

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – June 4, 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 appeals filed by Ms. Maria Big Snake on behalf of the Siksika First Nation and Mr. Clinton E. Blyth with respect to Amending Approval No. 1190-01-04 issued to the Town of Strathmore by the Director, Bow Region, Environmental Service, Alberta Environment, for the operation of a Class I wastewater treatment plant and a Class II wastewater collection system and a storm drainage system for the Town of Strathmore.

Cite as: *Siksika First Nation and Blyth v. Director, Bow Region, Environmental Service, Alberta Environment*; re: *Town of Strathmore*.

EXECUTIVE SUMMARY

The Town of Strathmore has an approval for the operation of its wastewater treatment plant and collection system. As an interim step towards adding tertiary treatment capabilities to the wastewater treatment plant, the Town obtained *an amendment* to this approval permitting it to discharge treated effluent to be discharged into a canal owned by the Western Irrigation District. The Siksika First Nation and Mr. Clint Blyth appealed the *amendment* to the approval.

Following receipt of the appeals, and encouragement of the Board, there were numerous attempts by the parties themselves to settle their dispute. These initial attempts proved unsuccessful and the Board scheduled a hearing for January 17 and 18, 2001. On January 5, 2001, in an attempt to expedite the hearing process, the Board facilitated a meeting to develop an agreed statement of facts. Following the discussions at this meeting, the parties asked the Board to adjourn the hearing and on January 7, 2001 the Town provided the parties with a draft “Memorandum of Principles of Settlement”.

Further discussions ensued. On March 5, 2001 the Board was advised that Mr. Blyth had signed a Memorandum of Settlement and on April 6, 2001 the Board was advised that the Chief and Council for the Siksika First Nation had approved the agreement.

The Memorandum of Settlement was finally provided to the Board on May 25, 2001. The Memorandum of Settlement notes that Mr. Blyth and the Siksika First Nation had reached an agreement with respect to their appeals *and* the further amendment to the Town’s approval for the tertiary treatment facilities. As a result, their appeals are withdrawn and the Board’s files are closed.

TABLE OF CONTENTS

| | |
|---------------------|----|
| I. BACKGROUND | 1 |
| II. DECISION | 11 |

I. BACKGROUND

[1] On April 28, 2000, the Director, Bow Region, Environmental Service, Alberta Environment (the “Director”) issued Amending Approval No. 1190-01-04 (the “Approval”) to the Town of Strathmore (the “Approval Holder”). This Approval is an amendment to Approval No. 1190-01-00, which authorizes the operation of a Class I wastewater treatment plant and a Class II wastewater collection system and a storm drainage system for the Town of Strathmore.

[2] On June 16 and 20, 2001, the Environmental Appeal Board (the “Board”) received Notices of Appeal from Ms. Maria Big Snake on behalf of the Siksika First Nation and Mr. Clinton F. Blyth (collectively the “Appellants”) appealing the Approval.

[3] According to standard practice, on May 30, 2000, the Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board asking whether this matter has been the subject of a hearing or review under their respective Board’s legislation. Both boards replied in the negative.

[4] On June 19 and 20, 2000, the Board wrote to the Appellants acknowledging receipt of their appeals and requesting that the Director provide all related records (the “Records”) related to the Approval. On the same dates, the Board also wrote to the Approval Holder advising of the appeals .

[5] The Board received the Records from the Director and a copy was forwarded to the Appellants on July 12, 2000.

[6] On August 2, 2000, the Board received a copy of a letter from Mr. Blyth addressed to the Director. The letter was a statement of concern filed in response to the Town of Strathmore’s application for a further approval for the addition of tertiary treatment capabilities to the wastewater treatment plant.

[7] On August 10, 2000, the Board wrote to the Appellants stating:

“The approval that is currently held by the Town of Strathmore and is the subject of the above noted appeal is still active. The Board understands however that the Town has applied for a new approval to address longer term sewage effluent discharges. Should this approval be granted by the Department in response to this

new application, the previous approval would be cancelled. The Board encourages you to file a statement of concern with the Department about the new application if you have not done so. This would allow you to file a Notice of Appeal should the approval be granted and you continue to be adversely affected.”

