
ALBERTA ENVIRONMENTAL APPEALS BOARD

Report and Recommendations

Date of Report and Recommendations – July 29, 2011

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 Mike Richard with respect to Approval No. 75152-01-00 issued under the *Environmental Protection and Enhancement Act* by the Director, Northern Region, Environmental Management, Alberta Environment.

Cite as: *Richard v. Director, Northern Region, Environmental Management, Alberta Environment, re: Newalta Corporation* (29 July 2011), Appeal No. 10-033-R (A.E.A.B).

MEDIATION MEETING BEFORE:

Ms. Christine Macken, Board Member.

APPEARANCES:

Appellant:

Mr. Mike Richard; and Mr. Eric Deegan,
Alberta Pride Regulatory Services Ltd.

Approval Holder:

Ms. Rhonda Rudniski, Newalta Corporation,
and Mr. Mike Richardson, Newalta
Corporation.

Director:

Mr. Gary Sasseville, Director, Northern
Region, Environmental Management, Alberta
Environment, and Mr. Okey Obiajulu, Alberta
Environment, represented by Ms. Meagan
Bryson, Alberta Justice.

Board Staff:

Mr. Gilbert Van Nes General Counsel and
Settlement Officer.

EXECUTIVE SUMMARY

Alberta Environment issued an Approval to Newalta Corporation authorizing the construction, operation and reclamation of the Spirit River Hazardous Recyclable Facility.

Mr. Mike Richard, a neighbouring property owner, filed an appeal expressing concerns about water discharging from the facility onto his farmland, odour, and air quality.

The Board held a mediation meeting on July 15, 2011, following which a resolution was reached by the participants. The Board recommends that the Minister of Environment accept the resolution varying the conditions in the Approval.

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I. BACKGROUND

[1] On October 29, 2010, the Director, Northern Region, Environmental Management, Alberta Environment (the “Director”), issued Approval No. 75152-01-00 (the “Approval”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”), to Newalta Corporation (the “Approval Holder”) authorizing the construction, operation, and reclamation of the Spirit River Hazardous Recyclable Facility.

[2] On November 30, 2010, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Mr. Mike Richard (the “Appellant”) appealing the Approval. Mr. Richard is a neighbouring property owner, and expressed concerns about water discharging from the facility onto his farmland, odour, and air quality.

[3] On December 6, 2010, the Board wrote to the Appellant, the Approval Holder and the Director (the “Participants”) acknowledging receipt of the Notice of Appeal, and notifying the Director and the Approval Holder 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 motions hearing, or hearing.

[4] On January 14, 2011, the Board received a copy of the Record from the Director, and on January 18, 2011 forwarded a copy to the Appellant and the Approval Holder.

[5] On February 9, 2011, in consultation with the Participants, the Board scheduled the mediation meeting for April 18, 2011, in Grande Prairie, Alberta.

[6] On April 8, 2011, the Board received a letter from the Director advising he may not be able to attend the mediation meeting due to flooding predicted for the Peace River area. The Board contacted the Appellant and the Approval Holder and both agreed to reschedule the mediation meeting.

[7] On May 31, 2011, in consultation with the Participants, the Board rescheduled the mediation meeting for July 15, 2011.

II. MEDIATION MEETING

[8] Pursuant to section 11 of the Environmental Appeal Board Regulations, Alta Reg.114/93, the Board conducted a mediation meeting in Grande Prairie, Alberta, on July 15, 2011, with Ms. Christine Macken, Board Member, as the presiding mediator (the “Mediator”).

[9] In conducting the mediation meeting, the Mediator reviewed the appeal and the mediation process and explained the purpose of the mediation meeting. She then circulated copies of the Participants’ Agreement to Mediate. All those in attendance signed the Participants’ Agreement to Mediate.

[10] Following productive and detailed discussions, a resolution evolved at the mediation meeting and is attached as pages 3 and 4.

III. RECOMMENDATIONS

[11] In accordance with section 99 of the *Environmental Protection and Enhancement Act*, the Board recommends that the Minister of Environment vary Approval No. 75152-01-00 in accordance with the resolution reached by the Participants.

