

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – August 29, 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 section 115 of the *Water Act*, R.S.A. 2000, c. W-3;

-and-

IN THE MATTER OF an appeal filed by Mel Gray with respect to *Environmental Protection and Enhancement Act* Approval No. 18639-00-00 issued to the Bar Kay Cee Club by the Director, Southern Region, Regional Services, Alberta Environment.

Cite as: *Gray v. Director, Southern Region, Regional Services, Alberta Environment, re: Bar Kay Cee Club* (29 August 2003), Appeal No. 03-013 (A.E.A.B.).

PARTIES:

Appellant: Mr. Mel Gray.

Director: Ms. May Mah-Paulson, Director, Southern Region, Regional Services, Alberta Environment, represented by Ms. Charlene Graham, Alberta Justice.

Approval Holder: Hon. James Laycraft and Mr. Ross Lennox, Bar Kay Cee Club.

EXECUTIVE SUMMARY

Alberta Environment issued an Approval under the *Environmental Protection and Enhancement Act* to the Bar Kay Cee Club for the construction, operation and reclamation of a waterworks system for the Bar Kay Cee Club subdivision in the Municipal District of Foothills No. 31.

On July 4, 2003, the Board received an appeal of the Approval from Mr. Mel Gray, a property owner in the subdivision.

The Board began processing the appeal and, in consultation with the parties, scheduled a hearing of the appeal for September 10, 2003 in Calgary. On August 18, 2003, the Board received a letter from Mr. Gray withdrawing his appeal as a result of a meeting with Alberta Environment. The Board therefore closes its file in this matter.

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I. BACKGROUND

[1] On June 5, 2003, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”), issued Approval No. 186939-00-00 (the “Approval”) to the Bar Kay Cee Club (the “Approval Holder”) authorizing the construction, operation and reclamation of a waterworks system for the Bar Kay Cee Club subdivision in the Municipal District of Foothills No. 31.

[2] On July 4, 2003, Mr. Mel Gray (the “Appellant”), a property owner in the subdivision, filed a Notice of Appeal with the Environmental Appeal Board (the “Board”) appealing the Approval, specifically requesting that the “...minimum free chlorine residual of treated water be reduced to 0.05 mg/L.”

[3] On July 10, 2003, the Board wrote to the Appellant, Director and Approval Holder (collectively the “Parties”) acknowledging receipt of the Notice of Appeal, notifying the Director and Approval Holder of the appeal, and requesting the Director provide the Board with a copy of the records (the “Record”) relating to this appeal. The Board also requested the Parties provide available dates for a mediation meeting or hearing and advise the Board if in their opinion, they knew of any other persons that may have an interest in this appeal.

[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 July 18, 2003, the Board received a letter from the Appellant providing available dates for a hearing or mediation meeting, and also provided a distribution list of 26 property owners of the Bar Cee Club and one resident manager as individuals who may have an interest in this appeal. On July 22, 2003, the Board wrote to the Parties acknowledging the Appellant’s letter, and in a separate letter wrote to the property owners providing a copy of the Appellant’s letter of July 18, 2003 and a copy of the Approval.

[6] On July 23, 2003, the Approval Holder provided available dates for a mediation meeting or hearing and submitted a new, updated distribution list of Bar Kay Cee Club members. In this letter, the Approval Holder expressed his concern with respect to the usefulness of mediation as a means to resolve the appeal, concluding that this was an issue where compromise is not possible. The Board acknowledged this letter on July 24, 2003 and sent a copy to the Parties for their information. The Board also sent a copy of the Approval Holder's letter to the updated distribution list of the Bar Kay Cee Club members.

[7] On July 24, 2003, the Board received a copy of the Record from the Director, along with potential dates for a mediation meeting or hearing. The Director also advised that she was not aware of any other persons who may have an interest in this appeal. On July 25, 2003, the Board wrote to the Parties acknowledging the Director's July 24, 2003 letter and advising that the Board has decided to proceed directly to a hearing on this appeal as a result of comments received from the Bar Kay Cee Club. As there was no mutually agreeable date provided by the Parties for a hearing, the Board requested the Parties revisit their schedules.

[8] On July 28, 2003, the Board forwarded a copy of the Record to the Approval Holder and the Appellant.

[9] After receiving the Parties' schedules, the Board wrote to the Parties on August 6, 2003 and advised that the hearing of the appeal would be held on September 10, 2003. On August 8, 2003, the Board advised the Parties of the location and procedures for the hearing.

[10] The Appellant advised the Board on August 18, 2003 that he was withdrawing his appeal as a result of a meeting with the Director. The Appellant stated:

“My appeal was an attempt to eliminate from the Approval the requirement for chlorine in the water disinfection process. In my opinion the addition of chlorine to our drinking water poses a serious health risk, and is not needed to realize fully effective disinfection.

Earlier today I met with ... Alberta Environment. This is my understanding following this meeting:

- The subject Approval was issued in strict adherence to the ‘STANDARDS AND GUIDELINES FOR MUNICIPAL WATERWORKS, WASTEWATER AND STORM DRAINAGE SYSTEMS – DECEMBER 1997.’
- The Standards call for the use of chlorine in the disinfection process.

- The Director does not have the authority to deviate from these Standards.
- The Environmental Appeal Board does not have the authority to change these Standards in any way.
- The Standards are presently under review and there will be an opportunity for public input before the new Standards are finalized.

I therefore withdraw my appeal.”¹

[11] The Board acknowledged the Appellant’s letter and advised that the hearing scheduled for September 10, 2003 was cancelled.

II. DECISION

[12] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act* R.S.A. 2000, c. W-3, and based on the Appellant’s letter dated August 18, 2003, the Board hereby discontinues its proceedings in Appeal No. 03-013 and closes its file.

Dated on August 29, 2003, at Edmonton, Alberta.

“original signed by”

William A. Tilleman, Q.C.
Chairman

¹ The Board commends the Parties for using informal mediation to reach an understanding without having to resort to the hearing process. However, while the Board confirms that the Board is empowered to make a recommendation to “...confirm, reverse or vary the decision appealed and *make any decision that the person whose decision was appealed could make* [(here the Director)]...”, the Board also wants to make it clear that the Director can not and does not speak for the Board. See: sections 99(1) and 100(1)(a) of the *Environmental Protection and Enhancement Act*.