

ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – November 3, 2004

IN THE MATTER OF sections 91, 92, 95 and 98 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 Laebon Developments Ltd. and WNM Engineering Ltd., with respect to *Environmental Protection and Enhancement Act* Administrative Penalty No. 04/08-AP-CR-04-11 and *Water Act* Administrative Penalty No. WA-04/04/03-AP-CR-04/04 issued to Laebon Developments Ltd. and WNM Engineering Ltd. by the Director, Central Region, Regional Services, Alberta Environment.

Cite as: *Laebon Developments Ltd. and WNM Engineering Ltd. v. Director, Central Region, Regional Services, Alberta Environment* (3 November 2004), Appeal Nos. 04-043, 04-044, 04-045 and 04-046-D (A.E.A.B.).

BEFORE:

Dr. Frederick C. Fisher, Q.C., Chair.

PARTIES:

Appellants: Laebon Developments Inc. and WNM Engineering Ltd., represented by Mr. Donald Manning, Duhamel Manning Feehan Warrenden Glass LLP.

Director: Mr. Wayne Boyd, Director, Central Region, Regional Services, Alberta Environment, represented by Ms. Shannon Keehn, Alberta Justice.

EXECUTIVE SUMMARY

Alberta Environment issued *Environmental Protection and Enhancement Act* Administrative Penalty No. 04/08-AP-CR-04-11 and *Water Act* Administrative Penalty No. WA-04/04/03-AP-CR-04/04 to Laebon Developments Ltd. and WNM Engineering Ltd. for alleged contraventions of section 227(e) of the *Environmental Protection and Enhancement Act* and section 142(1)(e) of the *Water Act* in relation to a waterworks system for the River County Estates subdivision, near Red Deer.

The Board received Notices of Appeal from Laebon Developments Ltd. and WNM Engineering Ltd. appealing the Administrative Penalties.

The Board scheduled a hearing for October 14, 2004, however Laebon Developments Ltd., WNM Engineering Ltd., and Alberta Environment reached an agreement reducing the *Water Act* Administrative Penalty from \$5,000 to \$3,000, and reducing the *Environmental Protection and Enhancement Act* Administrative Penalty from \$19,500 to \$10, 500. The Board accepted the agreement.

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I. BACKGROUND

[1] On June 18, 2004, the Director, Central Region, Regional Services, Alberta Environment (the “Director”), issued Administrative Penalty No. 04/08-AP-CR-04-11 under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”) and Administrative Penalty No. WA-04/04/03-AP-CR-04/04 under the *Water Act*, R.S.A. 2000, c. W-3 (the “Administrative Penalties”) to Laebon Developments Ltd. and WNM Engineering Ltd.

[2] The Administrative Penalties were issued for alleged contraventions of section 227(e) of EPEA and section 142(1)(e) of the *Water Act* in relation to a waterworks system for the River County Estates subdivision, near Red Deer, Alberta.

[3] On July 20, 2004, the Environmental Appeals Board (the “Board”) received Notices of Appeal from Laebon Developments Ltd. and WNM Engineering Ltd. (the “Appellants”) appealing the Administrative Penalties and requesting a Stay.

[4] On July 21, 2004, the Board wrote to the Appellants and the Director (collectively the “Parties”) acknowledging receipt of the Notices of Appeal and notifying the Director of the appeals. The Board also requested the Director provide the Board with a copy of the records (the “Record”) relating to these appeals, and the Parties provide available dates for a hearing. The Board also requested the Director provide his comments to the Board with respect to the Stay request.

[5] 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.

[6] On July 29, 2004, the Board received a letter from the Director advising that in relation to the Stay, the Director would “... not be undertaking collection proceedings on either of the Administrative Penalties until the Board issues the decision concluding the Appeal.”

[7] On August 6, 2004, the Board received a copy of the Record from the Director, and on August 16, 2004, a copy was forwarded to the Appellants.

[8] In consultation with the Parties, the Board scheduled a hearing of the appeals for October 14, 2004, in Red Deer, Alberta. In accordance with the legislation, the Board placed a Notice of Hearing in the Red Deer Advocate and the Red Deer Express advising of the Hearing, and that any person, other than the parties, who wished to make a representation before the Board on these appeals must submit a request in writing on or before September 17, 2004. On September 17, 2004, the Board received a letter from Mr. Donald Bower requesting an opportunity to make a representation at the Hearing.

