

ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – February 4, 2004

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 Marc and Roch Bremont with respect to *Water Act* Enforcement Order No. WA-EO-2003/01-NR issued to Marc and Roch Bremont by the Director, Northern Region, Regional Services, Alberta Environment.

Cite as: Issues Decision: *Bremont v. Director, Northern Region, Regional Services, Alberta Environment* (04 February 2004), Appeal No. 03-146-ID1 (A.E.A.B.).

EXECUTIVE SUMMARY

Alberta Environment issued Enforcement Order No. WA-EO-2003/01-NR under the *Water Act* to Messrs. Marc and Roch Bremont, with respect to the ditch located on the NW 27-79-21-W5M, near Falher, Alberta.

The Board received a Notice of Appeal from Messrs. Marc and Roch Bremont appealing the Enforcement Order.

The Board decided to schedule a Hearing of the appeal and requested the Parties provide written submissions to the Board with respect to the issues to be heard at the Hearing. Upon receipt of the written submissions the Board determined that the issues to be heard at the Hearing of this appeal are as follows:

1. whether the ditch is used, operated and maintained such that it constitutes an “activity” within the meaning of the *Water Act*, and whether its continued use, operation and maintenance without an approval is a contravention of section 36(1) of the *Water Act*; and
2. whether the Director properly and reasonably exercised his discretion in issuing the Enforcement Order.

TABLE OF CONTENTS

I. BACKGROUND	1
II. CONCLUSION.....	2

I. BACKGROUND

[1] On December 1, 2003, the Director, Northern Region, Regional Services, Alberta Environment (the “Director”), issued Enforcement Order No. WA-EO-2003/01-NR under the *Water Act* (the “Enforcement Order”) to Messrs. Marc and Roch Bremont with respect to the ditch located on the NW 27-79-21-W5M near Fahler, Alberta.

[2] On December 8, 2003 the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Messrs. Marc and Roch Bremont (the “Appellants”) appealing the Enforcement Order.

[3] On December 10, 2003, the Board wrote to the Appellants and the Director (collectively the “Parties”) acknowledging receipt of the Notice of Appeal and notifying the Director of the appeal. The Board also requested the Director provide the Board with a copy of the records (the “Record”) relating to this appeal, and that the Parties provide available dates for a 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 January 13, 2004, the Board received a copy of the Record from the Director, and on January 20, 2004 forwarded a copy to the Appellants.

[6] On January 21, 2004 the Board wrote to the Parties requesting they provide written submissions to the Board in order to determine the issues for the hearing of the appeal.

[7] Initial Written Submissions were subsequently received from the Director on February 2, 2004 and the Appellants on February 4, 2004. Both Parties were in agreement that the issues to be heard at the hearing of this appeal should be:

1. whether the ditch is used, operated and maintained such that it constitutes an “activity” within the meaning of the *Water Act*, and whether its

continued use, operation and maintenance without an approval is a contravention of section 36(1) of the *Water Act*; and

2. whether the Director properly and reasonably exercised his discretion in issuing the Enforcement Order.

Both the Appellants and the Director advised that they would not be providing Response Written Submissions to the Board. The Board confirmed this information in a letter to the Parties on February 4, 2004.

[8] On February 4, 2004, in consultation with the Parties the Board scheduled the hearing of this appeal for March 3, 2004 in Edmonton, Alberta.

II. CONCLUSION

[9] As the Parties are in agreement with respect to the issues to be dealt with at the Hearing, pursuant to sections 95(2), (3) and (4) of the *Environmental Protection and Enhancement Act* the Board determines that the following issues will be heard at the hearing of this appeal:

1. whether the ditch is used, operated and maintained such that it constitutes an “activity” within the meaning of the *Water Act*, and whether its continued use, operation and maintenance without an approval is a contravention of section 36(1) of the *Water Act*; and
2. whether the Director properly and reasonably exercised his discretion in issuing the Enforcement Order.

Dated on February 4, 2004 at Edmonton, Alberta.

“original signed by”

Dr. Steve Hrudehy

Panel Chair