[8] On August 14, 2000, the Board received a letter from the Approval Holder advising that “...the concerns of both Mr. Blyth and the Siksika Nation could be the subject of a mediation process prior to proceeding with what might be an unnecessary hearing.” The letter goes on request that the Board give the Approval Holder an opportunity to make submissions regarding Mr. Blyth’s directly affected status. The Board responded on August 23, 2000, by requesting that the Approval Holder clarify whether their willingness to mediate and whether they wish the Board to deal with the issue of Mr. Blyth’s standing pertained to the current appeal or the new application by the Approval Holder. The letter further stated:

“...As it is the Board’s understanding that the new application is still under review by the Department, any efforts to mediate issues concerning this application are not within the jurisdiction of the Board as the status of the approval has not yet been determined...Mr. Blyth has indicated that he wishes to continue with his current appeal at this time. Again, the Board does not have jurisdiction to deal with matters associated with the new application as it is still under review by the Department.”

[9] Further to a telephone conversation with the Approval Holder on August 20, 2000 the Board wrote to the parties on August 31, 2000 advising that the Approval Holder had proposed a mediation meeting/settlement conference with respect to the appeals and was willing to address the issue of Mr. Blyth’s standing after the mediation meeting/settlement conference in the event that the meeting was not successful. The Board requested a response from the parties with respect to this proposal and possible dates for a mediation meeting/settlement conference.

[10] On September 8, 2000, the Board received a letter from the Director indicating that the Director did not wish to participate in a mediation meeting/settlement conference in relation to the appeals. The Board responded with a September 12, 2001 letter requesting that the parties provide available dates for a preliminary meeting and/or hearing. The Board also requested that the Approval Holder indicate if they wished to bring forward their motion to address Mr. Blyth’s standing.

[11] On September 13, 2000, the Board received a letter from the Approval Holder stating:

“...the Town of Strathmore confirms that it wishes the Board to hear and consider arguments on the issue of whether Mr. Blyth is a person directly affected by the approval. To facilitate and expedite that process, the Town of Strathmore requests that Mr. Blyth be directed to provide to the Town that evidence which he believes indicates that he is, in fact, directly affected by the approval....”

On September 29, 2000, the Board wrote to the parties addressing the Approval Holder’s motion to determine Mr. Blyth’s standing. The Board put forth the question “Is Mr. Blyth a person directly affected by the Approval?” and advised the parties that the motion would be dealt with by way of preliminary meeting by written submissions only. The Board outlined a timetable for receipt of submissions and also welcomed the participation of the Siksika First Nation in the preliminary meeting.

[12] On September 29, 2000, the Board received a letter from Mr. Blyth. The letter advised that after meeting with a representative from EPCOR, agent for the Approval Holder, it was indicated to Mr. Blyth that a detailed scientific and engineering study/report could be conducted by a group representing stakeholders such as Mr. Blyth, the Approval Holder, and Siksika First Nation in order to:

“...provide a means to alleviate concerns of any real or perceived environmental impact and the ensuing loss of property values caused by the release of Strathmore’s treated sewage effluent and from other sources that effect the water quality within the WID ‘A’ Canal and connected water bodies.”

Mr. Blyth advised that he would consider placing his appeal in abeyance pending the findings of the report and requested the support of the other parties involved. On October 10, 2000 the Board responded to Mr. Blyth’s letter encouraging his efforts to attempt to reach a settlement in this matter.

[13] On October 18, 2000, Mr. Blyth wrote to the Board and provided his written submission with respect to his directly affected. Mr. Blyth indicated that even though he was not a registered water user/rate payer of the Western Irrigation District (WID), he was adversely affected by the Approval because the water used to irrigate his land (supplemented mainly from the WID “A” Canal) would become increasingly more unsuitable if the Approval Holder was

allowed to use the canal for effluent disposal. On October 19, 2000, the Board wrote to the parties requesting response submissions from the Approval Holder and the Director, and following those submissions, a rebuttal submission from Mr. Blyth.

[14] On October 26, 2000, the Board received a letter from the Approval Holder requesting Mr. Blyth provide additional evidence with respect to his standing. The letter went on to express concerns with respect to the initial submission on the issue.

[15] On October 30, 2000, the Director wrote to the Board advising that he would be taking no position on the issue of Mr. Blyth's directly affected status. The Director, however, expressed concerns in response to Mr. Blyth's consideration of placing his appeal in abeyance pending a scientific/engineering study by stating:

“...The concern which the Director has relates to the high degree of uncertainty which this may create i.e. how long would the matter be abeyance, who could reopen the appeal, what happens if he disagrees with the terms of reference, the method of study, the results of the study etc. As such, if the Board considers putting the matter in abeyance, the Director suggests that there should be specific terms of reference to such abeyance...”

