
ALBERTA
ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

Date Discontinuance of Proceedings – October 11, 2000

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

-and-

IN THE MATTER OF an appeal filed on February 24, 2000 by Mr. Charles Kazmierczak with respect to Approval No. 80-ML-012-R3'93 issued to the County of Athabasca No. 12 by the Director, Northeast Boreal Region, Alberta Environment.

Cite as: Kazmierczak v. Director, Northeast Boreal Region, Alberta Environment,
re: County of Athabasca No. 12.

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BACKGROUND

[1] On February 16, 1999, the Director, Northeast Boreal Region, Alberta Environment (Department) issued an extension until February 1, 2000, for Approval 80-ML-012-R3'93, which was initially issued on February 3, 1993 to the County of Athabasca No. 12 (Approval Holder). The Approval authorizes the County of Athabasca to operate or use a wastewater collection system and wastewater stabilization ponds for the Hamlet of Grassland.

[2] On February 24, 1999, the Environmental Appeal Board (Board) received a Notice of Appeal from Mr. Charles Kazmierczak (Appellant), appealing the Approval.

[3] On February 25, 1999, the Board acknowledged receipt of the Appellant's Notice of Appeal and, at that time requested a copy of all correspondence, documents and materials relative to the appeal from the Department. On this same date the Board also provided the Approval Holder with a copy of the Notice of Appeal.

[4] According to standard practice, on February 25, 1999, the Board wrote to the Natural Resources Conservation Board (NRCB) and the Alberta Energy and Utilities Board (AEUB) asking whether this matter has been the subject of a hearing or review under their respective Boards' legislation. A reply was received from the NRCB on March 2, 1999 and the AEUB on May 31, 1999 stating that they did not hold any hearing or review under their legislation.

[5] On April 16, 1999, the Board received all relevant documents with respect to the appeal from the Department, and a copy was forwarded to the Appellant and to the Approval Holder on April 20, 1999.

[6] On April 27, 1999, the Board wrote to the Appellant, the Approval Holder and the Department, asking if 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 also asked to provide additional information with respect to his Notice of Appeal.

[7] Replies to the Board' letter of April 27, 1999, were subsequently received from the Approval Holder on April 30, 2000, from the Department on May 3, 1999 and from the Appellant on May 3, 1999.

[8] In their letter of May 3, 1999, the Department advised that they were prepared to participate in a mediation meeting and provided the names of Mr. and Mrs. Jim Zachkewich as persons who may have an interest in this appeal. The Department also raised some preliminary matters, stating:

“As the Appellant has not provided detailed information, the Director reserves the right to address the “directly affected” issue in relation to this appeal...The Notice of Appeal filed indicates that the Appellant objects to the operation of the Grassland Wastewater System. The Notice of Appeal does not object to the extension of the term of the approval. The decision made by the Director was solely the extension of the approval for a period of one year. The Director did not issue an approval renewal but extended the existing approval until February 1, 2000. The Director submits that the only issue for appeal is the extension of the approval. The extension of the approval does not open the entire approval to appeal. The Director submits that the Appellant has not raised an objection to the decision that has actually been made by the Director. The Director requests that the appeal be dismissed for lack of substance.”

[9] On May 4, 1999, the Board forwarded the Department's May 3, 1999 letter to the Appellant and Approval Holder and requested that they provide their comments regarding the Department's letter, to the Board.

[10] On May 6, 1999, the Board received a letter from the Approval Holder advising that they concurred with the comments made by the Department in their letter of May 3, 1999.

[11] On May 9, 1999, the Appellant provided his comments to the Board, regarding the Departments letter of May 3, 1999 in a letter stating:

“It is my understanding that if the County's application for extension was rejected it would be because the waste water system was not operated properly or because of environmental concerns and the problems would have to be corrected before an extension of approval would be granted.

Past inspectors have expressed concerns since day 1, and the way things have been handled since that day are questionable, should be noted and shouldn't be kept quiet.

In my opinion that if we were to meet with the board and discuss what has happened since the beginning then a better understanding and solution could be accomplished.”

[12] The Board reviewed the parties' responses and in its letter of May 29, 1999 advised that a mediation meeting/settlement conference would be held on June 23, 1999 at the residence of the Appellant in Grassland. An advertisement was placed in the June 1, 1999 Athabasca Advocate advising of the mediation meeting.

THE MEDIATION MEETING/SETTLEMENT CONFERENCE

[13] Pursuant to section 11 of the regulations the Board conducted a mediation meeting/settlement conference in Grassland, Alberta on June 23, 1999, with Dr. Ted Best as presiding Board member.

[14] 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.

