

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Decision

Date of Decision – October 1, 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 section 115 of the *Water Act*, S.A. 1996, c. W-3.5.

-and-

IN THE MATTER OF appeals filed by Mr. Tom and Ms. Mae Adamyk, Mr. Lawrence and Ms. Evelyn Kucy, and Mr. Ted Jakubowski, with respect to Approval 00147901-00-00 issued on May 16, 2001, under the *Water Act* by the Director, Environmental Service, Parkland Region, Alberta Environment to Cam-A-Lot Holdings.

Cite as: *Adamyk et al. v. Director, Environmental Service, Parkland Region, Alberta Environment*, re: *Cam-A-Lot Holdings*.

EXECUTIVE SUMMARY

These appeals relate to an Approval to explore for groundwater issued under the *Water Act* by Alberta Environment to Cam-A-Lot Holdings Ltd. Cam-A-Lot Holdings Ltd. applied for both an Approval to explore and a Licence to divert in support of a cattle feedlot, near St. Michael, Alberta.

Notices of Appeals were received from Mr. Tom and Ms. Mae Adamyk, Mr. Lawrence and Ms. Evelyn Kucy, and Mr. Ted Jakubowski appealing the Approval.

Alberta Environment advised that Cam-A-Lot has completed the groundwater exploration and has now withdrawn their application for a water licence. As the appeals are therefore moot, without merit or not properly before the Board, the Board dismisses the appeals pursuant to section 87(5)(a) of the *Environmental Protection and Enhancement Act*.

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I. BACKGROUND

[1] On May 16, 2001, the Director, Environmental Service, Parkland Region, Alberta Environment (the “Director”) issued Approval 00147901-00-00 (the “Approval”) to Cam-A-Lot Holdings (the “Approval Holder”) pursuant to the *Water Act*, S.A. 1996, c. W-3.5. The Approval authorizes Cam-A-Lot Holdings to explore for groundwater at SW 17-056-18-W4 near St. Michael, Alberta for the purposes of a cattle feedlot.

[2] On May 16, 2001, the Director also advised persons, who had previously submitted Statements of Concern in respect of the application for the Approval, of his decision to issue the Approval.

[3] The Environmental Appeal Board (the “Board”) received Notices of Appeal and a request for a Stay on May 23, 2001 from Mr. Tom and Ms. Mae Adamyk, on May 28, 2001 from Mr. Lawrence and Ms. Evelyn Kucy, and on May 30, 2001 from Mr. Ted Jakubowski (collectively “the Appellants”).

[4] The Board acknowledged the appeals and requests for a Stay on May 24, 29 and 30, 2001 and requested available dates for a mediation meeting/settlement conference or hearing. The Board also requested that the Director provide the records (the “Records”) related to the appeals. The Board received the Records on June 1, 2001 and subsequently provided copies to the Appellants and the Approval Holder.

[5] On June 15, 2001, the Board dismissed Mr. Jakubowski’s request for a stay for failing to comply with a written notice pursuant to section 87(5)(a)(ii) of the *Environmental Protection and Enhancement Act*, S.A. 1992 c. E-13.3 (the “Act”). For reasons stated in the Board’s Decision dated July 9, 2001, the requests for a Stay filed by Mr. Tom and Ms. Mae Adamyk and Mr. Lawrence and Ms. Evelyn Kucy were denied.¹

[6]

¹ *Adamyk et al. v. Director, Environmental Service, Parkland Region, Alberta Environment, Stay decision re: Cam-A-Lot Holdings* (July 9, 2001) E.A.B. Appeal Nos. 01-050, 052, 054, 055-D.

[7] 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.

[8] After concluding the matter of the Stay requests, on July 27, 2001 the Board proceeded with the setting of a mediation meeting/settlement conference. Dates were received from Mr. and Ms. Adamyk, Mr. and Ms. Kucy and the Director and on August 13, 2001, the Board advised that it would advise further. The Board notes that Mr. Jakubowski refused delivery of the Board's letter of August 13, 2001.

[9] On August 13, 2001 the Board also wrote to the Approval Holder to confirm a telephone conversation with Board staff wherein the Approval Holder advised that that the pump test had been completed. The Board received a letter from the Approval Holder on August 22, 2001 confirming the exploration was complete.

[10] In the Board's letter of August 27, 2001, it requested the parties provide their comments to the Approval Holder's August 22, 2001 letter and a status report. This letter was also refused by Mr. Jakubowski.

[11] In response to the Board's letter of August 27, 2001, the Director advised that the exploration for the groundwater has been completed, however, the information collected during the exploration phase has not been submitted to Alberta Environment. Alberta Environment has also become aware of the Approval Holder's failure to comply with the Approval and the unauthorized diversion of groundwater and as a result was issuing an Enforcement Order to the Approval Holder requiring them to cease diverting water from the exploration well.² The Board also received status reports from Mr. and Ms. Kucy and Mr. and Ms. Adamyk. The Board acknowledged these letters and advised that as a result of these events, it "...does not feel that it would be in the best interest of the parties to enter into a mediation. The Board [said it would] proceed directly to a hearing in this matter..."

² Letter from the Director, Alberta Environment, dated August 31, 2001.

[12] The Board received a letter from the Director on September 18, 2001 advising that the Approval Holder withdrew its application for a licence to divert water under *the Water Act*. The Director further stated that "...[t]his development, along with the fact that ground water exploration was completed sometime ago and there is an enforcement order dealing with the unauthorized use of water, there does not seem to be any remedy the EAB can offer to deal with the appellant's concerns at this time."

[13] In response to the Director's letter, the Board advised the parties on September 18, 2001 that "...it appears to the Board that these appeals are moot or otherwise not properly before the Board" and offered the parties an opportunity to object before it proceeded with issuing this Decision dismissing the appeals. No objections were received.

II. DECISION

[14] Section 87(5)(a) of the *Environmental Protection and Enhancement Act*, S.A. 1992 c. E13-3 (the "Act"), states:

87(5) The Board

- (a) may dismiss a notice of appeal if ...
 - (i) it considers the notice of appeal to be frivolous or vexatious or without merit,
 - (i.2) for any other reason the Board considers that the notice of appeal is not properly before it,

[15] The Board hereby exercises its discretion and dismisses the Notices of Appeal filed by Mr. Tom and Ms. Mae Adamyk, Mr. Lawrence and Ms. Evelyn Kucy, and Mr. Ted Jakubowski, as their appeals are either moot, not properly before the Board or without merit. The Board will now close its files.

Dated on October 1, 2001, at Edmonton, Alberta.

William A. Tilleman, Q.C., Chair