

ALBERTA
ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – June 1, 2007

IN THE MATTER OF sections 91, 92 and 95 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, and section 115 of the *Water Act*, R.S.A. 2000, c. W-3;

-and-

IN THE MATTER OF an appeal filed by Cristallo Engineering Technologies Inc. and Cristallo Holdings Inc. with respect to *Environmental Protection and Enhancement Enforcement Order* No. EO-2006/01-SR issued to Cristallo Engineering Technologies Inc. and Cristallo Holdings Inc. by the Director, Southern Region, Regional Services, Alberta Environment.

Cite as: *Cristallo Engineering Technologies Inc. and Cristallo Holdings Inc. v. Director, Southern Region, Regional Services, Alberta Environment* (1 June 2007), Appeal No. 06-066-DOP (A.E.A.B.).

I. BACKGROUND

[1] On July 31, 2006, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”), issued Enforcement Order No. EO-2006/01-SR (the “Order”), under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12; to Cristallo Engineering Technologies Inc. and Cristallo Holdings Inc. for the Biesecker Waste Treatment Plant, a biomedical waste incinerator, for allegedly violating the Approval for the plant.

[2] On August 8, 2006, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Cristallo Engineering Technologies Inc. and Cristallo Holdings Inc. (the “Appellant”) appealing the Order.

[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 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 that 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 17, 2006, the Board received a letter from the Appellant requesting a Stay of the Enforcement Order. The Board responded on August 21, 2007 requesting the Appellant provide a response to the following questions:

- “1. What are the serious concerns that the Appellants have that should be heard by the Board?
2. Would the Appellants suffer irreparable harm if the Stay is refused?
3. Would the Appellants suffer greater harm if the stay was refused pending a decision of the Board on the appeal, than the harm that could occur from the granting of a Stay; and

4. Would the overall public interest warrant a Stay?"

The Board advised it would review the Appellant's response and decide whether sufficient information had been presented for the Board to consider issuing a Stay. However, on August 24, 2006, the Board received a letter from the Appellant advising the Director had issued an amendment to the Order which may impact the Stay request and that they would endeavour to provide submissions on the Stay application as soon as possible.

[6] On September 5, 2006, the Board received a further letter from the Appellant stating:

"Effective August 18, 2006, Alberta Environment issued certain amendments to the Enforcement Order...In particular, the amendments provide that certain terms of the Enforcement Order are postponed until October 13, 2006, and then such terms may only come into effect if certain conditions are not met by the Appellant. The terms that would come into effect on October 13 are of particular concern to the Appellant, but as Cristallo presently expects to meet the stipulated conditions, those terms may not come into effect and the Appeal may be unnecessary."

The Appellant went on to say that they were continuing to meet with the Director to work out appropriate air monitoring objectives and requirements, and requested the Board put the appeal in abeyance until the Director advised whether or not the stipulated conditions had been met. The Board responded to the Appellant's letter on September 7, 2006, granting the abeyance of the appeal and the Stay application and requesting the Participants provide status reports to the Board by October 13, 2006.

[7] Further requests for extensions to the abeyance of the appeal were received from the Participants. The Board granted the extensions to allow the Participants time to work together to resolve the appeal.

[8] Status reports were received from the Participants on a regular basis. On December 4, 2006, the Board received a letter from the Appellant advising

“...emissions testing is ongoing and communications continue between Cristallo and Alberta Environment regarding the appropriate terms for the operation of my client’s facility. My client is concurrently submitting an application for renewal of its operating approval...Cristallo continues to operate in compliance with the terms...of the Enforcement Order, while continuing to communicate with Alberta Environment in good faith to attempt to address Alberta Environment’s concerns and more particularly arrive at appropriate operating terms and conditions for the circumstances of this facility.”

[9] On December 7, 2006, the Board received a status report from the Director advising the Participants were continuing their communications regarding compliance. On February 9, 2007, the Board received a status report from the Appellant advising that the approval issued to the Appellant for the facility, had expired on January 31, 2007, and accordingly the Appellant had suspended operations. The Appellant also advised the Director had indicated to them that he would authorize the Appellant to receive and store waste on an interim basis until alternative arrangements are made for the disposal of the waste, and that as a result of these circumstances, the appeal may become moot. At the Appellant’s request the Board granted a further abeyance until February 20, 2007.

