

ALBERTA ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – October 29, 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-

IN THE MATTER OF an appeal filed by the Bassani family, Cholla Sand and Dry Waste Ltd., and the Edmonton Minor Soccer Association with respect to *Environmental Protection and Enhancement Act* Amending Approval Nos. 0049589-00-03 and 0049589-00-04 issued to Northland Material Handling Inc. by the Director, Central Region, Regional Services, Alberta Environment.

Cite as: *Bassani et al. v. Director, Central Region, Regional Services, Alberta Environment, re: Northland Material Handling Inc.* (29 October 2007), Appeal Nos. 07-120-122 and 07-124-126-DOP.

I. BACKGROUND

[1] On June 21, 2007, the Director, Central Region, Regional Services, Alberta Environment (the “Director”), issued Amending Approval No. 0049589-00-03, and on August 31, 2007, issued Amending Approval No. 0049589-00-04 under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, (collectively the “Amending Approvals”) to Northland Material Handling Inc. (the “Approval Holder”), extending the expiry date of the original Approval 0049589-00-00 to August 31, 2008 for the operation, reclamation and lateral expansion of a Class III landfill. The lateral expansion shall include surface water management, soil conservation, and sand removal. This was the second extension of the Approval’s expiry date.

[2] Notices of Appeal in relation to Amending Approval 0049589-00-03 were received by the Environmental Appeals Board (the “Board”) on August 17, 2007 from Mr. Fred Laux, counsel for the Bassani family, Cholla Sand and Dry Waste Ltd., and the Edmonton Minor Soccer Association (the “Appellants”).

[3] The Board wrote to the Appellants, the Approval Holder and the Director (collectively the “Participants”) acknowledging receipt of the Notices of Appeal and notifying the Approval Holder and the Director of the appeals. The Board also requested the Director provide the Board with a copy of the records (the “Record”) relating to these appeals, 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 September 7, 2007, the Board received a letter from the Director stating:

“This letter is to notify the Board of recent developments affecting the...appeals. First, on August 31st, 2007, the Director cancelled the EPEA Amending Approval No. 0049589-000-03 issued on June 21, 2007. That amending approval provided an extension of the operating approval until August 31, 2008. Then, on August 31, 2007, the Director issued EPEA Amending Approval No. 0049589-00-04. This amending approval has the same effect as the amending approval issued on

July 21st, 2007. It extends the operating approval until August 31st, 2008...These decisions...were undertaken to ensure that the publication deadline in Section 3(1) of the *Environmental Protection and Enhancement (Miscellaneous) Regulation* was complied with....”

[6] On September 10, 2007, the Board wrote to the Participants, acknowledging the Director’s letter, and stating:

“...when Alberta Environment cancels an Amending Approval that is under appeal, the Board would set a submission process to give the participants an opportunity to comment on whether the appeal is moot. In this case, because another Amending Approval which has the same effect as Amending Approval No. 49589-00-03, has been issued, and in the interest of preventing delays in the appeal process, the Board proposes to forgo the submission process, declare the appeal moot, and close its file regarding Appeals 07-120, 121 and 122. Mr. Laux could then file a new Notice of Appeal with the Board in relation to Amending Approval 0049589-00-04.”

The Board requested the Participants provide comments with respect to the Board’s proposed course of action by September 11, 2007. The Board also advised the Appellants that if they wished to file a new appeal in relation to Amending Approval 0049589-00-04, that they should do so as soon as possible.

[7] The Board received letters on September 12 and 14, 2007 from the Director and the Approval Holder. The Director advised the Board’s suggested course of action was acceptable, and the Appellants’ letter stated:

“There has been a litany of errors by Alberta Environment and Northland in respect of the time extension granted to Northland Materials Handling Inc. and its advertising. I am not altogether sure that these errors should or can be overlooked by the simple expedient of canceling earlier action taken and purporting to remedy the situation by new action. This raises some serious issues as to whether the Board can and should declare the appeal of approval 03 moot and thereby end the appeal proceeding. I am leaving the country on September 14 and not returning until October 5...Accordingly I would ask that the matter of what is to be done with the appeal of approval 03 be put on hold until my return. Alternatively, I suggest that it may be appropriate to consolidate the appeal of 03 and the appeal of 0049589-00-04...as there are common issues to be addressed.”

[8] The Board acknowledged both the Director’s letter and the Appellants’ letter on October 1, 2007, and advised that further correspondence would be forthcoming.

[9] On September 12, 2007 the Board received a Notice of Appeal from the Appellants in relation to Amending Approval 0049589-00-04. The Board acknowledged receipt of the Notice of Appeal on October 1, 2007.

[10] On September 14, 2007, the Board received a copy of the Record in relation to Amending Approval No. 0049589-00-03 and provided a copy to the Participants on October 1, 2007. On October 15, 2007, the Board received a copy of the Record in relation to Amending Approval No. 0049589-00-04 and provided a copy to the Participants on October 16, 2007.

[11] On October 24, 2007, the Board received a letter from the Appellants, withdrawing the appeals and advising:

“Please be advised that the two appeals I have filed on behalf of my clients are hereby withdrawn. My clients do not concede that there were no solid grounds. Moreover, this action is taken without prejudice to any rights of appeal that may exist and any grounds that may be argued in the event the Director approves the Northland application for extension of the waste site and renewal of the permit beyond 2009.”

II. DECISION

[12] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, and based upon the withdrawal of the appeals by the Appellants, the Board hereby discontinues its proceedings in Appeal Nos. 07-120-122 and 07-124-126 and closes its file.

Dated on October 29, 2007, at Edmonton, Alberta.

“original signed by”

Dr. Steve E. Hruddy, FRSC, PEng
Chair