

---

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.

## TABLE OF CONTENTS

|  |   |
|--|---|
| I. BACKGROUND .....                                  | 1 |
| II. THE MEDIATION MEETING .....                      | 1 |
| III. RECOMMENDATIONS .....                           | 2 |
| IV. DIRECTOR, ALBERTA ENVIRONMENT OFFER LETTER ..... | 4 |
| V. TOWN OF PICTURE BUTTE'S ACCEPTANCE LETTER .....   | 5 |
| VI. DRAFT ORDER.....                                 | 6 |

## **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

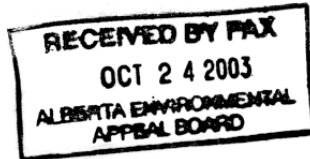


Our File No.: 0133-338 Town of Picture Butte  
Your File No.: EAB: 02-145



Environmental Law Section  
#1710, Standard Life Building  
639 Fifth Avenue S.W.  
Calgary, Alberta T2P 0M9

Tel: (403) 297-4429  
Fax: (403) 662-3824



October 24, 2003

"Via Telecopier"

Environmental Appeal Board  
306 Peace Hills Trust Tower  
10011 - 109 Street  
Edmonton, Alberta T5J 3S8

Attention: Ms. Valerie Higgins Myrmo, Registrar of Appeals:

Dear Ms. Higgins Myrmo:

Re: Town of Picture Butte / EPEA Approval No. 1064-02-00  
EAB File No.: Appeal 02-145

Further to the Board's letter of October 2, 2003, this letter constitutes the Director's status report.

In regard to the Lab Data Quality Assurance Program, that program is still in draft stage and it is not known exactly when it will be finalized. Given this unknown delay in this process, the Director is agreeable to deleting clause 2.3.2 from Approval No. 1064-02-00.

I can advise the Town of Picture Butte that it is the intention of the Department to implement this program, once finalized, through the existing regulatory regime and existing approval conditions.

trust the above is satisfactory.

Yours truly,

Charlene Graham  
Barrister & Solicitor  
CG/sab

cc: Town of Picture Butte, Attn: Mr. Norm McInnis, Chief Administrative Officer



11-14-'03 15:21 FROM-TWN OF PICTURE BUTTE 4037524334

T-657 P02/02 U-263

**V. Town of Picture Butte's Acceptance Letter**

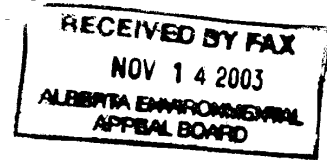
TOWN  
OF  
PICTURE BUTTE



LIVESTOCK  
FEEDING CAPITAL  
OF CANADA

November 14, 2003

Environmental Appeal Board  
306 Peace Hills Trust Tower  
10011 - 109 Street  
Edmonton, Alberta T5J 3S8



**Attention: Ms. Valerie Higgins Myrmo**

Dear Ms Higgins Myrmo:

Further to our conference call of Friday October 31, 2003, the Town of Picture Butte is satisfied with Environment's acceptance to remove section 2.3.2 from the Picture Butte Waterworks System Approval (No. 1064-02-00).

The Town of Picture Butte is still somewhat troubled by the tone of Ms. Graham's letter of October 24, 2003, in which she states that, "I can advise the Town of Picture Butte that it is the intention of the Department to implement this program once finalized, through the existing regulatory regime and existing approval conditions". We would suggest that a more consultative process would ensure the success of this initiative. Be sure that if this change is written into regulations in a manner such as it was written into our approval, the Town of Picture Butte would once again bring it to the attention of the Department.

Of particular interest to the Town of Picture Butte are the criteria for exemption that can be provided by the Director. With the variety of technology and technical expertise in the Waterworks industry in Alberta, a cookie cutter approach to a complex issue like parameters for analytical data seems short sighted.

Lastly, as was stated in the Town of Picture Butte appeal and consistent with the Alberta Urban Municipalities Association 3R's guiding principle #3, the cost of implementing this program must be considered. If the Department is going to set this new standard, the Department should be prepared to provide funding to meet the standard.

Respectfully,

A handwritten signature in black ink, appearing to read "Norm McInnis".

Norm McInnis  
Chief Administrative Officer

**IV. 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.

**Ministerial Order  
59/2003**

*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 2nd day of December, 2003.

*“original signed by”*

---

Honourable Dr. Lorne Taylor  
Minister of Environment

## **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.