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

[16] At the mediation meeting on June 23, 1999 an Interim Mediation Agreement was signed by all parties. It was agreed that the Approval Holder would retain an independent engineering firm to conduct a preliminary study on the southwest portion of Cell #1, to determine and study the extent of seepage as well as a suggested course of action for correcting any problems. The preliminary study was to be reviewed by the Department in consultation with the Appellant and Approval Holder. The parties also agreed to hold the appeal in abeyance until September 1, 1999. At that time, the parties were to provide a status report to the Board outlining their progress and how they wished to proceed with the appeal.

[17] On September 7, 1999, the Board received a letter from the Approval Holder stating:

"...A copy of Associated Engineering's report is attached and it appears that there is no evidence that seepage from the lagoon is taking place. We would therefore, respectfully suggest that this appeal should be dismissed."

[18] The Department wrote to the Board in a letter dated September 9, 2000, stating:

“We acknowledge receipt of the Associated Engineering Report dated September 3, 1999. Please be advised that Alberta Environment has only conducted an internal review of the Report. In accordance with clause 3 of the Mediation Agreement, the Report still requires a review in consultation with the Appellant and the County. Therefore, we submit that the file should be held in further abeyance to allow for review of the Report by all parties.”

[19] On September 9, 2000, the Appellant wrote to the Board stating:

“The County of Athabasca and their chosen Engineering Firm which I so strongly objected to using have broken the mediation agreement. In the first week of August I had made several attempts to get the material and information from the tests done on July 22nd but was unable to do so.

Also there are inefficiencies in the testing and the recording of information from those tests, and the water that was tested was from what I believe to be a deeper underground source....I am politely requesting that a second mediation meeting be held with possibly some environmental experts present to answer questions.”

[20] The Board requested on September 24, 1999, the parties provide their available dates for a mediation meeting as a result of the recent correspondence received from the parties. On September 29, 1999, the parties were advised that a mediation meeting would be held on December 17, 1999 at the Appellant’s residence in Grassland.

[21] On December 15, 1999, the Board received a letter from Mr. Jason Krips, Wilson & Hurlburt. Mr. Krips advised that he had been retained by Mr. Kazmierczak and requested that Board adjourn the mediation meeting set for December 17, 1999, so that his office could properly prepare. The Board granted Mr. Krips’ request to re-schedule the mediation meeting. The Board advised the parties on January 10, 2000 that a mediation meeting would be held on February 10, 2000 at the office of the Board. A Notice of Mediation Meeting/Settlement Conference and Public Hearing was placed in the January 18, 2000 Athabasca Advocate.

[22] At the mediation meeting on February 10, 2000, the parties agreed to hold the appeal in abeyance and another mediation meeting was set for May 2, 2000, with a status report due, on April 24, 2000, from all the parties, confirming their attendance at the mediation meeting or outlining the status of their discussion and potential hearing date.

[23] On May 1, 2000, the Board received a letter from counsel for the Appellant advising that the Appellant and the Department had agreed to adjourn *sine die* the mediation meeting of May 2, 2000. The Board also received a letter from the Department on that day confirming that they agreed to the adjournment and advising that the parties were continuing to work on the Mediation Agreement.

[24] As the Approval Holder had also agreed verbally to the adjournment, the Board granted the request in its May 1, 2000 letter, and asked the parties to provide a status report, to the Board, by May 15, 2000.

[25] The Department provided a status report to the Board on May 16, 2000, advising that they understood that counsel for the Appellant would be amending the draft agreement and would be circulating the next draft version of the agreement among the parties for comment. The Board then requested on May 16, 2000 that the parties provide a further status report by May 31, 2000.

[26] The Board received a further letter from the Department on June 22, 2000 advising that developments in the appeal had been most positive and that a resolution appeared imminent. The Department also requested a further adjournment for one month pending possible withdrawal of the appeal by the Appellant. The Board consulted with the parties on June 22, 2000 and as there were no objections from the other parties, the Board granted the request and asked for status reports by July 22, 2000.

[27] On July 18, 2000, the Board received a letter from counsel for the Appellant, withdrawing the appeal on behalf of his client. The letter stated:

“Mr. Kazmierczak, the County of Athabasca, and Alberta Environment have reached a resolution of the above noted appeal through the execution of a mediation agreement.

As a result, Mr. Kazmierczak formally withdraws his appeal of this matter.”

DECISION

[28] Pursuant to section 87(7) of the *Environmental Protection and Enhancement Act*, and based on Mr. Krips’ (counsel for the Appellant) letter of July 18, 2000, the Board hereby discontinues its proceedings in Appeal No. 99-004 and will be closing its file.

Dated October 11, 2000 at Edmonton, Alberta.

William A. Tilleman, Q.C.