[9] On October 5, 2004, the Board received a letter from the Director, on behalf of himself and the Appellants, advising the Board that the Parties had reached an agreement and requesting the Board accept and sanction the agreement. The agreement reached by the Parties is as follows:

- “1. Alberta Environment withdraws Counts 3 & 4 from the *Water Act* Administrative Penalty (No WA-04/04/03-AP-CR-04/04), resulting in a decrease of \$2,000;
2. Laebon Developments Ltd. and WNM Engineering Ltd. pay the amended *Water Act* Administrative Penalty (No. WA-04/04/03-AP-CR-04/04), in the amount of \$3000;
3. Alberta Environment withdraws Counts 2, 5, 6 & 8 from the EPEA Administrative Penalty (No. 04/08-AP-CR-04/11), resulting in a decrease of \$8,000.00;
4. Laebon Developments Ltd. will issue a press release, which shall state the methods employed by Laebon Developments Ltd. to ensure compliance with all of the terms and conditions of Approval No. 83404-00-00, including but not limited to, the monitoring of free or combined chlorine residual of treated water entering and within the water distribution system, the bacteriological sampling and analysis within the water distribution system, the monitoring of fluoride concentrations in both raw and drinking water, and the immediate and annual reporting required by AENV [(Alberta Environment)].
5. Alberta Environment will amend Factor (f) from Neutral to minus \$1,000.00 in order to acknowledge Laebon Development Ltd.’s commitment to informing the public of its corrective actions.

6. Laebon Developments Ltd. and WNM Engineering Ltd. pay the amended EPEA Administrative Penalty (No. 04/08-AP-CR-04/11), in the amount of \$10,500.00; and
7. Laebon Developments Ltd. and WNM Engineering Ltd. withdraw their respective appeals from the Environmental Appeals Board (No.'s 04-43, 04-44, 04-45, & 04-46).”

[10] On October 8, 2004, the Board acknowledged receipt of the Director’s letter and cancelled the Hearing. As the Hearing was cancelled, the Board did not make a decision with the respect to the request from Mr. Bower to make representation at the Hearing.

II. ORDER OF THE BOARD

[11] The Board accepts the agreement reached by the Parties.

[12] In accordance with section 98(2) of EPEA, the Board has the authority to confirm, reverse, or vary the decision of the Director. In this regard, with respect to the decision of the Director, Central Region, Regional Services, Alberta Environment, to issue Administrative Penalty Nos. 04/08-AP-CR-04-11 and WA-04/04/03-AP-CR-04/04 to Laebon Developments Ltd. and WNM Engineering Ltd., the Board orders that the decision of the Director to issue the Administrative Penalties is confirmed subject to the following amendments:

1. Administrative Penalty No. WA-04/04/03-AP-CR-04/04 in the amount of \$5,000 is varied by reducing it by \$2,000. Laebon Developments Ltd. and WNM Engineering Ltd. will pay \$3,000 for Administrative Penalty No. WA-04/04/03-AP-CR-04/04.
2. Administrative Penalty No. WA-04/04/03-AP-CR-04/04 is varied by adding the following condition: “Laebon Developments Ltd. will issue a press release, which shall state the methods employed by Laebon Developments Ltd. to ensure compliance with all of the terms and conditions of Approval No. 83404-00-00, including but not limited to, the monitoring of free of combined chlorine residual of treated water entering and within the water distribution system, the bacteriological sampling and analysis within the water distribution system, the monitoring of fluoride concentrations in both raw and drinking water, and the immediate and annual reporting required by Alberta Environment”.
3. Administrative Penalty No. 04/08-AP-CR-04/11 in the amount of \$19,500 is varied by reducing it by \$9,000. Laebon Developments Ltd. and WNM

Engineering Ltd. will pay \$10,500 for Administrative Penalty No. 04/08-AP-CR-04/11.

4. Administrative Penalty No. 04/08-AP-CR-04/11 is varied by adding the following condition: "Laebon Developments Ltd. will issue a press release which shall state the methods employed by Laebon Developments Ltd. to ensure compliance with all of the terms and conditions of Approval No. 83404-00-00, including but not limited to, the monitoring of free or combined chlorine residual of treated water entering and within the water distribution system, the bacteriological sampling and analysis within the water distribution system, the monitoring of fluoride concentrations in both raw and drinking water, and the immediate and annual reporting required by Alberta Environment".

Dated on November 3, 2004, at Edmonton, Alberta.

Dr. Frederick C. Fisher, Q.C.
Chair