
ALBERTA ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – December 18, 2006

IN THE MATTER OF sections 91, 92 and 95 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12,

-and-

IN THE MATTER OF an appeal filed by Newalta Corporation with respect to a warning letter issued July 20, 2006 under the *Environmental Protection and Enhancement Act* to Newalta Corporation by the Director, Southern Region, Regional Services, Alberta Environment.

Cite as: *Newalta Corporation v. Director, Southern Region, Regional Services, Alberta Environment* (18 December 2006), Appeal No. 06-067-DOP (A.E.A.B.).

I. BACKGROUND

[1] On July 10, 2006, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”), issued a warning letter (the “Letter”) to Newalta Corporation (the “Appellant”) with respect to an investigation undertaken at property owned by the Hopewell Development Corporation in relation to the improper storage of hazardous waste on or about July 11, 2004, in Calgary, Alberta. The letter states that the incident contravenes the Waste Control Regulation, A.R. 192/96. It further states “No further enforcement action is contemplated for this incident. However, please note that this warning letter will form part of Newalta Corporation’s enforcement history and will be taken into consideration should any further contraventions occur.”

[2] On August 9, 2006, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Newalta Corporation appealing the Letter and stating “...that the Board must determine as a preliminary issue whether it has jurisdiction pursuant to Section 91 of the Environmental Protection and Enhancement Act to hear an appeal in respect of a Warning Letter.”

[3] On August 10, 2006, the Board wrote to the Appellant and the Director (collectively the “Participants”) acknowledging receipt of the Notice of Appeal and notifying the Director of the appeal. The Board also requested the Director provide the Board with a copy of the records (the “Record”) relating to this appeal, and the Participants provide available dates for a mediation meeting, preliminary meeting or hearing.

[4] According to standard practice, 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 responded in the negative.

[5] On August 28, 2006, the Board received a letter from the Director requesting that the preliminary issue of the Board’s jurisdiction to hear the appeal be addressed, and that the Board make a decision before proceeding further. On August 30, 2006, the Board advised the

Participants that an oral preliminary meeting in Edmonton would be scheduled to hear legal arguments on the preliminary motion regarding the Board's jurisdiction to hear an appeal of a warning letter. The Board requested the Participants provide their available dates in October by September 7, 2006.

[6] On September 6, 2006, the Appellant, after speaking with Board Counsel, requested the Board extend the September 7, 2006 deadline. On September 7, 2006, the Board granted an extension to September 21, 2006 for the Participants to provide the Board with their available dates for the preliminary meeting in October 2006, and identify any other interested persons, and for the Director to provide the Record.

[7] On September 21, 2006, the Director requested a further extension as he did not have the information the Board requested at that time. The Board also received a letter from the Appellant on September 20, 2006 providing dates for the preliminary meeting and stating that they were not aware of any other persons that may have an interest in the appeal. The Board wrote to the Participants on September 27, 2006 asking for the Director to provide a status report, the Record, and available dates for the preliminary meeting, by September 29, 2006. The Board did not receive the information from the Director, and on October 4, 2006, the Board again requested that the Director provide the Board with the information.

[8] On October 6, 2006, the Board received a letter from the Director, advising that the Director and the Appellant were in discussions and the Director was attempting to schedule a meeting with the Appellant by the end of October. The Board requested the Participants provide status reports by October 31, 2006.

[9] On October 31, 2006, the Board received a letter from the Appellant advising that discussions had been delayed, however they are continuing to work with the Director to reach a resolution and requested a further abeyance prior to the Board holding a preliminary meeting. The Board wrote to the Participants on November 1, 2006 and requested status reports by November 15, 2006.

[10] On November 15, 2006, the Board received a letter from the Appellant advising that meetings had been arranged for late November and early December to continue their

discussions, and requesting a further adjournment to December 15, 2006. In the Board's letter of November 16, 2006, the Board advised that, as the Participants are working to resolve the appeal, it would grant the abeyance until December 15, 2006. The Participants were requested to provide status reports by December 15, 2006.

[11] On December 13, 2006, the Board received a letter from the Appellant stating:

“Newalta wishes to thank the Board for holding this appeal process in temporary abeyance in order to facilitate discussions between the parties. Newalta advises that productive discussions have occurred, and are intended to continue. Accordingly, Newalta seeks leave to withdraw the above-referenced appeal.”

II. DECISION

[12] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c W-3, and based upon the withdrawal of the appeal by the Appellant on December 13, 2006, the Board hereby discontinues its proceedings in Appeal No. 06-067 and closes its file.

Dated on December 18, 2006, at Edmonton, Alberta.

Steve E. Hrudey, F.R.S.C., P.Eng.
Chair