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ALBERTA  
ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

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Date Discontinuance of Proceedings – July 6, 2000

**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** an appeal filed on March 28, 2000 by Ms.  
Eva Mah Borsato on behalf of the Mah family, with respect to  
Approval 00075037-00-00 issued under the *Water Act* to The  
County of Red Deer No. 23, by the Manager, Regional Support,  
Parkland Region, Alberta Environment.

Cite as: Borsato v. Manager, Regional Support, Parkland Region, Alberta Environment,  
*re: County of Red Deer No. 23*

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**BACKGROUND**

[1] On March 20, 2000, the Manager, Regional Support, Parkland Region, Alberta Environment (Department) issued Approval No. 00075037-00-00, under the *Water Act* the County of Red Deer No. 23 (Approval Holder). The Approval authorizes the Approval Holder to construct storm water management works located in the NE 20-37-27-W4, McKenzie Industrial Park, Red Deer, Alberta.

[2] On March 28, 2000, the Environmental Appeal Board (Board) received a Notice of Appeal dated March 28, 2000, from Ms. Eva Mah Borsato, on behalf of the Mah family (Appellants), appealing the Approval.

[3] On March 29, 2000, the Board acknowledged Ms. Borsato's Notice of Appeal. On that same day the Board also notified the Approval Holder of Ms. Borsato's appeal, and requested copies of all related records relevant to the appeal from the Department of Environment.

[4] According to standard practice, on March 29, 2000, 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 April 5, 2000 and from the AEUB on May 1, 2000 stating that they did not hold any hearing or review under their legislation.

[5] On April 25, 2000, the Board received a letter from Mr. Grant Dunlop, Ogilvie and Company, on behalf of his client D.C. Commercial Corporation (landowner). Mr. Dunlop advised that his client, D.C. Commercial Corporation, was the owner of the lands known as McKenzie Industrial Park (NE 20-37-27-W4). Mr. Dunlop advised that although the Approval had been issued to the County of Red Deer No. 23, that his client, as the registered landowner

and developer undertaking construction of the water management works, was directly affected. Mr. Dunlop requested that the Board provide him with all communications in this appeal.

[6] The Board received a further letter from Mr. Dunlop, on April 26, 2000 requesting, on behalf of the landowner, full party status in this appeal, including the right to make submissions to the Board.

[7] On April 20, 2000, the Board received all of the relevant records, that had been requested from the Department, and on April 28, 2000 forwarded the documents to the parties in this appeal, advising that further correspondence would be forthcoming.

[8] On May 2, 2000 the Board wrote to the parties with regard to the landowner. The Board 's letter of May 2, 2000 stated in part:

“...The Board accepts that in situations such as this, it is very likely that the landowner is directly affected and, as such, it would be proper for the landowner to participate fully in the appeal process. As a result, the Board has no objections to providing DCCC copies of the documents that it received from the Director as was done in the Board's letter of April 28, 2000. Further it is the Board's intention to keep DCCC advised and involved in the appeal process.”

[9] On May 2, 2000 the Board again wrote to the parties, advising that the Board had begun consideration of the appeal and was now requesting certain written representations from the parties. The parties were also asked if they wished to have a mediation meeting under section 11 of the Environmental Appeal Board Regulation<sup>1</sup> and if so what would they contemplate to be the agenda for that mediation. The parties were also asked for available dates for a mediation meeting/settlement conference.

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1 A.R. 114/93.

[10] Based on subsequent written representations received from the parties, the Board decided to proceed to a preliminary meeting. The Board wrote to the parties on June 19, 2000, stating:

“...The sole purpose of this preliminary meeting is to deal with the jurisdiction of the Board to hear issues raised by the appellants and, accordingly, whether or not the Board should proceed with consideration of this appeal. Specifically, the Board will consider the Department and DCCC’s submission that the Mah family is not directly affected and, therefore, that the appeal should be dismissed.”

[11] The preliminary meeting was set for June 28, 2000 in Edmonton.

[12] On June 26, 2000, the Board received a telephone call from counsel for the Appellants advising that the parties were in the process of reaching an agreement in this appeal.

[13] On June 27, 2000 the Board received a telephone call from counsel for the landowner, respecting the agreement. Subsequently on June 27, 2000, the Board received a letter from Mr. James Murphy, Ogilvie and Company, counsel for the landowner, stating the following:

“...we confirm that the appeal in the above matter has been withdrawn pursuant to a settlement achieved by ourselves on behalf of DC Energy Services and Messrs. Fraser Milner Casgrain on behalf of the Appellant. A copy of the signed Letter of Settlement is enclosed for your files.”

[14] The aforementioned Letter of Settlement, from Fraser Milner Casgrain, counsel for the Appellants, states in part.

“...The Owners of the Mah Lands hereby withdraw and discontinue the EAB Appeal on the conditions contained in this letter...”

**DECISION**

[15] Pursuant to section 87(7) of the *Environmental Protection and Enhancement Act*, and based on the signed Letter of Settlement dated June 27, 2000 from the parties, the Board hereby discontinues its proceedings in Appeal No. 00-011 and will be closing its file.

Dated July 6, 2000 at Edmonton, Alberta.

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William A. Tilleman, Q.C.