

# ALBERTA ENVIRONMENTAL APPEAL BOARD

## Discontinuance of Proceedings

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Date of Discontinuance of Proceedings – January 17, 2003

**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** Notices of Appeal filed by, Mr. James  
Darwish, Ms. Verona Goodwin, Ms. Elena Napora, Mr. Don  
Stuikie, Mr. David J. Parker, Mr. Bill Boccock, Mr. Michael B.  
Nelson, Mr. Greg Ostapowicz, Mr. Douglas Price, Ms. Holly  
MacDonald, Mr. Stuart Pederson, Ms. Linda Stratulat, Mr.  
Leonard Rud, Mr. Marcel Wichink, Ms. Lorraine Vetsch, Ms.  
Gwen Davies, Mr. Garry Marler and Mr. Robert Wilde with  
respect to Amending Approval No. 10339-01-03 issued to Inland  
Cement Limited by the Director, Northern Region, Regional  
Services, Alberta Environment.

Cite as: *Darwish et al. v. Director, Northern Region, Regional Services, Alberta  
Environment re: Inland Cement Limited* (17 January 2003), Appeal Nos.  
02-019, 020, 021, 022, 025, 027, 028, 030, 031, 032, 033, 034, 035,  
036, 038, 039, 040 and 060-DOP (A.E.A.B.).

## EXECUTIVE SUMMARY

Alberta Environment issued an Amending Approval under the *Environmental Protection and Enhancement Act* to Inland Cement Limited to allow the burning of coal instead of natural gas as a fuel source for its cement plant in Edmonton, Alberta. The Board received twenty-nine appeals.

The Board held a Preliminary Meeting to determine the standing of the parties who filed the appeals and to determine the issues to be considered at the subsequent hearing. The majority of the parties reached an agreement and presented a joint submission to the Board on these questions, which the Board has accepted in principle. In the Board's view, the agreement is consistent with the purposes of the Act and the public interest. As a result Mr. James Darwish, Ms. Verona Goodwin, Ms. Elena Napora, Mr. Don Stuike, Mr. David J. Parker, Mr. Bill Boccock, Mr. Michael B. Nelson, Mr. Greg Ostapowicz, Mr. Douglas Price, Ms. Holly MacDonald, Mr. Stuart Pederson, Ms. Linda Stratulat, Mr. Leonard Rud, Mr. Marcel Wichink, Ms. Lorraine Vetsch, Ms. Gwen Davies, Mr. Garry Marler and Mr. Robert Wilde withdrew their appeals.

The Board therefore closes its files.

## TABLE OF CONTENTS

I. BACKGROUND .....	1
II. DECISION .....	5

## I. BACKGROUND

[1] On May 24, 2002, the Director, Northern Region, Regional Services, Alberta Environment (the “Director”) issued Amending Approval No. 10339-01-03 (the “Approval”) to Inland Cement Limited (“Inland” or the “Approval Holder”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA” or the “Act”) for the construction, operation, and reclamation of a cement manufacturing plant (the “Cement Plant”) in Edmonton, Alberta. The Approval allows for the burning of coal instead of natural gas as a fuel source (the “Substitute Fuel Program”) at the Cement Plant.

[2] Between June 14, 2002, and July 2, 2002, the Environmental Appeal Board (the “Board”) received a total of twenty-nine appeals with respect to the Approval. Notices of Appeal were received from Mr. David Doull (02-018), Mr. James Darwish (02-019), Ms. Verona Goodwin (02-020), Ms. Elena P. Napora (02-021), Mr. Don Stuike (02-022), Mr. Ron and Ms. Gail Maga and Mr. Ron Maga Jr. (02-023), Mr. Cameron Wakefield (02-024), Mr. David J. Parker (02-025), Mr. A. Ted Krug (02-026), Mr. Bill Bocoock (02-027), Mr. Michael Nelson (02-028), Mr. Stanley Kondratiuk (02-029), Mr. Greg Ostapowicz (02-030), Mr. Douglas Price (02-031), Ms. Holly MacDonald (02-032), Mr. Stuart Pederson (02-033), Ms. Linda Stratulat (02-034), Mr. Leonard Rud (02-035), Mr. Marcel Wichink (02-036), Dr. Roger G. Hodgkinson (02-037), Ms. Lorraine Vetsch (02-038), Ms. Gwen Davies (02-039), Mr. Garry Marler (02-040), a group of Community Leagues from the City of Edmonton (02-041),<sup>1</sup> Mr. Neil Hayes (02-047), Mr. Robert Wilde (02-060), the Edmonton Friends of the North Environmental Society (“EFONES”) (02-061),<sup>2</sup> Ms. Bonnie Quinn (02-073), and Ms. Anna T. Krug (02-074) (collectively the “Appellants”).<sup>3</sup>

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1 The group of Community Leagues from the City of Edmonton is composed of all of the Community Leagues in the City of Edmonton that are members of the Edmonton Federation of Community Leagues (the “EFCL”), “...and in particular the Community Leagues of Sherbrooke, Dovercourt, Inglewood, Wellington Park, Athlone, Woodcroft, Mayfield, High Park, McQueen and North Glenora...” The Notice of Appeal filed by the EFCL was on behalf of this group of Community Leagues and on behalf of two individuals, Ms. Bonnie Quinn (02-073) and Ms. Anna T. Krug (02-074). While these three parties filed only one Notice of Appeal, their standing differs, and as a result, the Board has assigned three appeal numbers to this one Notice of Appeal.

