
ALBERTA
ENVIRONMENTAL APPEAL BOARD

Report and Recommendations

Date of Mediation Meeting – April 9, 2003
Date of Report and Recommendations – November 14, 2003

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

-and-

IN THE MATTER OF an appeal filed by the Town of Picture
Butte with respect to Approval No. 1064-02-00 issued under the
Environmental Protection and Enhancement Act to the Town of
Picture Butte by the Director, Southern Region, Regional Services,
Alberta Environment.

Cite as: *Town of Picture Butte v. Director, Southern Region, Regional Services, Alberta
Environment* (14 November 2003), Appeal No. 02-145-R (A.E.A.B.).

MEDIATION MEETING BEFORE

Mr. Ron Hierath, Board Member.

APPEARANCES

Appellant:

Town of Picture Butte represented by Mr. Norm McInnis, Chief Administrative Officer, Town of Picture Butte; Mr. Sterling Mitchell, Town of Picture Butte; and Mr. John McGowan, Alberta Urban Municipalities Association.

Director:

Mr. Dave McGee, Director, Southern Region, Regional Services, Alberta Environment, and Mr. Ben Lichtenwald, Alberta Environment, represented by Ms. Charlene Graham, Alberta Justice.

Board Staff:

Ms. Marian Fluker, Senior Research Officer.

EXECUTIVE SUMMARY

Alberta Environment issued an Approval to the Town of Picture Butte, authorizing the construction, operation and reclamation of a waterworks system for the Town of Picture Butte, Alberta.

The Board received a Notice of Appeal from the Town of Picture Butte appealing some of the conditions in the Approval.

The Board held a mediation meeting in Lethbridge, Alberta, following which a resolution was reached by the parties. The Board recommended that the Minister of Environment accept the resolution.

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I. BACKGROUND

[1] On January 23, 2003, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”) issued Approval No. 1064-02-00 (the “Approval”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, to the Town of Picture Butte (the “Appellant”), authorizing the construction, operation and reclamation of a waterworks system for the Town of Picture Butte.

[2] On February 28, 2003, the Environmental Appeal Board (the “Board”) received a Notice of Appeal from the Town of Picture Butte appealing section 2.3.2 of the Approval.

[3] On March 3, 2003, the Board wrote to the Appellant and the Director (collectively the “Parties”), acknowledging receipt of the Notice of Appeal, notifying the Director of the appeal, requesting the Director provide the Board with a copy of the records relating to the Approval (the “Record”), and requesting the Parties provide available dates for a mediation meeting or hearing.

[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 review under their respective legislation. Both Boards responded in the negative.

[5] On March 12, 2003, the Board received a copy of the Record from the Director, and on March 13, 2003, the Board forwarded a copy of the Record to the Appellant.

[6] On March 19, 2003, in consultation with the Parties, the Board scheduled a mediation meeting for April 9, 2003 to be held in Lethbridge, Alberta.

II. THE MEDIATION MEETING

[7] Pursuant to section 11 of the Environmental Appeal Board Regulation, A.R. 114/93, the Board conducted a mediation meeting in Lethbridge, Alberta, on April 9, 2003, with Mr. Ron Hierath as the presiding Board Member (the “Mediator”).

[8] In conducting the mediation meeting, the Mediator reviewed the appeal and mediation process and explained the purpose of the mediation meeting. He then circulated copies of the Participants' Agreement to Mediate. All parties signed the Agreement and discussions ensued.

[9] Following productive and detailed discussions, the Parties reached an Interim Agreement. At the mediation meeting on April 9, 2003 the Parties agreed to hold the appeal in abeyance in order to continue discussions with a view towards resolution of the appeal, with a status report from the Director due on September 30, 2003.

[10] On October 1, 2003, the Board received a status report from the Director, which contained two options, resulting in the Appellant seeking an abeyance of the appeal. The Board granted the abeyance until October 25, 2003, with a status report due from the Director at that time.

[11] On October 24, 2003, the Board received a letter from the Director, which contained another offer for the Appellant. The Board scheduled a conference call for October 31, 2003, with the Parties in order to discuss the offer.

[12] During the conference call the Appellant accepted the offer of the Director and withdrew their appeal. On November 14, 2003 a letter was received from the Appellant confirming their acceptance of the Director's offer letter. A copy of the Director's offer letter of October 24, 2003 and a copy of the Appellant's acceptance letter of November 14, 2003 are attached as pages 4 and 5.

III. RECOMMENDATIONS

[13] In accordance with section 99 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (the "Act"), the Board recommends that the Minister of Environment vary Approval No. 1064-02-00, issued by the Director, Southern Region, Regional Services, Alberta Environment, to the Town of Picture Butte, in accordance with the Director's October 24, 2003 offer letter and the Appellant's November 3, 2003 acceptance letter contained herein.

Attached for the Minister's consideration is a draft Ministerial Order implementing the recommendations.

[14] Further, with respect to section 100(2) and 103 of the 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. Norm McInnis, Chief Administrative Officer, Town of Picture Butte;
- Ms. Charlene Graham, Alberta Justice, representing Mr. Dave McGee, Director, Southern Region, Regional Services, Albert Environment.

Dated on November 14, 2003, at Edmonton, Alberta.

"original signed by"

Mr. Ron Hierath

IV. Director, Alberta Environment Offer Letter

V. Town of Picture Butte's Acceptance Letter

VI. DRAFT ORDER

**Ministerial Order
/2003**

Environmental Protection and Enhancement Act
R.S.A. 2000, c. E-12

**Order Respecting Environmental Appeal Board
Appeal No. 02-145**

I, Dr. Lorne Taylor, Minister of Environment, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeal Board Appeal No. 02-145.

Dated at the City of Edmonton, in the Province of Alberta this ____ day of _____, 2003.

Honourable Dr. Lorne Taylor
Minister of Environment

Draft Appendix

Order Respecting Environmental Appeal Board Appeal No. 02-145

With respect to the decision of the Director, Southern Region, Regional Services, Alberta Environment (the “Director”) to issue Approval No. 1064-02-00 (the “Approval”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, to the Town of Picture Butte, I, Dr. Lorne Taylor, Minister of Environment:

1. Order that the decision of the Director to issue the Approval is confirmed subject to the following provisions:
2. Order that the Approval be varied by deleting clause 2.3.2 from the Approval.