

ALBERTA  
ENVIRONMENTAL APPEAL BOARD

Decision

---

Date of Decision – June 5, 2001

**IN THE MATTER OF** Sections 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 April 10, 2000 by Mr.  
Michael J. Laffin of Drummond Phillips and Sevalrud on behalf of  
the North Springbank Water Co-op Limited with respect to  
Amending Approval No. 188920-00-03 issued under the  
*Environmental Protection and Enhancement Act* to the Emerald  
Bay Water and Sewer Co-op Ltd., by the Director, Bow Region,  
Environmental Service, Alberta Environment.

Cite as: *North Springbank Water Co-op. v. Director, Bow Region, Environmental Service,  
Alberta Environment, re: Emerald Bay Water and Sewer Co-op Ltd.*

## **EXECUTIVE SUMMARY**

The Emerald Bay Water and Sewer Co-op holds an Approval for the wastewater treatment plant and collection system for the Emerald Bay Estates housing development located just west of Calgary. Emerald Bay disposes of the treated effluent from the plant by irrigating the Golf Course associated with the development. When Emerald Bay's Approval was amended, the North Springbank Water Co-op, whose water supply wells are located near the golf course, filed an appeal objecting to the use of the treated effluent for the irrigation of the Golf Course. North Springbank is concerned that the use of treated effluent for irrigation may cause problems with their water supply.

In response to the Notice of Appeal, the Board held two mediation meetings. Each meeting resulted in an agreement between the parties to continue working together towards a solution. Eventually, an agreement in principle to resolve the appeal was reached and North Springbank prepared an initial draft of the final agreement. The Board worked with the parties to develop the final wording of this final agreement and as of April 16, 2001, Emerald Bay, the Golf Course, and the Director have been prepared to sign this final agreement. The final agreement provides for an on-going working relationship between the parties to address water quality issues.

The Board has repeatedly requested the position of North Springbank with respect to the final agreement. North Springbank has had the opportunity to hold a meeting of its Board of Directors and an Annual General Meeting. The Board has requested a meeting with Board of Directors of North Springbank in order to discuss the final agreement. Unfortunately, the Board has not received a response with respect to North Springbank's position on this final agreement. Therefore, in accordance with section 87(5)(a)(ii) of the Act, the Board is dismissing the appeal for failing to comply with a written notice to provide the Board with information.

## TABLE OF CONTENTS

I. BACKGROUND .....	1
II. THE MEDIATION MEETING/SETTLEMENT CONFERENCE .....	2
III. DECISION .....	6

## **I. BACKGROUND**

[1] On March 3, 2000, the Director, Bow Region, Alberta Environment (the “Director”), issued Approval No. 18892-00-00 and Amending Approval No. 18892-00-03 (the “Approval”), under Division 2 Part 2 of the *Environmental Protection and Enhancement Act*, S.A., 1992 c. E13.3, (the “Act”), to the Emerald Bay Water and Sewer Co-op. (the “Approval Holder”) with respect to the construction and operation of a Class 2 wastewater treatment plant and a Class 1 wastewater collection system and a storm drainage system for the Emerald Bay Estates Development, near Calgary, Alberta.

[2] On April 10, 2000, the Environmental Appeal Board (the “Board”) received a Notice of Appeal, from the North Springbank Water Co-op (the “Appellant”), appealing the decisions of the Director and objecting to the “... use of any treated sewage effluent for irrigation purposes on the Springbanks golf Course.”

[3] On April 12, 2000, the Board acknowledged receipt of the Notice of Appeal and requested further information regarding the appeal. In its Notice of Appeal, the Appellant purported to also appeal the original Approval dated July 31, 1997. The Board sought clarification on this issue. The Board also requested that the Director provide the documents related to this appeal (the “Record”) and the Board also notified the Approval Holder of the appeal.

[4] According to standard practice, on April 12, 2000, 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 the Boards replied in the negative.

[5] On April 14, 2000, the Appellant forwarded a letter to the Board asking for additional time to set “... forth our arguments as to why our appeal of the Amending Approval No. 18892-00-03 also operates as an appeal of the original approval...”. The Board granted the request with the consent of all parties.

