
ALBERTA
ENVIRONMENTAL APPEAL BOARD

Report and Recommendations

Date of Report and Recommendations – August 1, 2000

IN THE MATTER OF sections 84, 85, 87, 92 and 93 of the
Environmental Protection and Enhancement Act, S.A. 1992, c. E-
13.3;

-and-

IN THE MATTER OF an appeal filed by Mr. Eugene P. Cyr with
respect to Approval 00074194-00 issued under the *Water Act* to the
Town of Pincher Creek by the Regional Water Manager, Prairie
Region, Alberta Environment.

Cite as: Eugene P. Cyr v. Regional Water Manager, Prairie Region, Alberta Environment
re: Town of Pincher Creek.

MEDIATION MEETING BEFORE

Dr. John P. Ogilvie, Deputy Chair.

APPEARANCES

Appellant:	Mr. Eugene P. Cyr, represented by Mr. Michael Swanson, Beaumont Church.
Approval Holder:	Mr. Leo Ludwig, representing His Worship Mayor Art Bonertz, Town of Pincher Creek. Mr. Ralph Bourque, Mr. John Marcellus.
Director:	Mr. Dave McGee, Regional Water Manager, Prairie Region, Alberta Environment, represented by Ms. Charlene Graham, counsel, Alberta Justice.
Board:	Mr. Gilbert Van Nes, General Counsel and Settlement Officer.

TABLE OF CONTENTS

I. BACKGROUND	1
II. THE MEDIATION MEETING/SETTLEMENT CONFERENCE	3
III. RECOMMENDATIONS	5
IV. DRAFT MINISTERIAL ORDER.....	6
V. RESOLUTION.....	8

I. BACKGROUND

[1] On April 12, 2000, the Regional Water Manager, Prairie Region, Alberta Environment (“Director”), issued Approval 00074194-00 under the *Water Act* to the Town of Pincher Creek (“Approval Holder”) for the construction of Stormwater Drainage Works in the SW 23-6-30-W4 discharging into Kettles Creek in Pincher Creek, Alberta.

[2] On April 17, 2000, the Environmental Appeal Board (“Board”) received via fax a Notice of Appeal dated April 17, 2000, from Mr. Eugene P. Cyr (“Appellant”), objecting to the Approval.

[3] The Board wrote to the Appellant on April 18, 2000, acknowledging receipt of the Notice of Appeal, and also wrote to the Director requesting that they provide copies of all related correspondence, documents and materials related to this matter. On that same date the Board provided the Approval Holder with a copy of the Notice of Appeal.

[4] According to standard practice, on April 18, 2000, 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 both the NRCB and the AEUB stating that neither Board held a hearing or review.

[5] The Board received the documents requested from the Director and forwarded them to the parties on April 28, 2000.

[6] On May 1, 2000, the Board wrote to the Appellant, the Approval Holder and the Director requesting that the parties advise whether they wished to have a mediation meeting/settlement conference under section 11 of the Environmental Appeal Board Regulation¹ and if there were any other persons who may have an interest in the appeal. The Appellant was requested to explain how he was directly affected by the decision of the Director and to explain in more detail the environmental concerns he had with that decision. Responses were due from the parties on May 15, 2000.

[7] On May 11, 2000, the Board wrote to the parties regarding a telephone call received from Counsel for the Appellant requesting an extension to the May 15, 2000 deadline to respond to the Board's letter of May 1, 2000. The Board extended the deadline to May 31, 2000.

[8] The Director responded to the Board's May 1, 2000 letter on May 24, 2000, advising that they were willing to participate in a mediation meeting/settlement conference.

[9] On June 7, 2000, the Board wrote to the parties acknowledging the Director's letter of May 24, 2000. The Board also acknowledged a voice mail, of May 30, 2000, received from Mr. Swanson, Counsel for the Appellant whereby Mr. Swanson had requested an additional month to address the questions posed to the Appellant in the Board's letter of May 1, 2000. It was also indicated that the Appellant had retained an engineering consulting firm and that the report being prepared was relevant to determining as to whether the Appellant was directly affected.

