
ALBERTA ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings: March 20, 2002

IN THE MATTER OF sections 91, 92 and 95 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 and section 115 of the *Water Act*, R.S.A. 2000, c. W-3;

-and-

IN THE MATTER OF appeals filed by Vant Erve Dairy Ltd., Mr. Ashley and Ms. Dorothy Heggelund, and Mr. Robert Hill, with respect to Approval No. 00150120-00-00 issued under the *Water Act* by the Director, Northwest Boreal Region, Regional Services, Alberta Environment, to D. Ray Construction Ltd., authorizing the drainage of groundwater from a gravel pit at NE 28-071-10-W6M and SE 33-071-10-W6M, near Beaverlodge, Alberta.

Cite as: *Vant Erve Dairy Ltd. et al. v. Director, Northwest Boreal Region, Regional Services, Alberta Environment, re: D. Ray Construction Ltd.*

EXECUTIVE SUMMARY

Alberta Environment issued an Approval under the *Water Act* to D. Ray Construction Ltd., which authorized the draining of groundwater from a gravel pit near Beaverlodge, Alberta. The Environmental Appeal Board received three appeals opposing the Approval.

The Board conducted a number of mediation meetings and settlement conferences in an effort to assist the parties in resolving their appeals. At the mediation meetings and settlement conferences the parties agreed to continue discussions to resolve the appeals.

After seven extensions had been granted at the request of the parties to continue settlement discussions, it appeared to the Board that the parties were still unable to reach a resolution. Therefore, the Board scheduled a hearing for March 13, 2002, in Grande Prairie, Alberta, to hear the appeals.

On March 6, 2002, the Appellants withdrew their appeals. The Board therefore closes its files in this matter.

BEFORE

William A. Tilleman, Q.C., Chair

PARTIES

Appellants: Mr. Albert and Mr. Bert Vant Erve of Vant Erve Dairy Ltd., Mr. Ashley and Ms. Dorothy Heggelund, and Mr. Robert Hill, represented by Mr. Gordon Chrenek, Mr. Lewis Chrenek.

Director: Mr. Nico Wyngaarden, Director, Northwest Boreal Region, Regional Services, Alberta Environment, and Mr. Rob George, Alberta Environment, represented by Mr. Randy Didrikson, Alberta Justice.

Approval Holder: Mr. Dennis and Mr. Derek Ray, D. Ray Construction Ltd., represented by Mr. Bradley Gilmour, Bennett Jones.

Board Staff: Ms. Lisa Awid and Ms. Denise Black.

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I. BACKGROUND

[1] On May 18, 2001, the Director, Northwest Boreal Region, Regional Support, Alberta Environment (the “Director”) issued Approval 001501200-00-00 (the “Approval”) under the *Water Act*, R.S.A. 2000, c. W-3,¹ to D. Ray Construction Ltd. (the “Approval Holder”). The Approval authorizes D. Ray Construction Ltd. to drain groundwater from a gravel pit at NE 28-071-10-W6M and SE 33-071-10-W6M near Beaverlodge, Alberta.

[2] The Environmental Appeal Board (the “Board”) received Notices of Appeal on May 28, 2001, from Mr. Albert and Mr. Bert Vant Erve of Vant Erve Dairy Ltd., on May 29, 2001, from Mr. Ashley and Ms. Dorothy Heggelund, and on June 1, 2001 from Mr. Robert Hill (collectively the “Appellants”).

[3] The Board acknowledged the Notices of Appeal on May 29 and June 4, 2001, notified the Director and the Approval Holder of the appeals, and requested the Director provide the records (the “Record”) related to the appeals to the Board. The Board received the Record from the Director on June 12, 2001, and provided copies to the Appellants and the Approval Holder.

[4] According to standard practice, the Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board asking whether this matter had been the subject of a hearing or a review under their Boards’ respective legislation. Both Boards responded in the negative.

[5] In consultation with all Parties, the Board scheduled a mediation meeting/settlement conference on June 26, 2001, in Beaverlodge, Alberta.

II. THE MEDIATION MEETING/SETTLEMENT CONFERENCE

[6] Pursuant to section 11 of the Environmental Appeal Board Regulations, A.R. 114/93, the Board conducted a mediation meeting and settlement conference in Beaverlodge, Alberta on June 26, 2001, with Dr. M. Anne Naeth as presiding Board member.

¹ The *Water Act*, R.S.A. 2000, c.W-3, replaced the *Water Act*, S.A. 1996, c. W-3.5, on January 1, 2002.

[7] Following detailed mediation discussions, the Parties agreed to an interim resolution, and that the Board would hold these appeals in abeyance with the Parties providing the Board with a written status report by July 30, 2001. The Parties were also requested to advise the Board if they wished the mediator, Dr. Naeth, to participate further in the completion of the details of the settlement.

