

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings: September 17, 2004

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 Ms. Linda J. Court with
respect to Approval No. 150612-00-00 issued under the
Environmental Protection and Enhancement Act by the Director,
Bow Region, Regional Services, Alberta Environment to Lafarge
Canada Inc.

Cite as: *Court v. Director, Bow Region, Regional Services, Alberta Environment re:
Lafarge Canada Inc.* (17 September 2004), Appeal No. 01-096-DOP (A.E.A.B.).

EXECUTIVE SUMMARY

Alberta Environment issued an Approval to Lafarge Canada Inc. for the opening up, operation, and reclamation of a gravel pit in the Municipal District of Rocky View, Alberta. The Environmental Appeals Board received a Notice of Appeal from Ms. Linda J. Court appealing the Approval.

During the preliminary phase of this appeal, Lafarge challenged the standing of Ms. Court, arguing that she was not directly affected. The Board received submissions on this question and decided that it did not have sufficient information to determine if Ms. Court was directly affected. The Board decided that it needed to hear the substantive evidence in this appeal before it would be able to determine Ms. Court's directly affected status. The Board scheduled a hearing for July 23 and 24, 2002 in Calgary, Alberta.

The Board issued its Decision on August 31, 2002. Based on the evidence received and the arguments of the parties, the Board determined that Ms. Court was not directly affected by the Lafarge Operation, and as a result, the Board did not have the jurisdiction to consider the other issues raised in this appeal.

The Appellant subsequently filed a Judicial Review against the Board's Decision with the Court of Queen's Bench of Alberta. The Court of Queen's Bench issued its decision on May 26, 2003, sending the matter back to the Environmental Appeals Board to be dealt with on the basis that the Appellant was directly affected.

The Board began the process of scheduling a hearing of the appeal. However, the Appellant withdrew the appeal. The Board hereby discontinues its proceedings in this matter.

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I. BACKGROUND

[1] On October 2, 2001, the Director, Bow Region, Regional Services, Alberta Environment (the “Director”) issued Approval No. 150612-00-00 (the “Approval”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 to Lafarge Canada Inc. (the “Approval Holder”) authorizing the opening up, operation, and reclamation of a sand and gravel pit on N 7-22-28-W4M and NE 12-22-29-W4M in the Municipal District of Rocky View, Alberta.

[2] On November 21, 2001, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Ms. Linda J. Court (the “Appellant”) appealing the Approval. The Board acknowledged receipt of the Notice of Appeal from the Appellant, notified the Approval Holder of the Appeal, and requested a copy of the documents related to the appeal (the “Record”) from the Director. The Board requested that the Appellant, the Director and the Approval Holder (collectively the “Parties”) provide available dates for a mediation meeting or a hearing.

[3] According to standard practice, the Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board (“AEUB”) asking whether this matter had been the subject of a hearing or review under their respective legislation. Both Boards responded in the negative.

[4] On December 20, 2001, in consultation with the Parties, the Board scheduled a mediation meeting for January 23, 2002 to be held in Calgary, Alberta.

[5] Pursuant to section 11 of the *Environmental Appeal Board Regulation*, A.R. 114/93 (the “Regulation”), the Board conducted a mediation meeting in Calgary, Alberta, on January 23, 2002, with Mr. Ron Peiluck, Board Member, presiding as the mediator. No resolution was reached, and the Board advised the Parties that a hearing date would be set. On January 31, 2002, the Board set a schedule to receive written submissions to determine the issues to be considered at the hearing of the appeal.

[6] On April 22, 2002, the Board issued its decision regarding the issues to be heard at the hearing.¹

[7] On May 29, 2004, in consultation with the Parties, the Board scheduled the hearing of the appeal for July 24 and 25, 2002 to be held in Calgary, Alberta. On August 31, 2004, the Board issued its Decision². The Board determined that the Appellant was not directly affected by the Approval issued by the Director, and dismissed the Appeal.

[8] On October 18, 2002, the Appellant filed a Judicial Review against the Board's Decision with the Court of Queen's Bench of Alberta and on May 16, 2003, the Court of Queen's Bench of Alberta issued a decision sending the matter back to the Environmental Appeals Board to be dealt with on the basis that the Appellant was directly affected.

[9] The Board began the process of scheduling the hearing, however on September 2, 2004, the Board received a letter from the Appellant withdrawing her appeal. The Appellant's September 2, 2004 letter stated:

“...I have received instructions from the Appellant, Linda J. Court, to withdraw her Notice of Appeal in respect of the referenced matter including any claim for costs...”

II. DECISION

[10] 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. 01-096 and closes its file.

Dated on September 17, 2004, at Edmonton, Alberta.

“original signed by”

Dr. Frederick C. Fisher, Q.C.
Chair

¹ *Court v. Director, Bow Region, Regional Services, Alberta Environment re: Lafarge Canada Inc.* (22 April 2002), Appeal No. 01-096-ID (A.E.A.B.)

² *Court v. Director, Bow Region, Regional Services, Alberta Environment re: Lafarge Canada Inc.* (31 August 2002), Appeal No. 01-096-D (AEAB).