



Environmental Review Tribunal

Case Nos.: 07-009/07-010/07-011/07-012/
07-013/07-014/07-015/07-016

Baker v. Directors, Ministry of the Environment

In the matter of appeals by Martin J. Hauschild and William Kelley Hineman on behalf of Loyalist Environmental Coalition; Lake Ontario Waterkeeper and Gordon Downie; Gordon Downie, Gordon Sinclair, Robert Baker, Paul Langlois and John Fay filed April 18, 2007; and by Susan Quinton on behalf of Clean Air Bath filed April 19, 2007, for a Hearing before the Environmental Review Tribunal pursuant to section 139 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended, as a result of a Decision of the Environmental Review Tribunal, dated April 4, 2007, granting Leave to Appeal to Susan Quinton on behalf of Clean Air Bath; Martin Hauschild and William Kelley Hineman on behalf of Loyalist Environmental Coalition; Lake Ontario Waterkeeper and Gordon Downie; and Gordon Sinclair, Robert Baker, Gordon Downie, Paul Langlois and John Fay under section 41 of the *Environmental Bill of Rights, 1993*, S.O. 1993, c. 28, as amended, with respect to Amended Certificate of Approval (Air) Number 3479-6RKVHX issued by the Director, Ministry of the Environment, on December 21, 2006 under section 9 of the *Environmental Protection Act* for air emissions from a cement manufacturing facility located at Lots 5 and 6, Concession 1, Loyalist Township in the County of Lennox and Addington, Ontario; and

In the matter of appeals by Martin J. Hauschild and William Kelley Hineman on behalf of Loyalist Environmental Coalition; Lake Ontario Waterkeeper and Gordon Downie; Gordon Downie, Gordon Sinclair, Robert Baker, Paul Langlois and John Fay filed April 18, 2007; and by Susan Quinton on behalf of Clean Air Bath filed April 19, 2007, for a Hearing before the Environmental Review Tribunal pursuant to section 139 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended, as a result of a Decision of the Environmental Review Tribunal, dated April 4, 2007, granting Leave to Appeal to Susan Quinton on behalf of Clean Air Bath; Martin Hauschild and William Kelley Hineman on behalf of Loyalist Environmental Coalition; Lake Ontario Waterkeeper and Gordon Downie; and Gordon Sinclair, Robert Baker, Gordon Downie, Paul Langlois and John Fay under section 41 of the *Environmental Bill of Rights, 1993*, S.O. 1993, c. 28, as amended, with respect to Provisional Certificate of Approval (Waste Disposal Site) Number 8901-6R8HYF issued by the Director, Ministry of the Environment, on

December 21, 2006, under section 39 of the *Environmental Protection Act* for the operation of a waste disposal site located at 6501 Highway 33, Loyalist Township in the County of Lennox and Addington, Ontario; and

In the matter of a status update conducted by teleconference on July 14, 2008 commencing at 10:00 a.m.

Before: Dirk VanderBent, Vice- Chair

Appearances:

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| Marlene Cashin | - | Counsel for the Appellants, Martin J. Hauschild and William Kelley Hineman on behalf of Loyalist Environmental Coalition |
| Richard D. Lindgren and Joseph F. Castrilli | - | Counsel for the Appellants, Lake Ontario Waterkeeper and Gordon Downie |
| Joseph F. Castrilli | - | Counsel for the Appellants, Gordon Sinclair, Robert Baker, Gordon Downie, Paul Langlois and John Fay |
| Tony Fleming | - | Counsel for the Other Party, the City of Kingston |
| David Crocker, Liliane Gingras, and Jonathan Davis-Sydor | - | Counsel for the Instrument Holder, Lafarge Canada Inc |
| Isabelle O'Connor and Sylvia Davis | - | Counsel for the Directors, Ministry of the Environment |

Dated this 18th day of July, 2008

Reasons for Decision

Background:

On December 21, 2006, pursuant to section 9 of the *Environmental Protection Act* (“EPA”), Victor Low, Director, Ministry of the Environment (“MOE”) issued Amended Certificate of Approval (Air) Number 3479-6RKVHX (the “section 9 CofA”) to Lafarge Canada Inc. (“Lafarge”) for the operation of a Portland cement manufacturing facility located at Lots 5 and 6, Concession 1, Loyalist Township, in the County of Lennox and Addington, Ontario. Also on December 21, 2006, pursuant to section 39 of the *EPA*, Tesfaye Gebrezghi, Director, MOE, issued Provisional Certificate of Approval (Waste Disposal Site) Number 8901-6R8HYF (the “section 39 CofA”) to Lafarge for the operation of a waste disposal site at 6501 Highway 33, Loyalist Township, in the County of Lennox and Addington, Ontario. Directors Low and Gebrezghi are referred to collectively as “the Directors”.

