

ALBERTA  
ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

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Date of Discontinuance of Proceedings – May 16, 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 section 115 of the *Water Act*, R.S.A. 2000, c. W-3;

**-and-**

**IN THE MATTER OF** an appeal filed by Ben Gadd with respect to the decision of the Director, Central Region, Regional Services, Alberta Environment that Ben Gadd was not directly affected by the Cardinal River Coal, Cheviot and Luscar Mine private haulroad located near Cadomin, Alberta.

Cite as: *Gadd v. Director, Central Region, Regional Services, Alberta Environment re: Cardinal River Coal, Cheviot and Luscar Mine* (16 May 2003), Appeal No. 03-004-DOP (A.E.A.B.).

## **EXECUTIVE SUMMARY**

Alberta Environment received a Statement of Concern from Mr. Ben Gadd in relation to the application of the Cardinal River Coal, Cheviot and Luscar Mines for a private haulroad located near Cadomin, Alberta. Alberta Environment determined that Mr. Gadd was not directly affected by the project.

Alberta Environment determined that Mr. Gadd, was not directly affected.

The Environmental Appeal Board received a Notice of Appeal from Ms. Jennifer Klimek on behalf of Mr. Ben Gadd, appealing the decision of Alberta Environment.

The Board began processing the appeal. However, the Board received a request from Alberta Environment to dismiss the appeal for being premature as a decision had not yet been made with respect to the application.

The Board scheduled a written submission process to deal with Alberta Environment's request to dismiss the appeal. However, the Board received a request from the Appellant for an abeyance in order to allow the parties to work towards a resolution of the appeal.

The Appellant subsequently withdrew his appeal. The Board therefore closes its file in this matter.

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## **I. BACKGROUND**

[1] On April 11, 2003 the Environmental Appeal Board (the “Board”) received a Notice of Appeal from Ms. Jennifer Klimek, on behalf of Mr. Ben Gadd (the “Appellant”) appealing the decision of the Director, Central Region, Regional Services, Alberta Environment (the “Director”), that the Appellant was not directly affected by the private haulroad near Cadomin, Alberta which was applied for by Cardinal River Coal Ltd., Cheviot and Luscar Mines (the “Applicants”).

[2] On April 15, 2003, the Board wrote to the Appellant, the Applicants and the Director (collectively the “Parties) acknowledging receipt of the Notice of Appeal and notifying the Applicants and the Director of the appeal. The Board requested the Director provide the Board with a copy of the records (the “Record”) relating to this appeal, and that the Parties provide available dates for a mediation meeting or hearing.

[3] On April 17, 2003, the Board received a letter, dated April 16, 2003, from the Director requesting that the Board dismiss the appeal for being premature. The Director’s April 16, 2003 letter stated in part:

“...I wish to advise that although the Director has received an application for this project, no decision has been made with respect to the application...As no decision has been made with respect to the application, the Director hereby requests the Board dismiss the Notice of Appeal filed April 11, 2003...as being premature and being without jurisdiction under the provisions of the *Environmental Protection and Enhancement Act*.

The Director also advised that the Record consisted of a substantial amount of documentation, and at that time provided the Board with copies of correspondence between the Appellant and the Director only.

[4] On April 22, 2003, the Board acknowledged receipt of the Director’s April 16, 2003 letter and scheduled a written submission process to deal with the Director’s request to dismiss the appeal.

[5] On April 23, 2003, the Board received a letter from the Appellant requesting the Board postpone the written submission process to allow discussions between the Parties with a view towards resolving the appeal. The Board granted the abeyance and requested the Parties

provide the Board with status reports by May 2, 2003. The Appellant subsequently requested an extension of time to provide the Board with the status report and was granted an extension until May 9, 2003.

[6] On May 13, 2003, the Board received a letter from the Appellant withdrawing the appeal. The Appellant's letter stated:

"I wish to advise that we are prepared to drop our appeal pursuant to an agreement reached between all of the parties..."

## **II. DECISION**

[7] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act* R.S.A. 2000, c. W-3, and based on the Appellant's letter of May 13, 2003 the Board discontinues its proceedings in Appeal No. 03-004 and closes its file.

Dated on May 16, 2003 at Edmonton, Alberta.

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William A. Tilleman, Q.C  
Chair