

ALBERTA
ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – January 18, 2006

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 appeals filed by Tia Bartlett, Ken Bartlett,
Alysha Bartlett, Heather Garon and Cheryl Henkelman, with
respect to *Environmental Protection and Enhancement Act*
Approval No. 203303-00-00 issued to BA Energy Inc. by the
Director, Northern Region, Regional Services, Alberta
Environment.

Cite as: *Bartlett et al. v. Director, Northern Region, Regional Services, Alberta
Environment re: BA Energy Inc.* (18 January 2006), Appeal Nos. 05-029 – 05-
031-DOP (A.E.A.B.).

I. BACKGROUND

[1] On August 5, 2005, the Director, Northern Region, Regional Services, Alberta Environment (the “Director”), issued Approval No. 203303-00-00 (the “Approval”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”), to BA Energy Inc. (the “Approval Holder”) for the construction, operation and reclamation of the Heartland Oil Sands Processing Plant (Bitument Upgrader) in Strathcona County.

[2] On September 27, 2005, the Environmental Appeals Board (the “Board”) received Notices of Appeal from Mr. Garry Henderson on behalf of Ms. Tia Bartlett, Mr Ken Bartlett and Ms. Alysha Bartlett, Ms. Heather Garon and Ms. Cheryl Henkleman (collectively the “Appellants”) appealing the Approval.

[3] On September 28, 2005, the Board wrote to the Appellants, the Approval Holder and the Director (collectively the “Participants”) acknowledging receipt of the Notices of Appeal and notifying the Approval Holder and the Director of the appeals. The Board also requested the Director provide the Board with a copy of the records (the “Record”) relating to these appeals, and the Participants provide available dates for a mediation meeting or hearing.

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

[5] On October 17, 2005, the Board received a copy of the Record from the Director, along with a letter that stated:

“Further to your letter of September 28, 2005, enclosed please find the Director’s record together with a copy of Bartlett v. Alberta (Energy and Utilities Board) a decision of the Alberta Court of Appeal.

You will note that the applicants in the Bartlett decision are the appellants in the three appeals presently before you.

You will also note that the enclosed record is restricted to the Statement of Concern correspondence, the decision of the Alberta Energy and Utilities Board ([A]EUB) of July 19, 2005 conditionally approving the application by BA Energy to construct and operate an upgrader and materials received or generated

thereafter. In light of the decisions of the [A]EUB and the Court of Appeal, there is a serious issue concerning the validity of these appeals.”

[6] On October 19, 2005, the Board received a letter from the Approval Holder stating:

“Regarding the second request for available dates for a mediation meeting, preliminary meeting or hearing, BA Energy submits that the Board must first review the appeals to determine its jurisdiction. In this regard, all the Appellants entered into a binding settlement with BA Energy that included their agreement to withdraw their objections to BA Energy’s regulatory applications regarding its Heartland Upgrader Project, which is the subject of these appeals....

We request that the Board determine the issue of its jurisdiction to proceed with a hearing on the appeals pursuant to paragraph 95(5)(b)(i) of the *Environmental Protection and Enhancement Act*. Further we request that this jurisdiction issue be determined on the basis of written submissions.”

[7] On October 24, 2005, the AEUB advised the Board that:

“Further to your letter dated September 28, 2005, I can advise that the Alberta Energy and Utilities Board (AEUB) considered an application made by BA Energy Inc. to construct and operate the Heartland Upgrader and associated infrastructure in Decision 2005-079. I attach a copy of this decision and the related Order in Council. The Board has not received a request to review this decision. In a decision dated October 12, 2005, the Alberta Court of Appeal denied an application for leave to appeal the Decision 2005-079”.

[8] In a letter dated October 21, 2005, the Board advised the Participants that in accordance with sections 95(2)(a) and 95(5)(b)(i) of EPEA, the Board must determine whether the issues in the Notices of Appeal have been adequately dealt with by the AEUB. The Board set a schedule to receive written submissions and all submissions were received with the last submission received on December 7, 2005.

[9] On January 10, 2006, the Board received a letter from the Appellants advising that they were withdrawing their appeals, as well as a letter from the Approval Holder acknowledging the withdrawal.

II. DECISION

[10] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, and based on the withdrawal of the appeals by the Appellants, the Board hereby discontinues its proceedings in Appeal Nos. 05-029, 05-030, and 05-031 and closes its file.

Dated on January 18, 2006, at Edmonton, Alberta.

“original signed by”

Steve E. Hrudey, D.Sc. (Eng.), P.Eng.
Chair