In *Dawber v. Director, Ministry of the Environment*, 28 C.E.L.R. (3d) 281, Bruce Parry, Member of the Environmental Review Tribunal (the “Tribunal”), on April 4, 2007, granted the Appellants leave to appeal both CofAs (the “Leave to Appeal Decision”).

Further background to this proceeding is provided in the previous Orders of the Tribunal dated October 4, 2007, November 20, 2007, January 7, 2008, and February 8, 2008.

A status update hearing was held by teleconference on July 14, 2008, in accordance with the Tribunal’s Order dated February 8, 2008. Counsel participated on behalf of all Parties. No one appeared on behalf of Clean Air Bath, Ms. Quinton having advised the Tribunal by email that she would not be able to attend. The Tribunal advised that the Panel Side Members, Joyce Young and Heather Gibbs, had withdrawn from the Hearing Panel due to personal commitments.

The purpose of this status update was to review whether the Divisional Court has rendered its decision respecting Lafarge’s application for judicial review of the Leave to Appeal Decision. The Divisional Court released its decision on June 18, 2008, upholding the Tribunal’s Leave to Appeal Decision. LaFarge has now instituted a Motion before the Court of Appeal, requesting leave to appeal the decision of the Divisional Court. Counsel agree that this proceeding will likely be completed in late October 2008. By letter dated July 9, 2008, Mr. Crocker, on behalf of his client, advised that Lafarge has reconsidered its position. In this correspondence, he confirms

that Lafarge will withdraw its application for the two CofAs if the Court of Appeal does not grant Lafarge's motion requesting leave to appeal the decision of the Divisional Court. In oral submissions, Mr. Crocker explained that a Hearing before the Tribunal will not be required regardless of the outcome of proceedings in the Court of Appeal. He asserts that if leave to appeal is granted, the Court of Appeal will either uphold the Tribunal's decision granting Leave to Appeal (at which time Lafarge will withdraw its application for the two CofAs), or the Court of Appeal will overturn the Tribunal's Decision, and rescind the Tribunal's Decision granting Leave to Appeal. He, therefore, submitted that the current Hearing dates should be cancelled and that new Hearing dates are not required. All other Counsel agreed with this submission. Counsel also agreed to an Order staying any procedural requirements specified in the previous Orders of the Tribunal, which have not already been completed or fulfilled, provided that the stay is granted without prejudice to any claim for costs if this matter does not proceed to a Hearing. Finally, the Parties agreed that this proceeding should be adjourned for a further status update teleconference to be held on October 29, 2008 at 10:00 a.m. to review whether the Court of Appeal has rendered its decision respecting Lafarge's Motion requesting leave to appeal the decision of the Divisional Court.

Order

1. The dates for the main Hearing scheduled in 2008 on September 22-25; October 6-7, 8 (morning only), 14-17, 20-23, and 27-30; November 3-6, 12-14, 17-20, and 24-27; and December 1-4, and 9-11, are cancelled.
2. Any procedural requirements specified in previous Orders of the Tribunal that have not already been completed or fulfilled, are stayed without prejudice to any claim for costs if this matter does not proceed to a Hearing.
3. A status update teleconference will be conducted on October 29, 2008, at 10:00 a.m. to review whether the Court of Appeal has rendered its decision respecting Lafarge's Motion requesting leave to appeal the decision of the Divisional Court. The Case Manager will contact the Parties to advise of the code to access the teleconference.

*Hearing Dates Cancelled
Procedural Orders Stayed
Teleconference Scheduled*



Dirk VanderBent, Panel Chair

Appendix A

List of Parties

Appellants: Robert Baker, Gordon Downie, John Fay, Martin J. Hauschild and William Kelley Hineman on behalf of Loyalist Environmental Coalition, Lake Ontario Waterkeeper, Paul Langlois and Gordon Sinclair

Susan Quinton on behalf of Clean Air Bath

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