

ALBERTA ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings - August 18, 1999

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

-and-

IN THE MATTER OF Section 84 of the *Environmental Protection and Enhancement Act*, S.A. 1992 c.E-13.3, filed by the Fort McMurray #468 First Nation with respect to Approval 16404-01-02 issued to Japan Canada Oil Sands Limited by the Director, Northeast Boreal Region, Alberta Environment on June 9, 1999.

Cite as: Fort McMurray #486 First Nation v. Director, Northeast Boreal Region, Alberta Environment, *re: Japan Canada Oil Sands Limited*.

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BACKGROUND

[1] On June 9, 1999, Mr. Ken Singh, Acting Director, Northeast Boreal Region, Alberta Environment (Department), issued Approval 1604-01-02 to Japan Canada Oil Sands Limited (Approval Holder) for the construction, operation and reclamation of the Hangingstore in-situ heavy oil recovery plant.

[2] On July 8, 1999, the Environmental Appeal Board (Board) received a Notice of Appeal from Mr. Brian Barrington-Foote of McKercher, McKercher & Whitmore on behalf of their client, the Fort McMurray #468 First Nation (Appellant), advising that they objected to the Approval and requested that the Approval be reversed.

[3] The Board wrote to Mr. Barrington-Foote on July 9, 1999 acknowledging receipt of his appeal and requesting the Department provide all correspondence, documents and materials related to the appeal.

[4] According to standard practice, on July 9, 1999 the Board wrote to the Natural Resources Conservation Board (NRCB) and the Alberta Energy and Utilities Board (AEUB) asking whether this matter had been the subject of a hearing or review under their respective Boards' legislation. A reply was received from the NRCB on July 12, 1999 stating they did not hold any hearing or review under their legislation. On August 3, 1999 the AEUB advising that they granted an approval for the project and that no objections were received nor did they hold a public hearing.

[5] On July 9, 1999 the Board received a letter from the Appellant advising that they wished to hold the file in abeyance pending conclusion of negotiations. The Board acknowledged this letter on July 14, 1999 and provided copies to the other parties to this appeal.

[6] The Board received a letter from the Department on July 14, 1999 advising it would not commence gathering the documentation until the outcome of the negotiations was known. On

July 15, 1999 the Board asked the parties if they had any objections to the Department's July 14, 1999 letter.

[7] On July 30, 1999, the Fort McMurray #486 First Nation provided a letter requesting that the appeal continue to be held in abeyance as negotiations continued. The Board advised in its letter of August 3, 1999 that the appeal would be held in abeyance on the condition that there were no objections. No objections were received and parties were requested to provide written status reports by August 18, 1999.

[8] On August 16, 1999, the Board received a letter from the Appellant stating:

“Further to our letter of July 30, 1999 and your letter of August 3, 1999, we confirm that the Fort McMurray #468 First Nation and Japan Canada Oil Sands Limited have now reached an agreement relating to the matters at issue in this appeal. We are accordingly instructed by our client to withdraw the appeal.”

DECISION

[9] Pursuant to Section 87(7) of the *Environmental Protection and Enhancement Act*, and based on Mr. Barrington-Foote's letter of August 16, 1999, the Board hereby discontinues its proceedings in Appeal No. 99-140 and will be closing its file.

Dated August 18, 1999, at Edmonton, Alberta

Dr. William A. Tilleman