[8] At the request of the Appellants, the Board granted further abeyances of these appeals on August 7, 2001, and again on August 13, 2001. On August 13, 2001, the Parties were asked to provide a status report to the Board by August 17, 2001, or to provide available dates for further mediation or a hearing. Status reports were received and the Board advised the Parties on September 20, 2001 that it would like to proceed to a second mediation meeting and settlement conference via teleconference. This eventually occurred.

[9] On November 19, 2001, the Board received a status report from the Approval Holder requesting an extension. The Board granted the extension as the Parties were continuing to work towards a resolution, and the Board requested written status reports by November 28, 2001. On November 20, 2001, the Board acknowledged receipt of a status report from the Director in which he advised that the "...Department is not involved in the negotiations and will therefore, not have anything to report...."

[10] On November 27 and 28, 2001, the Board received letters from the Approval Holder and the Appellants in which the Approval Holder requested a further abeyance as the Parties were still working towards a resolution. The Board granted the extension and requested that the Parties provide a written status report confirming resolution of the appeals or providing available dates for a mediation meeting and settlement conference or hearing to the Board by December 12, 2001. There were several other extensions granted.²

² On December 12, 2001, counsel for the Approval Holder advised the Board that he had prepared a draft settlement, but at that time had not heard back from his clients. He requested a further two-week abeyance. The abeyance was granted by the Board and a written status report was to be provided by December 28, 2001.

On December 17, 2001, the Appellants requested the abeyance be extended to January 10, 2002. The abeyance was again granted by the Board with written status reports to be provided to the Board by January 10, 2002.

On January 10, 2002, the Board received a letter from the Approval Holder advising that a letter concerning a settlement proposal had been sent to the Appellants, and that a response had not been received.

III. THE HEARING

[11] On February 8, 2002, the Board advised the Parties that seven extensions had been granted and no further extensions would be permitted. In this same letter, the Board advised the Parties that on February 12, 2002, a hearing date for March would be set, and therefore, the Parties were requested to provide their available dates for March to the Board by February 12, 2002.

[12] On February 15, 2002, the Board acknowledged receipt of available dates from the Parties. The Appellants asked that the hearing be moved to June 2002, but was advised by the Board that the hearing would be set for March. Two March dates were provided to the Parties, asking for their preference. On February 19, 2002, the Board received a letter of the same date, from counsel for the Appellants advising that he could not attend a hearing in March, and he would provide his clients with a referral to obtain new counsel.

[13] On February 25, 2002, the Board acknowledged letters dated February 19 and 21, 2002, from the Appellants, and letters dated February 20, 2002, from the Approval Holder and the Director. The Board advised that these appeals had been outstanding since June 1, 2001, that a total of seven extensions had been granted to the Parties, and that a hearing would take place on March 13, 2002, in Grande Prairie, Alberta. Written submissions from the Parties and exhibits were to be provided to the Board by March 6, 2002. A Notice of Public Hearing was published in the *Beaverlodge Advertiser* on March 6, 2002.

On January 11, 2002, the Board received a status report from counsel for the Appellants in which he advised that the proposal had been forwarded to his clients, and he was waiting for instructions. The Board acknowledged this letter and requested the Appellants provide a status report by January 16, 2002.

On January 18, 2002, the Board advised the parties that if a settlement was not concluded by January 21, 2002, that the Board would be proceeding to a hearing on February 15, 2002. On the same date, the Approval Holder requested that the Board extend the deadline to January 25, 2002, for the Parties to reach a settlement. On January 22, 2002, the Board advised the Parties that the settlement deadline had been extended to January 25, 2002, at which time, if a settlement had not been reached, the hearing would proceed on February 15, 2002.

On January 29, 2002, the Board acknowledged letters dated January 25, 2002, from the Director and the Approval Holder and January 28, 2002, from the Appellants and the Approval Holder, advising the hearing date of February 15, 2002 was not suitable for the Parties and their witnesses. The Board requested that all Parties provide further available dates to the Board by February 4, 2002.

On February 4, 2002, the Approval Holder advised the Board of available dates, and on February 5, 2002, the Appellants requested a further extension as they felt that a settlement was pending and they needed time to retain an expert witness if the settlement was not reached.

[14] On February 28, 2002, the Board provided the Parties with a copy of the Notice of Public Hearing and requested that the Parties advise if there were other persons who may have an interest in participating in this appeal. This letter also outlined the procedures for the hearing.

[15] On March 6, 2002, the Board received a letter from the Appellants stating:

“Please be advised that Vant Erve Dairy Ltd. (Albert J. Vant Erve and Bert Vant Erve), Robert Hill, Ashley Heggelund and Dorothy Heggelund each withdraw their respective appeals.”

IV. DECISION

[16] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, and based on the letter of March 6, 2002, from the Appellants, the Board discontinues its proceedings in Appeal Nos. 01-051, 01-053 and 01-056 and closes its files.

Dated on March 20, 2002, at Edmonton, Alberta.

William A. Tilleman, Q.C.
Chair