

ALBERTA ENVIRONMENTAL APPEALS BOARD

Appellant – BURNCO Rock Products Ltd., **Operator** – BURNCO Rock Products Ltd.,
Location – W½ 30-008-22-W4M on the Oldman River in Lethbridge County, **Type of Decision and Date** – Discontinuance November 23, 2021

A Notice of Appeal was received by the Board on December 5, 2019 from BURNCO Rock Products Ltd. in relation to the November 8, 2019 decision of the Director, South Saskatchewan Region, Operations Division, Alberta Environment and Parks (Director), to refuse to renew *Water Act* Licence No. 00223671-00-00 for gravel washing purposes at W½ 30-008-22-W4M on the Oldman River in Lethbridge County.

On December 18, 2019, the Director requested the appeal be dismissed because BURNCO did not have landowner's consent, which is a requirement pursuant to section 50(4) of the *Water Act*. The Board set a schedule to receive submissions on the following questions:

1. Is the motion appropriate to be decided as a preliminary matter, or is the challenge posed by the Director more correctly one that needs to be decided at a hearing on the merits?; and
2. Assuming the matter is an appropriate preliminary matter, is the appeal without merit?

Upon reviewing the file and submissions, on April 1, 2020 the Board decided that the motion was not a preliminary motion and that the challenge raised by the Director was one that could only be decided based on a hearing of the merits. In the Board's reasons issued on November 12, 2021, the Board stated it was of the view that it is not appropriate to rule on the Director's challenge to the appeal in a preliminary motion, as it goes beyond the scope of whether or not the appeal is without merit. The consent of the landowner is central to the issues between BURNCO and the Director. The Director is asking the Board to make findings of fact and law on evidence and issues that cannot be made without the benefit of the full Director's record and arguments that accompany a hearing.

Cite: Interim Decision: *BURNCO Rock Products Ltd. v. Director, South Saskatchewan Region, Operations Division, Alberta Environment and Parks* (12 November 2021), Appeal No. 19-049-ID1 (A.E.A.B.), 2021 ABEAB 32

The Board's November 12, 2021 letter, advised that it would proceed with a written hearing of the appeal as it did not appear that the facts were in dispute. The Board set out the issues for the hearing and requested the Director and BURNCO provide comments on the proposed hearing issues.

On November 22, 2021, BURNCO advised they would like to withdraw their appeal. They explained that the appeal process afforded BURNCO with ample notice and opportunity to engage with the landowner but BURNCO had been unable to secure written consent from the landowner for the renewal of the licence as required under section 50(4) of the *Water Act*.

Based on the withdrawal of the appeal, the Board discontinued its proceedings and closed its file on November 23, 2021.

Cite: *BURNCO Rock Products Ltd. v. Director, South Saskatchewan Region, Operations Division, Alberta Environment and Parks* (23 November 2021), Appeal No. 19-049 (A.E.A.B.), 2021 ABEAB 35