[16] On October 30 and 31, 2000, the Approval Holder and Mr. Blyth responded to the Director's letter. Both were in agreement with respect to the specific terms of reference for an abeyance.

[17] After reviewing the information provided, the Board wrote to the parties on November 7, 2000 acknowledging their letters. The Board advised that a hearing would be convened to address the appeals initiated by the Appellants in relation to the Amending Approval and that the motion made by the Approval Holder concerning the standing of Mr. Blyth would be dealt with as a preliminary matter at the beginning of the hearing. The Board established a schedule to deal with procedural issues and the parties were requested to identify available dates for a hearing.

[18] On November 15, 2000, the Board received a letter from Mr. Blyth forwarding a copy of his November 15, 2000 letter of support for the Director's initiatives in addressing his concerns. The letter advised of a recent proposal (also enclosed in Mr. Blyth's letter) from the Director with respect to additions to the Approval Holder's Amending Approval advocating a solution to the concerns expressed by the Appellants. Mr. Blyth's letter went on to state that if

“...these changes were written, formally without significant change, into Strathmores [sic] approval 1190-01-04 my concerns would be addressed and I would drop my appeal.”

[19] On November 16, 2000, the Director provided hearing dates and documents entered as evidence which were provided to the parties on November 16, 2000. On November 16, 2000 the Board received a letter from Mr. Blyth indicating hearing dates and that his evidence would be received by the Board via courier. Mr. Blyth’s evidence was delivered to the Board on November 20, 2000 and provided to the parties on November 21, 2000.

[20] On November 17, 2000, the Approval Holder wrote to the Board providing information with respect to dissemination of the Approval Holder’s exhibit information and hearing dates. The letter went on to acknowledge Mr. Blyth’s letter with respect to the Director’s proposal to amend the Approval:

“...My client’s cannot support the draft monitoring proposal for a number of reasons...To impose the cost of watershed baseline studies on municipal owners of public utilities as applicants for the operation of wastewater facilities would, in my client’s respectful view, fundamentally alter the responsibilities of municipalities...”

[21] On November 21, 2000, the Board wrote to the parties acknowledging their letters and a telephone call the Board received from the Siksika First Nation. The Siksika First Nation requested that the deadline for submissions of evidentiary documents be extended in order to allow negotiations between the parties to conclude. In a letter of November 17, 2000 the Approval Holder also requested an extension to provide all relevant documentation. The Board granted the extension.

[22] On November 29, 2000, the Approval Holder wrote to the parties proposing a resolution to the concerns expressed by the Appellants and stated:

“...while Strathmore is only one of many stakeholders in the WID’s works, it is prepared to play a leadership role in advocating and funding a water quality study of the system. If that is acceptable to both Mr. Blyth and the Siksika Nation, my clients are prepared to formalize their proposal concurrent with the withdrawals of the appeals.”

[23] On December 6, 2000, the Siksika First Nation wrote to the Board and advised that they would be continuing with their appeal and that evidentiary documents would be sent via courier. Following several attempts to contact the Siksika First Nation, the Board wrote to them

on December 8, 2000 advising that the Board had yet to receive documents mentioned in the letter. The Board cautioned that it had "...the ability to dismiss the appeal under section 87(5)(a)(ii) where a party does not provide the Board with additional information within a time frame specified by the Board in a written notice..." On December 12, 2000 the Board received evidentiary documents from the Siksika First Nation which was acknowledged by the Board and forwarded to the parties.

[24] On December 13, 2000, the Board wrote to the parties asking them to respond to a letter sent to the Board from Mr. Blyth on December 6, 2000. Mr. Blyth's letter was in response to the Approval Holder's letter of November 29, 2000 regarding a proposed resolution to the Appellants' concerns. Commending the Approval Holder for "...recognizing they must take an active role in ensuring the water quality of the WID canal system is not further compromised...", Mr. Blyth indicated that he "...would support a properly documented water quality study...". Mr. Blyth expressed concerns regarding abandoning his appeal, however, proposed placing it in "abeyance pending the provision of documentation..."

[25] On December 14, 2000, the Board wrote to the parties acknowledging receipt of a letter from the Approval Holder dated December 7, 2000. The Board's letter granted the Approval Holder's request for additional time to prepare their written submission for the hearing.

[26] On December 15, 2000, the Board wrote to the parties informing them that a hearing had been scheduled for January 17 and 18, 2001, in Calgary, Alberta. Included in the letter was a Notice of Public Hearing which was placed in the *Strathmore Standard* and *Calgary Herald* on December 19, 2000 and also contained a deadline of January 3, 2001 for applications from intervenors.

