

ALBERTA
ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – August 15, 2005

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 Mesken Contracting Limited with respect to *Water Act* Administrative Penalty No. WA-05/01-AP-SR-05/01 issued to Mesken Contracting Limited by the Director, Southern Region, Regional Services, Alberta Environment.

Cite as: *Mesken Contracting Limited v. Director, Southern Region, Regional Services, Alberta Environment* (15 August 2005), Appeal No. 05-007-DOP (A.E.A.B.).

EXECUTIVE SUMMARY

Alberta Environment issued an Administrative Penalty to Mesken Contracting Limited in relation to a water licence allowing the temporary diversion of water from the Bow River.

The Board received a Notice of Appeal from Mesken Contracting Limited appealing Alberta Environment's Decision.

The Board began processing the appeal, however the Appellant withdrew the appeal. The Board therefore closes its file in this matter.

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I. BACKGROUND

[1] On June 15, 2005, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”), issued Administrative Penalty No. WA-05/01-AP-SR-05/01 (the “Administrative Penalty”) to Mesken Contracting Limited for failing to ensure that a copy of the licence authorizing the diversion of water, from the Bow River at NW ¼ 33-021-25-W4M in Wheatland County, was kept in the vehicle transporting the water, and for failing to submit the monitoring data to the Director within 30 days of the completion of the water diversion.

[2] On June 23, 2005, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Mesken Contracting Limited (the “Appellant”) appealing the Administrative Penalty.

[3] On June 24, 2005, the Board wrote to the Appellant, and the Director (collectively the “Parties”) acknowledging receipt of the Notice of Appeal and notifying the Director of the appeal. The Board also 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, preliminary meeting or hearing.

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

[5] On June 28, 2005, the Board received a letter from the Appellant requesting a Stay of the Administrative Penalty pending the resolution of the appeal. The Board acknowledged receipt of the Appellant’s letter and requested the Director provide comments to the Board with respect to the Stay request. On July 4, 2005, the Board’s General Counsel and Settlement Officer, and the Director discussed the Appellant’s Stay request via telephone. On July 5, 2005, the Board received a letter from the Director requesting the Board schedule a mediation meeting. On July 7, 2005, the Board acknowledged the July 4, 2005 telephone discussion with the Director and the Director’s July 5, 2005 letter. The Board’s July 7, 2005 letter stated:

“...The Board...understands that Alberta Environment will postpone any enforcement of the Administrative Penalty until the conclusion of the mediation meeting. Consequently, the Board need not address Mr. Lunn’s Stay request at this time...The Board agrees with Ms. Graham’s request and will proceed to a mediation meeting...”

[6] On July 18, 2005, in consultation with the Parties, the Board scheduled the mediation meeting for August 16, 2005.

[7] On July 20, 2005, the Board wrote to the Parties canceling the mediation meeting, following a telephone conversation with the Appellant, wherein the Appellant advised that an agreement had been reached with the Director. The Board requested the Appellant provide the Board with the withdrawal of the appeal in writing.

[8] On August 10, 2005, the Board received a letter from the Appellant withdrawing the appeal.

II. DECISION

[9] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, and based on the withdrawal of the appeal by the Appellant, the Board hereby discontinues its proceedings in Appeal No. 05-007 and closes its file.

Dated on August 15, 2005, at Edmonton, Alberta.

“original signed by”

Dr. Steve E. Hruddy
Chair