

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Decision

Date of Decision – November 19, 2001

IN THE MATTER OF Sections 84, 85 and 87 of the
Environmental Protection and Enhancement Act, S.A. 1992 c. E-
13.3;

-and-

IN THE MATTER OF an appeal filed by Fas Gas Oil Ltd. and
Fas Gas Realty Ltd. with respect to Environmental Protection
Order No. 2000-9 issued by the Director, Enforcement and
Monitoring, Bow Region, Alberta Environment.

Cite as: *Fas Gas Oil Ltd. and Fas Gas Realty Ltd. v. Director, Enforcement and
Monitoring, Bow Region, Alberta Environment.*

EXECUTIVE SUMMARY

On October 27, 2000, Alberta Environment issued Environmental Protection Order No. 2000-9 to Fas Gas Oil Ltd. and Fas Gas Realty Ltd. for soil contamination at a gas station in Provost, Alberta.

On November 1, 2000, Fas Gas Oil Ltd. filed a Notice of Appeal with the Board, appealing the Environmental Protection Order. The main issue in this appeal was that the contamination was on the site prior to Fas Gas taking possession of the gas station.

On November 13, 2001, the Board was advised by Alberta Environment that the Environmental Protection Order, which was the subject of this appeal, had been withdrawn, therefore the Board is dismissing the appeal and is closing its file.

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I. BACKGROUND

[1] On October 27, 2000, the Director, Enforcement and Monitoring, Bow Region, Alberta Environment (the “Director”), issued Environmental Protection Order No. 2000-09 (the “Order”) to Fas Gas Oil Ltd. and Fas Gas Realty Ltd. (the “Appellants”) with respect to contamination of lands legally described as Plan 851627, Block 1, Lot 5A and municipally described as 5313-44 Avenue in Provost, Alberta.

[2] On November 1, 2000, the Environmental Appeal Board (the “Board”) received a Notice of Appeal from the Appellants with respect to the decision of the Director to issue the Order. On November 3, 2000, the Board acknowledged receipt their Notice of Appeal and on that date the Board requested that the Director provide the documents related to this appeal (the “Record”). The Board also requested available dates for a mediation meeting/settlement conference from the parties.

[3] According to standard practice, on November 3, 2000, the Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board asking whether this matter had been the subject of a hearing or review under their respective legislation. Both Boards replied in the negative.

[4] On November 7, 2000, the Board acknowledged a letter from the Appellants requesting a Stay of the Order and requested that the Director’s position with respect to the Stay be provided to the Board.

[5] On November 16, 2001, the Board acknowledged a letter dated November 15, 2000 from the Director agreeing “...not to take any action under the Environmental Protection Order until this appeal is resolved.”

[6] On November 24, 2000, the Board advised the parties of a mediation meeting/settlement conference to be held on December 5, 2000 in Red Deer, Alberta. On November 27, 2000, the Director requested an abeyance of this appeal until January 19, 2001 to accommodate an ongoing investigation with respect to the Order. The Board granted the

abeyance and the Appellants advised that they had no objection to this request. On this date, the Board canceled the mediation meeting/settlement conference.

[7] On January 22, 2001, April 2, 2001, May 9, 2001, and June 15, 2001, the Director made further requests to hold the file in abeyance to accommodate investigations and meetings between the parties, all of which were granted by the Board. The abeyance requested on June 15, 2001 was granted on the condition that no further requests for abeyance would be brought forward.

[8] On October 1, 2001, the Director again requested an abeyance, which was *denied* by the Board and hearing dates were requested from the parties.

[9] On October 5, 2001, the Board received and acknowledged a letter from the Appellants advising of their available dates for a hearing. On October 11, 2001, the Board acknowledged a letter from the Director giving their available dates and advising the Board that the Record would be unavailable until after October 30, 2001.

[10] On October 16, 2001 the Board acknowledged a letter from the Appellants, which stated their preferred dates for the hearing and on October 25, 2001, the Board received a letter that amended the dates that had been given previously.

[11] The Board received a letter on November 13, 2001, from the Director advising that the Order had been withdrawn. The Board acknowledged this letter and advised the parties that the Board "... considers this appeal to be moot as the Environmental Protection Order, which was the subject of this appeal, has been withdrawn by Alberta Environment." and the Board offered the parties an opportunity to object before it proceeded with issuing this Decision dismissing the appeal. No objections were received.

II. DECISION

[12] Section 87(5)(a) of the *Environmental Protection and Enhancement Act*, S.A. 1992, c. E-13.3, states:

87(5) The Board

(a) may dismiss a notice of appeal if...

- (i) it considers the notice of appeal to be frivolous or vexatious or without merit,
- (i.2) for any other reason the Board considers that the notice of appeal is not properly before it,

[13] The Board hereby exercises its discretion under section 87(5) of the *Environmental Protection and Enhancement Act* and dismisses the Notice of Appeal filed by Fas Gas Oil Ltd. and Fas Gas Realty Ltd., as their appeal is either moot, not properly before the Board or without merit. The Board will now close its file.

Dated on November 19, 2001 at Edmonton, Alberta.

William A. Tilleman, Q.C.