment to the hearing in order that the parties may continue to negotiate. The Board granted this request but requested that parties provide status of the appeal by July 3, 1997.

On August 26, 1997, a preliminary meeting was set and parties were requested to provide their

availability for a hearing on either November 17 to 21 or November 24 to 27, 1997.

On September 18, 1997, Mr. Denstedt requested that the Board adjourn the preliminary meeting as a settlement was *again* in negotiation. Later that same day, correspondence was received from Ms. Moen requesting that the preliminary meeting be adjourned until 1:30 p.m. on September 19, 1997, informing the Board that a settlement was imminent.

The Board wrote to all parties on September 18, 1997, informing them that for reasons of convenience and timing to all parties, the Board would commence the preliminary meeting at 10:30 a.m. on September 19, 1997.

Then on September 19, 1997, the Board received a letter from Ms. Moen stating:

“This is to advise that the appeal commenced by BPCO, a Division of Emco Limited and Steve Hertzog with respect to the Canadian Turbo (1993) Inc. Approval 9956-01-01 is unconditionally withdrawn.”

DECISION

Pursuant to section 87(7) of the *Environmental Protection and Enhancement Act*, and based on Ms. Moen's letter of September 19, 1997, the Board hereby discontinues its proceedings and will be closing its file.

Dated on September 19, 1997, at Edmonton, Alberta.

William A. Tilleman, Chair