2 A total of three Notices of Appeal were filed on behalf of EFONES. On July 2, 2002, EFONES filed its third Notice of Appeal. Attached to this Notice of Appeal was a letter from EFONES indicating that the Notices of Appeal filed by Mr. James Darwish and Mr. Robert Wilde were intended to be filed on behalf of themselves and

[3] The Board acknowledged receipt of these appeals and notified the Appellants, the Approval Holder, and the Director (collectively the “Parties”) of these appeals. In the same letters, the Board also requested (1) that the Director provide the Board with a copy of the records (the “Record”) relating to the Approval, and (2) available dates from the Parties for a preliminary meeting, a mediation meeting, or a hearing.

[4] According to standard practice, the Board wrote to the Natural Resources Conservation Board (“NRCB”) 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. The NRCB notified the Board that these appeals were not subject to review under its legislation. The AEUB stated that it had not held a public hearing or review into the subject matter of the Appeals. However, the AEUB did provide a copy of Industrial Development Permit No. IDP 00-1 and IDP IC 80-1, permitting “...Inland to use natural gas produced in Alberta as fuel in the production of cement in the Province...”<sup>4</sup>

[5] On June 24, 2002, the Board received a letter from the Approval Holder asking that all meetings regarding these appeals be put in abeyance until the deadline for filing had passed so that one organizational meeting could be held for all of the appeals. The Board granted this request.

[6] On July 11, 2002, the Board received a copy of the Record, which was forwarded to the Appellants and the Approval Holder on July 22, 2002. In the Director’s cover letter, he stated that he would be pleased to participate in discussions with the other Parties to these appeals to reach a consensus as to the issues and parties that should be allowed at the hearing.

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EFONES. The Board has taken copies of the Notices of Appeal filed by Mr. Darwish and Mr. Wilde and added them to the Notice of Appeal filed by EFONES alone.

3 The majority of the Appellants have nominated either EFONES or the EFCL to represent them. EFONES represents: Mr. James Darwish, Ms. Verona Goodwin, Ms. Elena P. Napora, Mr. Don Stuike, Mr. Ron and Ms. Gail Maga and Mr. Ron Maga, Jr., Mr. Cameron Wakefield, Mr. David J. Parker, Mr. A. Ted Krug, Mr. Bill Boccock, Mr. Michael Nelson, Mr. Stanley Kondratiuk, Mr. Greg Ostapowicz, Mr. Douglas Price, Ms. Holly MacDonald, Mr. Stuart Pederson, Ms. Linda Stratulat, Mr. Leonard Rud, Mr. Marcel Wichink, Dr. Roger G. Hodgkinson, Ms. Lorraine Vetsch, Ms. Gwen Davies, Mr. Garry Marler, and Mr. Robert Wilde. The EFCL represents: the group of Community Leagues from the City of Edmonton, Ms. Bonnie Quinn, and Ms. Anna T. Krug. Mr. David Doull and Mr. Neil Hayes are representing themselves.

4 See: EUB’s Letter, dated July 17, 2002.

[7] On July 17, 2002, the Board received a letter from the Approval Holder in which it disputed that any of the Appellants had standing, but if some of the Appellants were determined to have standing, it was willing to work with the other Parties to work out an agreement on the issues to be heard.

[8] On August 2, 2002, the Board wrote to the Parties and indicated it would schedule a Preliminary Meeting to deal with various preliminary motions that had been identified by the Parties. The Board specified a deadline by which any other preliminary motions needed to be filed. No other preliminary motions were received.

[9] On August 27, 2002, the Board advised all Parties that a Preliminary Meeting would be held on September 17, 2002, in the Board's office with potential hearing dates in November 2002. The Board stated that the purpose of the Preliminary Meeting was to hear arguments on the following matters:

- “1. the standing of the Appellants, including their directly affected status and whether they filed valid statements of concern;
2. the standing of Mr. Doull, including whether the statement of concern filed by Mr. Doull is a valid statement of concern for the purposes of filing a Notice of Appeal and whether Mr. Doull is directly affected;
3. the issues to be dealt with at the hearing of these appeals; and
4. whether to consolidate the appeals.”<sup>5</sup>

[10] The Board requested that written submissions in preparation for the Preliminary Meeting be provided by September 6, 2002. On September 5, 2002, the Board received Mr. Neil Hayes' written submission.

