

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings - January 24, 2000

IN THE MATTER OF Sections 84, 85, and 87 of the
Environmental Protection and Enhancement Act, (S.A. 1992, ch. E-
13.3 as amended);

-and-

IN THE MATTER OF an appeal filed by the New Dale Hutterian
Brethren with respect to the issuance of Enforcement Order No. 99-
WA-02 by Mr. David Perraton, Lethbridge Area Manager, Prairie
Region, Alberta Environment.

Cite as: New Dale Hutterian Brethren v. Lethbridge Area Manager, Prairie Region,
Alberta Environment.

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BACKGROUND

[1] On November 25, 1999, the Environmental Appeal Board (Board) received a Notice of Appeal and Application for a Stay dated November 25, 1999 from Mr. Alan Harvie, Macleod Dixon on behalf of the New Dale Hutterian Brethren (Appellant) with respect to Enforcement Order No. 99-WA-02 issued to the New Dale Hutterian Brethren by the Lethbridge Area Manager, Prairie Region, Alberta Environment (Department) for lands located near Milo, Alberta for the construction of non-approved drainage works on the lands.

[2] On November 25, 1999 the Board acknowledged receipt of the Notice of Appeal from the New Dale Hutterian Brethren and, at that time requested a copy of all correspondence, documents, and materials relative to the appeal from the Department.

[3] According to standard practice, on November 25, 1999, 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 Boards' legislation. Replies were subsequently received from stating that they did not hold any hearing or review under their respective legislation.

[4] On December 2, 1999, the Board received a letter of December 1, 1999 from Mr. Michael J. Monner of Milo, Alberta, requesting that he wished to be apprised of the developments in this appeal and stated "the drainage ditches in question have resulted in the loss of productivity on part of my land, increased operating costs, have created the development of salinity as well as interfering with the ability for me to access parts of my property." The Board acknowledged receipt of Mr. Monner's letter on December 2, 1999 and advised it would provide copies of all future correspondence.

[5] Further correspondence was received from the Appellant and Mr. Monner on December 21, 1999 and December 20, 1999 respectively regarding the request for a Stay. The Board

advised in a letter of December 22, 1999 that it grants the request for a Stay until 5:00 p.m. on **January 7, 2000**, stating:

“The Department does not oppose the stay request and, while Mr. Monner does oppose the request, his December 20, 1999 letter states that water will not begin to flow through the ditch until at least ‘early March’. Thus, a limited stay will not appear to adversely affect Mr. Monner.

At 9:00 a.m. on January 7, 2000, the Board will convene a brief hearing to decide whether to continue the stay pending all or a portion of the remainder of the appeal.”

[6] On January 4, 2000, copies of the documents requested by the Board were provided by the Department and copies were forwarded to Mr. Monner and the Appellant on January 5, 2000.

[7] The Board conducted a Stay hearing in Calgary on January 7, 2000, and granted Mr. Harvie’s request for a Stay. Specifically, the Board stated, in their letter of January 10, 2000:

“On the consent of all parties, Mr. Harvie’s application for a Stay is granted until 5:00 p.m. on March 1, 2000. Also on the consent of all parties, a Board sponsored mediation/settlement conference will occur at 9:30 a.m. on January 11, 2000 and will be facilitated by Mr. Ron Peiluck, Member of the Board, who will not sit on the appeal panel if a full hearing is subsequently held. This mediation meeting/settlement conference will be held at the Federal Court of Canada, 3rd Floor, 635 - 8 Avenue SW, Calgary, Alberta.

In the event that the mediation/settlement conference does not resolve this appeal, the hearing of the merits will occur on January 27, 2000 and extending, if necessary, into January 28th at the Royal Canadian Legion in Vulcan, Alberta.

Also on the consent of all parties, the due date for all parties for filing written (hearing) submissions is 5:00 p.m., January 24, 2000. The Board’s Notice of Mediation Meeting/Settlement Conference and Public Hearing (attached) contains a deadline of January 17, 2000 for application from others to make represents before the Board.”

[8] As a result of the mediation meeting/settlement conference held on January 11, 2000, status reports became due on January 18, 2000 from all participants. The Board received letters from

all participants as requested. The Appellant stated in their letter of January 17, 2000 to the Department:

“It is our understanding that once these actions have been completed the Enforcement Order will have been complied with and we respectfully request that the Enforcement Order be formally cancelled. Once the Enforcement Order has been cancelled there will be no need for the Appeal before the Environmental Appeal Board and at that time the Brethren will withdraw the Notice of Appeal.”

The Department responded to the Appellant on January 17, 2000 advising:

“Your letter accurately reflects our understanding. The only additional point is that once your clients have carried out the work in filling in the ditch, Alberta Environment will want to inspect the site to ensure that the Enforcement Order has been properly complied with. At that point, the Enforcement Order would be removed and the Department would confirm this in writing.”

[9] A further response was received from the Appellant to the Board on January 18, 2000 stating that:

“The New Dale Hutterian Brethren has instructed us to advise you it will not be proceeding with its appeal of Enforcement Order No. 99-WA-02.”

DECISION

[10] Pursuant to Section 87(7) of the *Environmental Protection and Enhancement Act*, and based on Mr. Harvie’s letter of January 18, 2000, the Board hereby discontinues its proceedings in Appeal No. 99-166 and will be closing its file. The Board commends and thanks all the parties for their willingness to participate in settlement discussions.

Dated January 24, 2000 at Edmonton, Alberta.



Dr. William A. Tilleman, Q.C.