[6] On May 1, 2001, the Appellant wrote to the Board and advised that they had received instruction from their Board of Directors to:

“... address the issue...namely the ability of the North Springbank Water Co-op Limited to appeal the original Approval from Alberta Environment dated July 31, 1997, as a component of the present appeal...We would like to establish a time frame with your office for submitting these arguments.”

[7] The Board, in a letter dated May 11, 2000, established a schedule for the receipt of written submission on the issue of “... the ability of the North Springbank Water Co-op Limited to appeal the original Approval from Alberta Environment dated July 31, 1997.” The Record was received by the Board on May 12, 2000 and copies were forwarded to the Approval Holder and the Appellant on May 18, 2000.

[8] On May 24, 2000, the Board received a letter from the Director proposing mediation and requested that the appeal be placed in abeyance while the mediation process was in progress.

[9] In a letter dated May 24, 2000, the Appellant responded by stating that provided the submission process (concerning the ability to appeal the Approval, dated July 31, 1997) was put on hold, that they would be willing to pursue mediation. The Approval Holder indicated support for mediation.

[10] On May 24, 2000, the Board wrote to the parties and suggested a mediation date of June 9, 2000.

[11] A Notice of Mediation/Settlement Conference and Public Meeting was placed in the Calgary Herald stating that the date of the mediation was June 9, 2000 in Calgary. Parties were informed of the details of the mediation/settlement conference in a letter dated May 31, 2000.

## **II. THE MEDIATION MEETING/SETTLEMENT CONFERENCE**

[12] According to the Board’s standard practice the Board called the mediation meeting/settlement conference in an attempt to mediate or facilitate through a settlement conference the resolution of this appeal; or failing that, to make procedural arrangements for the

oral hearing.<sup>1</sup> The Board invited representatives from each party to participate in the mediation meeting.

[13] In conducting the mediation meeting, Mr. Peiluck reviewed the appeal and mediation process and explained the purpose of the mediation meeting. He then circulated copies of the “Participants Agreement to Mediate” which all participants signed.

[14] At the mediation meeting/settlement conference, the parties reached an agreement (the “June 9<sup>th</sup> Agreement”) to continue discussions, develop a contingency plan, and to make a decision on the course of action to be taken with respect to the appeal by September 15, 2000.

[15] The Director wrote to the Board on August 31, 2000 to provide a status report. The Director advised that in accordance with the June 9<sup>th</sup> Agreement:

“... the membership of the interim committee has made significant progress on a number of issues. The committee plans to meet again on September 11, 2000...the parties should be in a position to advise the Board of their respective positions by the September 15, 2000 deadline.”

[16] The Director wrote to the Board on September 14, 2000 indicating that the meeting of the interim committee was postponed and that the status report deadline should be extended to September 29, 2000. The Board granted the request.

[17] As a result of status reports received from the Appellant and the Director on September 29, 2000, the Board wrote to the parties on October 30, 2001, requesting the status on various tasks which were to be completed as a result of the June 9<sup>th</sup> Agreement. The Board requested a copy of the Contingency Plan and proposed a further mediation meeting/settlement conference to review any outstanding issues. Status reports and a copy of the contingency plan were subsequently received from the parties.

[18] The Board then set a further mediation meeting/settlement conference for December 7, 2000. Mr. Ron Peiluck was again the presiding Board member. At the mediation meeting/settlement conference on December 7, 2000, the parties reached a second agreement (the “December 7<sup>th</sup> Agreement”) regarding the resolution of this appeal. At the conclusion of the

---

<sup>1</sup> Pursuant to section 11 of the Environmental Appeal Board Regulation, A.R. 114/93, the Board conducted a mediation meeting/settlement conference in Calgary, Alberta on June 9, 2000, with Mr. Ron Peiluck as presiding Board Member.

mediation meeting/settlement conference the parties agreed to continue to work together to resolve the issues.

[19] On January 19, 2001, the Board received a status report from the Appellant. The Appellant stated:

“It is the belief and opinion of the North Springbank Water Co-op Limited that the issues arising by way of the Approval, the Amending Approval, and the Notice of Appeal might be resolved at this time, subject to the negotiation and drafting of a final Mediation Agreement to be signed by all parties to these proceedings, and subject to the final input from Alberta Environmental Protection (AEP)...”

