

ALBERTA  
ENVIRONMENTAL APPEAL BOARD

Decision

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Date of Decision – September 25, 2001

**IN THE MATTER OF** Sections 84, 85 and 87 of the *Environmental Protection and Enhancement Act*, S.A. 1992 c. E-13.3 and section 115 of the *Water Act*, S.A. 1996 c. W-3.5;

-and-

**IN THE MATTER OF** appeals filed by Kenneth A. Matier, Mr. Billie A. and Mrs. Shirley S. Borys, and Mr. Nick Supina with respect to Approval 00151115-00-00 issued under the *Water Act* to Meadowview Sod Farms Ltd. by the Director, Approvals, Northeast Boreal Region, Regional Services, Alberta Environment.

Cite as: *Matier et al. v. Director, Approvals, Northeast Boreal Region, Regional Services, Alberta Environment, re: Meadowview Sod Farms Ltd.*

## EXECUTIVE SUMMARY

On July 17, 2001, Alberta Environment issued a *Water Act* Approval to Meadowview Sod Farms Ltd. for the exploration of groundwater near Fort Saskatchewan, Alberta. The exploration was in support of two *Water Act* licence applications for the Fox Run Golf Course and for diverting water from a gravel pit to irrigate a sod farm.

The Environmental Appeal Board received appeals and requests for Stays of the Approval from Mr. Kenneth Matier, Mr. Billie and Mrs. Shirley Borys, and Mr. Nick Supina.

On August 30, 2001, the Board received notification from Alberta Environment that the Approval had been cancelled at the request of Meadowview Sod Farms Ltd. As the Approval was cancelled, the appeals are moot, not properly before the Board, or without merit, and the Board, therefore, exercises its discretion pursuant to section 87(5)(a) of the *Environmental Protection and Enhancement Act*, and dismisses the appeals.

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## I. BACKGROUND

[1] On July 17, 2001, the Director, Approvals, Northeast Boreal Region, Regional Services, Alberta Environment (the “Director”) issued, Approval 00151115-00-00 (the “Approval”), under the *Water Act*, S.A. 1996 c. W-3.5, to Meadowview Sod Farms Ltd. (the “Approval Holder” or “Meadowview”) for the exploration of groundwater at SE 04-054-22-W4, near Fort Saskatchewan, Alberta. Subsequently, Amending Approval 00151115-00-01 was issued to correct the location of the exploration to SW 09-054-22-W4. The exploration was in support of two *Water Act* licence applications for the Fox Run Golf Course and for diverting water from a gravel pit to irrigate a sod farm.

[2] On July 31, 2001, the Environmental Appeal Board (the “Board”) received Notices of Appeal and requests for Stays of the Approval from Mr. Kenneth Matier, Mr. Billie and Mrs. Shirley Borys, and Mr. Nick Supina (collectively the “Appellants”). On this same day the Board acknowledged the appeals, requested available dates for a hearing or mediation meeting, and requested that the Director provide a copy of the records (the “Record”) related to the appeals. The Board asked the Appellants to answer four questions to assist the Board in determining if the Stay should be considered.<sup>1</sup>

[3] According to standard practice, the Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board asking whether these matters had been the subject of a hearing or review under their respective jurisdictions. Both Boards responded in the negative.

[4] On August 3, 2001, the Board received letters from the Appellants requesting an extension to the deadline to respond to the Board regarding their Stay requests and also requested that the Director provide responses to the concerns raised in their Statements of Concern. The

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1 Board’s letter of July 31, 2001 to each of the Appellants requests they answer the following questions:  
“1. What is the serious concern that the Appellants have that should be heard by the Board?  
2. Would the Appellants suffer irreparable harm if the stay is refused?  
3. Would the Appellants suffer greater harm for the refusal of a stay pending a decision of the Board on the appeal than the Approval Holder would suffer from the granting of a stay; and  
4. Would the overall public interest warrant a stay?”

Board granted the extension and requested that the Director assist the Appellants with their concerns.

[5] On August 8, 2001, the Board received a portion of the Record and provided a copy to the Appellants and the Approval Holder. On August 16, 2001, the Director provided the remainder of the Record to the Board and a copy was forwarded to the Appellants and the Approval Holder.

[6] The Board again received letters on August 14 and 15, 2001 from the Appellants requesting an extension to respond to the Board regarding their Stay requests until their concerns were addressed as outlined in their Notices of Appeal and subsequent correspondence to the Board. The Board, on August 15, 2001, extended the deadline and requested the Director and Meadowview provide the Appellants directly with the information they seek. The Board received copies of letters dated August 22, 2001, from the Director to each of the Appellants, in response to their concerns.

[7] Mr. Borys advised the Board on August 28, 2001 that he was reviewing the response provided to him by the Director and would then provide a response to the Board's questions on his Stay. Mr. Matier provided the Board with a letter of August 29, 2001 addressing the questions related to his Stay request.

[8] The Director notified the Board on August 30, 2001 that Meadowview requested that the Approval be cancelled. In light of the cancellation of the Approval, the Board advised the parties on August 31, 2001 that it would issue a Decision dismissing the appeals, as they were now moot, failing any compelling reasons to the contrary. On September 4, 2001, Mr. Matier advised the Board that he was withdrawing his appeal.

[9] On September 12, 2001, the Board confirmed receipt of Mr. Matier's letter of September 4, 2001 and advised that it would be proceeding with issuing a Decision dismissing the appeals filed by Mr. Kenneth Matier, Mr. Billie and Mrs. Shirley Borys and Mr. Nick Supina.

## **II. DECISION**

[10] Section 87(5)(a) of the *Environmental Protection and Enhancement Act*, S.A. 1992 c. E-13.3 (the "Act"), states:

87(5) The Board....

(a) may dismiss a notice of appeal if...

(i) it considers the notice of appeal to be frivolous or vexatious or without merit,

(i.2) for any other reason the Board considers that the notice of appeal is not properly before it,

[11] The Board hereby exercises its discretion under section 87(5)(a) of the Act and dismisses the Notices of Appeal filed by Mr. Kenneth Matier, Mr. Billie and Mrs. Shirley Borys, and Mr. Nick Supina as their appeals are moot, not properly before the Board, or without merit. The Board will now close its files.

Dated on September 25, 2001, at Edmonton, Alberta.

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William A. Tilleman, Q.C., Chairman