[10] In its June 7, 2000 letter to the parties, the Board advised that Mr. Swanson's request would be granted subject to any concerns by any of the other parties to the appeal. The Board,

¹ A.R. 114/93 (the "regulations").

however, did raise a concern with the extension in that the Approval in question included a provision that all work was to be completed by June 30, 2000. It was the Board's understanding that the June 30, 2000 requirement did not relate to an environmental concern. The Board requested that the

-3-

parties address the issue among themselves and requested that once Mr. Swanson had reviewed the engineering report, that he provide a copy to the Board and the other parties to the appeal no later than June 28, 2000.

[11] On June 8, 2000, the Board received a letter from the Approval Holder, in response to the Board's letter of June 7, 2000. The Approval Holder indicated that they were strongly opposed to the tentative approval for extension, and requested that it be denied. They felt that the Appellant had had more than adequate time to respond.

[12] The Board acknowledged the concerns raised by the Approval Holder in a letter of June 12, 2000 and requested that the Appellant provide copies of the engineering report to each of the parties by the close of business on June 22, 2000. The Board requested that the parties provide their response to the questions posed in the Board's letters of May 1, 2000 by June 23, 2000 and indicated its intention to proceed to a mediation meeting. The Board also advised of its understanding that in response to this information, the Director would consider the extension of the June 30, 2000 construction deadline, included in the Approval, in order to accommodate the appeal.

[13] The Board advised the parties in its letter of June 15, 2000 that a mediation meeting would be held on June 27, 2000 in Pincher Creek. An advertisement was placed in the Pincher Creek Echo on June 20, 2000 advising of the mediation meeting.

II. THE MEDIATION MEETING/SETTLEMENT CONFERENCE

[14] Pursuant to section 11 of the Regulations the Board conducted a mediation

meeting/settlement conference in Pincher Creek, Alberta on June 27, 2000, with Dr. John Ogilvie as presiding Board member.

-4-

[15] According to the Board's standard practice the Board called the mediation meeting in an attempt to mediate or facilitate through a settlement conference the resolution of this appeal; or failing that, to structure procedural arrangements for the oral hearing. The Board invited representatives from each party to participate in the mediation meeting.

[16] In conducting the mediation meeting, Dr. Ogilvie reviewed the appeal and mediation process and explained the purpose of the mediation meeting. He then circulated copies of the AParticipants' Agreement to Mediate and all participants signed.

[17] At the mediation meeting on June 27, 2000, the parties agreed to schedule a second mediation for July 18, 2000, in Pincher Creek.

[18] Following productive and detailed discussions, at the continuation of the mediation meeting on July 18, 2000, a resolution evolved and the attached settlement was signed (page 8 of this report).

[19] On July 25, 2000, the Board received a letter from the Town of Pincher Creek enclosing the Resolution. The letter of July 25, 2000, states the following:

“...The tentatively agreed to resolution was ratified in full at the July 24, 2000 Council meeting.

I trust that this satisfies the requirements of clause (4) of the resolution. Thank you for your efforts in reaching this resolution at the mediation phase.”

III. RECOMMENDATIONS

[20] The Board recommends that the Minister of Environment approve the conditions of the Resolution contained herein.

[21] Attached for the Minister's consideration is a draft Ministerial Order implementing this recommendation.

[22] Further, with respect to section 92(2) and 93 of the *Environmental Protection and Enhancement Act*, the Board recommends that copies of this Report and Recommendations and of any decision by the Minister be sent to the following parties:

- Mr. Michael Swanson, Counsel, Beaumont Church, representing Mr. Eugene P. Cyr;
- Ms. Charlene Graham, Counsel, Alberta Justice, representing the Regional Water Manager, Prairie Region, Alberta Environment; and
- Mr. Leo Ludwig, representing the Town of Pincher Creek.

Dated August 1, 2000, at Edmonton, Alberta.

“original signed by”

Dr. John P. Ogilvie

IV. DRAFT MINISTERIAL ORDER

**Ministerial Order
/2000**

Environmental Protection and Enhancement Act

S.A. 1992, c.E-13.3,

Water Act

S.A. 1996, c.W-3.5.

Order Respecting EAB Appeal No. 00-014

I, Halvar Jonson, Minister of Environment, pursuant to s.92(1) of *the Environmental Protection and Enhancement Act*, S.A. 1992, c.E-13.3, make the order in the attached Appendix.