The Appellant went on to request that certain issues, included in the December 7<sup>th</sup> Agreement, be addressed.

[20] In response to the Appellant’s letter of January 19, 2001, the Board wrote to all parties, requesting comments with respect to the Appellant’s letter and requesting the parties advise if they wished to convene a further mediation meeting/settlement conference, or if they wished to conclude the agreement by exchange of letters.

[21] Responses to the Board’s request were received from the parties and a further mediation meeting/settlement conference was scheduled for February 27, 2001, in Calgary, Alberta. The Board advised:

“The main focus of this mediation is to develop a settlement agreement following up on the work completed and the [December 7<sup>th</sup> Agreement]...”

[22] On January 30, 2001, the Board received a letter from the Appellant advising that the Chairperson of North Springbank Water Co-op Ltd. had resigned. The Appellant advised that this had created delays with respect to drafting the Mediation Agreement. The Appellant went on to advise that the remaining Directors felt that the matter could be resolved without the necessity for a further mediation. The Appellant advised that he hoped to forward correspondence to the Board’s office outlining the principles of what they would like to see included in the Mediation Agreement.

[23] The Board responded to the Appellants’ letter of February 22, 2001, requesting comments from the Appellant by March 2, 2001 and advising that once these comments were

received, the Board would attempt to facilitate a resolution by the exchange of letter as quickly as possible.

[24] On March 2, 2001, the Board received the draft Mediation Agreement from the Appellant. The Board forwarded the Mediation Agreement to the other parties to the appeal, requesting comments with regard to the Mediation Agreement by March 9, 2001.

[25] Comments were received from all parties and were incorporated into the Mediation Agreement by the Board. The Board then circulated the document among the parties, requesting comments by April 18, 2001. By letters of April 10 and 16, 2001, the other parties to this appeal approved the draft Mediation Agreement. The Board awaited comments from the Appellant which were due on April 18, 2001.

[26] On April 25, 2001, the Board, in writing, acknowledged a telephone conversation with counsel for the Appellant. It was advised, by the Appellant, that the Appellants' Board of Directors were meeting on the evening of April 24, 2001, and that an annual general meeting was to be held on April 28, 2001 where the mediation agreement would be discussed. The Board requested the Appellant provide a status report by May 1, 2001.

[27] On May 4, 2001, the Board acknowledged a further telephone conversation with counsel for the Appellant advising that more time was required with respect to the Mediation Agreement. The Board requested a status report by May 16, 2001.

[28] On May 17, 2001, the Board's General Counsel wrote to the Appellant, stating:

“Further to the Board's letter of May 4, 2001, the Board has not yet received a status report from Mr. Cameron with respect to the mediation agreement. In this regard, Mr. Cameron is requested to provide the Board with available dates for a meeting, to discuss the mediation agreement, between myself and the Board of Directors for North Springbank Water Co-op Limited. Please provide these dates by **Tuesday, May 22, 2001...**” (Emphasis in original.)

[29] The Board contacted the Appellant's counsel on May 23 and 25, 2001 with respect to a status report. On May 25, 2001 counsel for the Appellant advised that he had contacted the Board of Directors and was advised that they were circulating the Mediation Agreement among themselves for comment. He advised that he should have a status report to

the Board by Wednesday, May 30, 2001. To date the Board has not heard further from the Appellant.

### **III. DECISION**

[30] Section 87(5)(a) of the *Environmental Protection and Enhancement Act* states:

“87(5) The Board

(a) may dismiss a notice of appeal if ...

(ii) the person who submitted the notice of appeal fails to comply with a written notice under section 85...”

(iii)

[31] The Board hereby exercises its discretion under section 87(5)(a)(ii) of the *Environmental Protection and Enhancement Act* and dismisses the Notice of Appeal filed by North Springbank Water Co-op Limited for failure to comply with a written notice.

Dated on June 5, 2001 at Edmonton, Alberta.

---

William A. Tilleman, Q.C.