[12] Further, with respect to sections 100(2) and 103 of EPEA, the Board recommends that copies of this Report and Recommendations, and of any decision by the Minister, be sent to the following Participants:

- Mr. Mike Richard;
- Ms. Jill Schmeichel, Newalta Corporation; and
- Ms. Meagan Bryson, Alberta Justice, on behalf of Mr. Gary Sasseville, Director, Northern Region, Environmental Management, Alberta Environment.

Dated on July 29, 2011, at Edmonton, Alberta.

Delmar W. Perras
Chair

IV. RESOLUTION

RESOLUTION ENVIRONMENTAL APPEALS BOARD EAB File No. 10-033

In the matter of the mediation of the appeal of the October 29, 2010 decision of the Director, Northern Region, Environmental Management Services, Alberta Environment, to issue Approval No. 75152-01-00 (the "Approval"), under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, to Newalta Corporation authorizing the construction, operation and reclamation of the Spirit River Hazardous Recyclable Facility.

All participants to the appeal have agreed to the following terms and conditions:

1. The participants will work together to build a better relationship, including by improving communications.
2. Newalta Corporation ("Newalta") agrees that its preferred method of disposing of water from the Spirit River Hazardous Recyclable Facility (the "Site") is trucking the water from the Site and preferably using it in another process at a different facility or, if other options do not exist, disposing of it by deep-well injection.
3. In the event that Newalta must discharge water from its Site, it will notify Mr. Mike Richard prior to the discharge, and make best efforts to notify Mr. Richard at a minimum of 48 hours prior to the discharge. The notice to Mr. Richard will be provided by telephone and e-mail. In particular, Newalta agrees to:
 - a. notify Mr. Richard before Newalta samples the water that will be released;
 - b. provide Mr. Richard with a copy of the sampling results report that is obtained from the independent third party laboratory;
 - c. explain the sampling results to Mr. Richard in person or by telephone, including whether the sampling results are in compliance with the Approval requirements;
 - d. include, in their weekly inspection a requirement to make sure there are no blockages of the ditch into which the water will be discharged such that any release will not impact Mr. Richard's land; and
 - e. allow Mr. Richard escorted access to the Site, upon reasonable notice, to take his own samples of the water.
4. Mr. Richard is free to contact Alberta Environment to review the sampling results regarding the water discharge, and Alberta Environment will make best efforts to

respond to Mr. Richard's questions.

5. Alberta Environment will provide Mr. Richard with copies of all correspondence relating to the Fugitive Emissions Management Plan and a copy of the approved Fugitive Emissions Management Plan. Newalta will provide Mr. Richard with a copy of the Fugitive Emissions Management Report on an annual basis.
6. The Approval will be amended to require Newalta to undertake a continuous air quality monitoring program for H₂S, BTEX, and total hydrocarbons, based on a plan (the "Plan") that is satisfactory to Alberta Environment, for a three month period in June, July, and August 2012, and then prepare a report (the "Report") correlating the activities that have taken place on the Site during this time with the results of the monitoring program. The Plan will include:
 - a. locating the monitoring trailer in the NW portion of LSD 9 on the Site; and
 - b. the steps that will be taken to ensure that the monitoring program collects appropriate representative samples.
7. Newalta agrees to provide Mr. Richard with a copy of the Plan for the continuous air quality monitoring program and a copy of the Report correlating the activities and the monitoring results. Newalta also agrees to notify Mr. Richard when the monitoring program starts.
8. Newalta and Alberta Environment each agree to meet with Mr. Richard and explain the Plan and Report.
9. Mr. Richard will make best efforts to notify Newalta of all odour incidents that occur to the Newalta representative on the Site and/or the Newalta head office in Calgary.
10. In consideration of the foregoing, the Appellant, Mr. Mike Richard, withdraws his Notice of Appeal.