[27] In a letter of December 18, 2000 to the Board, the Approval Holder advised that:

"...unfortunately it appears the Town's proposal was not satisfactory to either Mr. Blyth or the Siksika Nation. In the result, the proposal was withdrawn...and while the Town of Strathmore appreciates that Mr. Blyth is apparently willing to seek some compromise which addresses his concerns, the assurances which Mr. Blyth requires are beyond the power of the Town of Strathmore."

However, also on December 18, 2000, the Board received a letter from the Siksika First Nation advising of their intention to withdraw their appeal. The letter stated:

“The basis for the withdrawal is based upon the attached letter that highlights commitments made by EPCOR, on behalf of the Town of Strathmore, to the Siksika Nation ... The withdraw of the appeal is further supported by the monitoring and reporting requirements that have been proposed for incorporation into the amending approval...We are encouraged that the proposed Alberta Environment regulatory requirements will examine the cumulative impacts to the lake and that overtime, the water quality in Stobart lake is enhanced.”

[28] On December 22, 2000, the Board acknowledged Siksika First Nation’s letter indicating that since Siksika First Nation was withdrawing its appeal, the Board would proceed to close its file with respect to their appeal. The Board also provided the parties with procedural timelines for the preliminary meeting and hearing. The Board encouraged the parties to provide affidavit evidence and file an agreed statement of facts with the Board. Lastly, the Board offered to meet with the parties on January 5, 2001 with respect to developing the agreed statement of facts.

[29] On January 2, 2001, the Board wrote to the parties enclosing letters provided to the Board by individuals¹ wishing to make representations to the Board. In its letter, the Board offered an opportunity for the parties to comment prior to making its final decision as to the level of participation, if any, that would be allowed. On January 4, 2000 the Board wrote to the parties with two additional requests to make representations to the Board.²

[30] On January 3, 2001, the Approval Holder wrote to the Board requesting the Board extend the hearing to January 19, 2001 in order to allow a witness to appear on behalf of the Approval Holder and to allocate enough time for all the parties to conduct their presentations. On that same day, the Approval Holder wrote another letter to the Board and advised that “...if Mr. Blyth, who appears from the Board’s correspondence to be the only remaining appellant, is prepared to meet with the Town’s representatives and the Board’s staff, the Town would certainly participate in such a meeting.”

[31] Also, on January 3, 2001, the Director wrote to the Board inviting the parties to discuss the current application at the January 5, 2001 meeting as well as to assist the parties in

1 Ms. Deborah Kea and Mr. Jacob Sathe, Mr. Chris and Ms. Martha Seitz, Mr. Peter and Ms. Verna Knight, Mr. Leo and Ms. Mary Watrin, Mr. Leonard Wathen, Mr. Norbert and Ms. Margaret Ziehr, and Ms. Arlene Wahl.

2 Ms. Leslie Pringle of Eagle Lake Campground, and Mr. Sid Holt.

developing an agreed statement of facts. The Director wrote to the Board again on January 3, 2001 with information regarding the application for a further amendment to the Approval (Application 010-1190), and further consultation with the Appellants. The letter stated:

“The application for Amending Approval No. 010-1190...is currently under review by the department. It is the intent of the Director to complete this review and make a decision on the Amending Approval prior to the Appeal hearing.

The Director feels that it is important for the Town to have sufficient time to properly undertake the above noted studies. A period of up to five years has been suggested.

The Director has discussed the matter of the approval amendment with the Mayor and Council of the Town of Strathmore...Staff from the Director’s office will be contacting Siksika Nation and Mr. Blyth to arrange this meeting.”

[32] On January 4, 2001, Mr. Blyth wrote to the Board supporting the Board’s offer to assist the parties with their agreed statement of facts, but noted the status of his standing should first be determined. Mr. Blyth also welcomed representation by the intervenors at the hearing.

[33] Also, on January 4, 2001, the Approval Holder wrote to the Board again requesting another extension to the hearing indicating that the “...Town of Strathmore cannot agree to the procedure being proposed by the Board...and again urge the Board to consider expanding the time for the hearing.”

