

**Appellant** – Leduc County, **Operator** – Leduc County, **Location** – Leduc County

A Notice of Appeal was received from Leduc County on March 2, 2015 with respect to the February 23, 2015 decision of the Director, Alberta Environment and Parks (AEP), to issue Environmental Protection Order No. EPO-2015/01-UAR to Leduc County for the alleged release of a substance into the environment, at the former Kavanagh Landfill located at NE-36-48-25-W4M, in Leduc County, and that the substance may cause, is causing or has caused an adverse effect on the environment, including impairment of or damage to the environment, human health or safety of property.

On March 6, 2015 the Board received a request for a stay of the Order. The Board requested the Appellant answer questions in relation to the stay in order to make its decision. The Board's test for a stay, as stated in its previous decisions,<sup>1</sup> is adapted from the Supreme Court of Canada case of *RJR MacDonald*.<sup>2</sup> The steps in the test, as stated in *RJR MacDonald*, are:

“First, a preliminary assessment must be made of the merits of the case that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.”<sup>3</sup>

In addition, the environmental mandate of this Board requires the public interest be considered. Therefore, the Board has always assessed the public interest as a separate step in the test.

In its letter of March 16, 2015 the Board denied the stay. Although the stay was denied because the Appellant would not suffer irreparable harm, the Board addressed the Appellant's arguments regarding the public interest. The Appellant acknowledged there were two competing public interest issues to be considered, one represented by AEP in ensuring that environmental issues were addressed in a timely and effective manner, and the other by the Appellant, who appealed the Order to ensure its rate payers did not bear the costs and effort of implementing the required environmental investigations and remediation directed by the Order unless the Order was found to be properly issued.

In consultation with the parties, the Board held a site visit on June 8, 2015 in Leduc County and a mediation meeting on June 9, 2015 in Edmonton. As a result of the Interim Resolution reached at the mediation, a second mediation was held on September 10, 2015 in Edmonton. Discussions were ongoing and on March 2, 2016 Leduc County withdrew their appeal.

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<sup>1</sup> *Stelter v. Director of Air and Water Approvals Division, Alberta Environmental Protection*, Stay Decision re: *GMB Property Rental Ltd.* (14 May 1998), Appeal No. 97-051 (A.E.A.B.).

<sup>2</sup> *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 (“*RJR MacDonald*”). In *RJR MacDonald*, the Court adopted the test as first stated in *American Cyanamid v. Ethicon*, [1975] 1 All E.R. 504. Although the steps were originally used for interlocutory injunctions, the Courts have stated the application for a stay should be assessed using the same three steps. See: *Manitoba (Attorney General) v. Metropolitan Stores*, [1987] 1 S.C.R. 110 at paragraph 30 and *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at paragraph 41.

<sup>3</sup> *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at paragraph 43.