RESOLUTION AGREED TO BY:

"original signed by"

Mike Richard

Date: July 15, 2011

"original signed by"

Rhonda Rudniski, Newalta Corporation

Date: July 15, 2011

"original signed by"

Gary Sasseville, Director, Northern Region,

Date: July 15, 2011

Environmental Management Services, Alberta Environment
Represented by Meagan Bryson, Alberta Justice



ALBERTA
ENVIRONMENT

*Office of the Minister
MLA, Medicine Hat*

**Ministerial Order
32/2011**

*Environmental Protection and Enhancement Act
R.S.A. 2000, c. E-12*

**Order Respecting Environmental Appeals Board
Appeal No. 10-033**

I, Rob Renner, Minister of Environment, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeals Board Appeal No. 10-033.

Dated at the City of Edmonton, in the Province of Alberta, this 8th day of August, 2011.

“original signed by”

Rob Renner
Minister

Appendix

Order Respecting Environmental Appeals Board Appeal No. 10-033

With respect to the decision of the Director, Northern Region, Environmental Management, Alberta Environment (the “Director”), to issue Approval No. 75152-01-00 (the “Approval”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, to Newalta Corporation (the “approval holder”), I, Rob Renner, Minister of Environment, order that the Approval is varied as follows:

1. The Approval is amended by adding the following conditions immediately after 4.1.15:

- “4.1.16 The approval holder shall submit a Continuous Air Quality Monitoring Program to the Director on or before October 31, 2011, unless another date is authorized by the Director in writing.
- 4.1.17 The Continuous Air Quality Monitoring Program shall include, at a minimum:
- (a) continuous air quality monitoring for H₂S, BTEX, and total hydrocarbons for the three month period of June, July, and August 2012;
 - (b) monitoring and recording of all activities at the facility for the three month period of June, July, and August 2012 in sufficient detail that it will be possible to correlate these activities with the data collected by the continuous air quality monitoring;
 - (c) locating the monitoring trailer in the NW portion of LSD 9 in NE ¼ of Section 15, Township 78, Range 7, West of the 6th Meridian;
 - (d) a detailed description of the steps that will be taken to ensure that the Continuous Air Quality Monitoring Program collects representative samples of what is occurring at and adjacent to the facility;
 - (e) any amendments to the Fugitive Emission Management Proposal and the Fugitive Emission Management Plan that are necessary to incorporate the Continuous Air Quality Monitoring Program; and
 - (f) any other information specified by the Director in writing.
- 4.1.18 If the Continuous Air Quality Monitoring Program is found deficient by the Director, the approval holder shall correct all deficiencies identified in writing by the Director by the date specified in writing by the Director.
- 4.1.19 Subject to 4.1.18, the approval holder shall implement the Continuous Air Quality Monitoring Program as authorized in writing by the Director.
- 4.1.20 The approval holder shall submit a report detailing the results of the Continuous Air Quality Monitoring Program to the Director on or before October 31, 2012, unless another date is authorized by the Director in writing.

4.1.21 The report detailing the results of the Continuous Air Quality Monitoring Program shall include, at a minimum:

- (a) a correlation between the continuous air quality monitoring data that were collected and the activities that occurred at the facility during the three month period of June, July, and August 2012;
- (b) consider all information available in relation to odour complaints during the three month period of June, July, and August 2012;
- (c) an analysis of all the information obtained as a result of the Continuous Air Quality Monitoring Program;
- (d) recommendations to address any air quality issues identified as a result of the Continuous Air Quality Monitoring Program;
- (e) recommendations for any changes to the Fugitive Emission Management Plan as a result of the Continuous Air Quality Monitoring Program; and
- (f) any other information specified by the Director in writing.

4.1.22 If the report prepared by the approval holder detailing the results of the Continuous Air Quality Monitoring Program is found deficient by the Director, the approval holder shall correct all deficiencies identified in writing by the Director by the date specified in writing by the Director.”

2. The Approval is amended by deleting the phrase “The Fugitive Emission Management Proposal must” in condition 4.1.9 and replacing it with the phrase “The Fugitive Emission Management Proposal shall”.*

* This amendment corrects a clerical error found in the Approval.