Dated at City of Edmonton in the Province of Alberta, this ____ day of _____ 2000.

Halvar Jonson
Minister of Environment

Draft Appendix
Order Respecting EAB Appeal No. 00-014

The decision of the Director, Mr. Dave McGee, Regional Water Manager, Prairie Region, Alberta Environment to issue Approval 00074194-00 under the *Water Act* S.A. 1996 c.W-3.5 to the Town of Pincher Creek on April 12, 2000 is varied as follows:

1. The expiry date is varied by deleting “April 12, 2025” and replacing it with “April 12, 2010”.
2. Condition 7 is varied by deleting the phrase “shall be completed by June 30, 2000” and replacing it with “shall be completed by October 31, 2000”.

RESOLUTION OF APPEAL NO. 00-014 REGARDING APPROVAL NO. 00074194-00-00/WATER ACT ISSUED TO THE TOWN OF PINCHER CREEK ON APRIL 12, 2000, BY ALBERTA ENVIRONMENT, TO CONSTRUCT STORMWATER DRAINAGE WORKS IN THE SW 23-6-30-W4 DISCHARGING INTO KETTLES CREEK IN THE NW 14-6-30-W4, PINCHER CREEK, ALBERTA.

All parties to the appeal have agreed to the following terms and conditions:

1. The expiry date of Approval No. 00074194-00-00 is amended by deleting "April 12, 2025" and replacing it with "April 12, 2010".
2. Condition 7 of Approval No. 0007419-00-00 is amended by deleting the phrase "shall be completed by June 30, 2000" and replacing it with "shall be completed by October 31, 2000".
3. The Appellant, Mr. Eugene Cyr, withdraws his Notice of Appeal.
4. This agreement is subject to ratification by the Town Council of the Town of Pincher Creek. The Town agrees to present this agreement to the Town Council on or before July 25, 2000. The Town agrees to notify the parties and the Board as to whether this agreement has been accepted by the Town Council on or before July 28, 2000.

RESOLUTION AGREED TO BY:

“original signed by” _____ DATE: July 18, 2000

Mr. Eugene Cyr
Represented by Mr. Michael Swanson, Beaumont Church

“original signed by” _____ DATE: July 18, 2000

Leo Ludwig on behalf of
His Worship Mayor Art Bonertz, Town of Pincher Creek

“original signed by” _____ DATE: July 18, 2000

Mr. Dave McGee
Regional Water Manager, Prairie Region, Alberta Environment
Represented by Ms. Charlene Graham

This agreement is accepted by the Town Council of the Town of Pincher Creek.

“original signed by” _____ DATE: July 18, 2000

His Worship Mayor Art Bonertz, Town of Pincher Creek



ALBERTA ENVIRONMENT

Office of the Minister

Ministerial Order
73/2000

Environmental Protection and Enhancement Act
S.A. 1992, c.E-13.3.

Water Act
S.A. 1996, c.W-3.5.

Order Respecting EAB Appeal No. 00-014

I, Halvar Jonson, Minister of Environment, pursuant to section 92(1) of *the Environmental Protection and Enhancement Act*, S.A. 1992, c.E-13.3, make the order in the attached Appendix.

Dated at City of Edmonton in the Province of Alberta, this 28 day of August, 2000.

A handwritten signature in black ink, appearing to read 'Halvar Jonson', written over a horizontal line.

Halvar Jonson
Minister of Environment

228 Legislature Building, Edmonton, Alberta, Canada T5K 2B6 Telephone 780/427-2391 Fax 780/422-6259

Printed on recycled paper

Appendix

Order Respecting EAB Appeal No. 00-014

The decision of the Director, Mr. Dave McGee, Regional Water Manager, Prairie Region, Alberta Environment to issue Approval 00074194-00 under the *Water Act*, S.A. 1996, c.W-3.5 to the Town of Pincher Creek on April 12, 2000 is varied as follows:

1. The expiry date is varied by deleting "April 12, 2025" and replacing it with "April 12, 2010".
2. Condition 7 is varied by deleting the phrase "shall be completed by June 30, 2000" and replacing it with "shall be completed by October 31, 2000".