[11] On September 5, 2002, EFONES contacted the Board and advised that it, along with the Director, Approval Holder, and the EFCL were close to an agreement to recommend to the Board what issues should be considered at the hearing and who should be granted status as parties. EFONES requested an extension to the deadline for filing written submissions. Mr. David Doull also requested an extension to the deadline for filing his written submission. The

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<sup>5</sup> See: Board's Letter, dated August 27, 2002. The motion with respect to Mr. Doull was raised by the Director and is based on the view that Mr. Doull (and some of the other Appellants for that matter) filed a Statement of Concern in the environmental assessment process under Part 2, Division 1 of EPEA, entitled "Environmental Assessment Process," instead of under Part 2, Division 2 of EPEA, entitled "Approvals, Registrations and Certificates" as required by section 91(1)(a)(i) of EPEA.

Board granted this request and written submissions were subsequently received from the remaining Parties.<sup>6</sup>

[12] On September 16, 2002, Board staff received a telephone call from Mr. Neil Hayes. Mr. Hayes advised that due to a family emergency he would be unable to attend the Preliminary Meeting on September 17, 2002.

[13] On September 17, 2002, the Board convened the Preliminary Meeting and advised the Parties that Mr. Neil Hayes was unable to attend. The Board advised the Parties that it would like to proceed with the hearing, but would provide Mr. Hayes with an opportunity to provide a written rebuttal submission before making its final decision. None of the Parties expressed any concerns with this course of action and the Board proceeded with the Preliminary Meeting.

[14] On September 26, 2002, the Board provided Mr. Hayes with a copy of the audio recording of the Preliminary Meeting, and on September 30, 2002, Mr. Hayes provided his rebuttal submission to the Board.

[15] On October 2, 2002, the Board wrote to the Parties, advising of its decision and on October 11, 2002, the Board issued its Preliminary Issues Decision<sup>7</sup>. The Board's Preliminary Issues Decision stated in part:

“The Board determines that the following Appellants have standing: Mr. Cameron Wakefield (02-024); Mr. A. Ted Krug (02-026); Mr. Stan Kondratiuk (02-029); Mr. Ron and Ms. Gail Maga and Mr. Ron Maga Jr. (02-023); Dr. Roger G. Hodgkinson (02-037); Mr. Neil Hayes (02-047); and Ms. Anna T. Krug (02-074).

Further, the Board accepts the Edmonton Friends of the North Environmental Society and the Edmonton Federation of Community Leagues as full parties to these appeals. The Notices of Appeal filed by EFONES (02-061) and the EFCL (02-41) are dismissed.

The Board determines that Mr. Doull does not have standing to bring an appeal, and his appeal is therefore dismissed (02-018). The Board also determines that

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6 In granting this extension, the Board was concerned about potential prejudice to Mr. Hayes. As a result, Board staff contacted the Director and Inland, who advised that they were not going to object to Mr. Hayes' standing. As a result of these representations, Mr. Hayes did not object to the extension. See: Board's letter, dated September 5, 2002.

7 Preliminary Issues: *Doull et al. v. Director, Northern Region, Regional Services, Alberta Environment re: Inland Cement Limited.* (11 October 2002), Appeal Nos. 02-018-041, 047, 060, 061, 073, and 074-ID1 (A.E.A.B.).

Ms. Quinn does not have standing to bring an appeal, and her appeal is therefore also dismissed (02-073).”

[16] On November 25, 2002, the Board received a letter from the Appellants advising that “...with the exception of the Appellants granted standing at the Preliminary hearing, we abandon all other appeals.”

## **II. DECISION**

[17] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act* R.S.A. 2000, c. E-12, and based on the letter of November 25, 2002 from the Appellants, the Board discontinues its proceedings in Appeal Nos. 02-019 (Mr. James Darwish), 020 (Ms. Verona Goodwin), 021 (Ms. Elena Napora), 022 (Mr. Don Stuike), 025 (Mr. David Parker), 027 (Mr. Bill Boccock), 028 (Mr. Michael Nelson), 030 (Mr. Greg Ostapowicz) 031 (Mr. Douglas Price), 032 (Ms. Holly MacDonald), 033 (Mr. Stuart Pederson), 034 (Ms. Linda Stratulat), 035 (Mr. Leonard Rud), 036 (Mr. Marcez Wichnik), 038 (Ms. Lorraine Vetsch), 039 (Ms. Gwen Davies), 040 (Mr. Garry Marler) and 060 (Mr. Robert Wilde) and will be closing its files.

Dated on January 17, 2003, at Edmonton, Alberta.

“original signed by”

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William A. Tilleman, Q.C.  
Chair