[34] Also, on January 4, 2001, the Approval Holder copied the Board on its letter to the Appellants regarding their formal withdrawal on December 18, 2000 of its offer to contribute to the funding and participation of a stakeholder group. The letter advises:

“...Mr. Willier’s [counsel for Siksika First Nation] letter of December 18 appears to indicate that the positions of the Town of Strathmore and the Siksika Nation may not be far apart. A solution would appear to be achievable...Notwithstanding the issue of whether Mr. Blyth might be entitled to be an appellant (ie. whether he meets the test of ‘directly affected’), the Town of Strathmore is also prepared to meet with him, in addition to Siksika’s representatives, to listen to his concerns...Based on my reading of Mr. Willier’s letter, and in the anticipation that Mr. Blyth might consider a similar position, it is my impression that the concerns of the parties are capable of resolution...”

[35] Lastly, on January 4, 2001, the Siksika First Nation wrote to the Board advising that they would take part in the hearing as their intention to withdraw their appeal depended upon

“... formalization of commitments and the addition of amendments to the approval contained in our letter dated December 18, 2000.”

[36] On January 5, 2001, the Board facilitated a meeting to develop an agreed statement of facts. At the end of the meeting the parties agreed to ask the Board to adjourn the hearing scheduled for January 17 and 18, 2001. The Board wrote to the parties confirming that the hearing scheduled for January 17 and 18, 2001 would be adjourned. The Board also outlined when the parties should provide their written status reports and indicated that it would schedule a hearing if a resolution was not underway by January 31, 2001.

[37] On January 7, 2001, the Approval Holder wrote to the parties and provided them with a draft “Memorandum of Principles of Settlement” based on the January 5, 2001 meeting. The Approval Holder also requested the parties sign the draft if they were in agreement of the principles in order that a formal approval could then take place.

[38] On January 17, 2001, the Director submitted his first written status report. Also, on January 17, 2001 the Approval Holder wrote to the Board advising that they and the Siksika First Nation were working toward finalizing the draft principles. The letter also indicated that the Approval Holder was not aware of the extent of Mr. Blyth’s participation but would be contacting him in the near future.

[39] On January 22, 2001, the Approval Holder wrote to the Siksika First Nation and copied the other parties stating:

“I have been requested by the Town of Strathmore to attempt to finalize the agreement between The Town of Strathmore and The Siksika Nation (and Mr. Blyth)...Finally, as the Town and Siksika are now in the process of negotiating a detailed settlement, I believe the document would no longer reflect only ‘principles of settlement’ but would actually represent the terms of an agreed settlement.”

Also attached to this letter was a copy of the amended Memorandum of Principles of Settlement.

[40] On January 29, 2001, the Director provided its second written status report and advised the Board that application 1190-05 for an amending approval had been signed and a copy was sent to the parties.

[41] Also, on January 29, 2001, the Approval Holder wrote to the parties advising that the Siksika First Nation did not receive his letter of January 22, 2001 and that "... the Town and the Siksika Nation have not finalized their agreement..." The letter goes on to inform of Mr. Blyth's position stating "... I have been advised by Mr. C. Blyth that he is generally in agreement with the Memorandum of Settlement...as well as the Amending Approval..."

[42] On February 1, 2001, the Board wrote to the Siksika First Nation again requesting their written status report.

[43] On February 2, 2001 the Approval Holder wrote a letter to the Board stating:

"...I have been advised by Mr. Willier that The Siksika Nation are in agreement the Memorandum of Settlement. I have forwarded execution copies to Mr. Wilier and Mr. Blyth. My present understanding is that, in combination with Alberta Environment's conditions for the amendment to the Town of Strathmore's wastewater system licence, the Memorandum of Settlement resolves their concerns.

Hence, I anticipate that upon execution of the Memorandum of Settlement that both The Siksika Nation and Mr. Blyth will withdraw their respective appeal and application to the Board."

[44] On February 6, 2001, the Board wrote to the parties acknowledging the Approval Holder's letter and provided copies to the parties. The Board *expressed its support* with respect to the parties reaching a Memorandum of Settlement, however since the agreement was subject to ratification, the Board requested a status report from the parties by February 14, 2001.

[45] On February 14, 2001, the Board received a status report from Siksika First Nation advising that the Memorandum of Settlement is scheduled for the Chief and Council meeting on February 23, 2001 at which time the Memorandum of Settlement would be forwarded to the Approval Holder.

[46] The Board wrote to Mr. Blyth on February 20, 2001 requesting that he provide a written status report by February 23, 2001 to the Board advising if he was satisfied with the Memorandum of Settlement and, if so, was he intending on withdrawing his appeal.

[47] On March 5, 2001, the Board received a letter from the Approval Holder advising that Mr. Blyth had signed the Memorandum of Settlement and that it had been forwarded to the