[10] On February 21, 2007, the Board received a status report from the Appellant advising there were still some live issues under the Order and, therefore the Order has not been rendered moot. The Appellant went on to advise that the issues under the Order may yet become moot as Cristallo was working through the approval process and the terms of the Order would presumably be incorporated into the approval.

[11] On February 22, 2007, the Board responded to the Appellant’s February 21, 2007 status report requesting further status reports by March 21, 2007. In addition, the Participants were asked to advise the Board when they anticipated the approval process to be complete. The Appellant responded to the Board on March 20, 2007 advising:

“...there have been no developments in respect of this matter since my letter of February 21, 2007. Cristallo is working on the approval application and accordingly it is premature to estimate when the approval process will be completed...”

The Director responded on March 27, 2007 advising:

“...It is my understanding that there is still some information due from Cristallo to complete its approval application. Therefore, until the application is deemed

complete by Alberta Environment, I am unable to advise as to when a decision on the issuance of the approval will be made.”

[12] The Board responded on March 30, 2007. The Board’s letter stated:

“Upon review of the recent correspondence from Mr. Devlin and Ms. Gerlock, the Board understands the Approval expired on January 31, 2007 and as a result the appellant has suspended operations. Further to Mr. Devlin’s February 21, 2007 letter, the Board understands there are still some “live issues” under the Enforcement Order. Mr. Devlin is requested to provide further information to the Board by April 5, 2007 regarding the “live issues”.

In addition, the Board understands the appellant is in the process of applying for a new approval that may incorporate the terms of the Enforcement Order, and render it moot. Once Alberta Environment issues its decision with respect to the new Approval application, the appellant will have the ability to appeal that decision if it does not receive the Approval, or if it is not in agreement with the conditions in the Approval. In this regard, Mr. Devlin is requested to advise the Board by April 5, 2007, why he feels it is necessary to hold this appeal in abeyance until the Approval application process is concluded.”

[13] On April 16, 2007, the Board received a response from the Appellant advising:

“I have been advised that Environment does not consider the Enforcement Order to be moot, notwithstanding that Cristallo has suspended operation of the facility. For example, environment requires Cristallo to provide a Waste Management Plan (pursuant to an amendment to the Enforcement Order) after the facility had suspended operations. Such Waste Management Plan was provided by letter of February 5, 2007. Perhaps Environment...can provide further information regarding the live issues under the Enforcement Order, or advise if the Enforcement Order can now be withdrawn or considered moot...if the Board declines holding this appeal in abeyance, I must put my client to election of proceeding with the appeal or withdrawing it. However, in these circumstances, perhaps the Board will agree that it would not be in anyone’s advantage to move forward with the appeal at this time.”

[14] On April 18, 2007, the Board responded stating:

“The Board understands Cristallo has suspended operations and has complied with Alberta Environment’s request to provide a Waste Management Plan. Ms. Gerlock is requested to advise the Board if there are any further conditions under the Enforcement Order that Cristallo has yet to comply with, what those conditions are, and if they will be incorporated into the new approval. Ms. Gerlock is requested to provide this information to the Board by April 25, 2007. The Board will then determine if it will allow the appeal to remain in abeyance.

[15] On April 25, 2007, the Board received an e-mail from Director advising “the Director is considering closing the EO. I anticipate being able to provide written confirmation of the Director’s intent to close the Order by no later than Monday April 20, 2007.”

[16] On May 9, 2007, the Board received a further e-mail from the Director stating “...a letter has been sent today...to the parties closing the Enforcement Order...” In response to the Director’s e-mail, the Board sent a letter to the Appellant on May 15, 2007, requesting the Appellant advise if they will be withdrawing their appeal.

[17] On May 18, 2007 the Board received a letter from the Appellant withdrawing their appeal.

II. DECISION

[18] 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, the Board hereby discontinues its proceedings in Appeal No. 06-066 and closes its file.

Dated on June 1, 2007, at Edmonton, Alberta.

Dr. Steve E. Hrudehy, FRSC, PEng
Chair