

ALBERTA
ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – February 9, 2012

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 Rene Lemay with respect to *Water Act* Licence Amendment No. 00285465-00-01 issued to Matt Schultz by the Director, Central Region, Operations Division, Alberta Environment and Water.

Cite as: *Lemay v. Director, Central Region, Operations Division, Alberta Environment and Water*, re: *Matt Schultz* (09 February 2012), Appeal No. 11-178-D (A.E.A.B.).

BEFORE:

Justice Delmar W. Perras (ret.), Board Chair.

SUBMISSIONS BY:

Appellant: Mr. Rene Lemay.

Director: Mr. Neil Hollands, Director, Central Region, Operations Division, Alberta Environment and Water, represented by Mr. Andrew Bachelder, Alberta Justice.

EXECUTIVE SUMMARY

Alberta Environment and Water issued a licence to Matt Schultz to divert up to 70,000 cubic meters of water annually for commercial purposes, specifically for hauling heated water. An amendment was issued amending the date to complete an assessment of neighbouring water wells, requiring a report on the water well assessment, and requiring the report to be provided to Alberta Environment and Water prior to withdrawing any water from the well.

The Environmental Appeals Board received a Notice of Appeal from Mr. Rene Lemay, appealing the amendment, specifically the extent of the water well assessment. Alberta Environment and Water objected to the appeal.

After reviewing and considering the submissions from Alberta Environment and Water and Mr. Lemay, the Board determined the grounds on which the appeal was filed are moot since all of the conditions in the amendment had to be met by December 20, 2011. Mr. Lemay's major concern in his appeal, the area that should be included in the data collection and monitoring, was included in his appeal of the original licence, and is, therefore, still an issue that may be considered by the Board if a hearing is held and Mr. Lemay is granted standing with respect to that appeal.

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I. BACKGROUND

[1] On August 30, 2011, the Director, Central Region, Operations Division, Alberta Environment and Water (the “Director”), issued Licence No. 00285465-00-00 (the “Licence”) under the *Water Act*, R.S.A. 2000, c. W-3 to Mr. Matt Schultz (the “Licence Holder”). On December 2, 2011, the Director, issued Licence Amendment No. 00285465-00-01 (the “Licence Amendment”) under the *Water Act* to the Licence Holder. The Licence Amendment amended the date baseline data had to be completed, added the requirements that the report had to be submitted to the Director, and provided that no water was to be withdrawn before the report was submitted. The Licence Amendment is in relation to an aquifer accessed by a well located in 6-23-48-8-W5M near Drayton Valley, Alberta.

[2] On December 14, 2011, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Mr. Rene Lemay (the “Appellant”) appealing the Licence Amendment on the grounds that: (1) testing and monitoring of the wells should go beyond 1.6 km; (2) inadequate notice of the Licence and Licence Amendment; (3) additional testing should be required; and (4) the onus is on the appellants to demonstrate the well under appeal is having a negative effect on their wells.

[3] On January 17, 2012, the Director filed an objection to the appeal on the grounds that: (1) no notice was required; (2) amendments to monitoring, reporting, or inspection requirements are not appealable; (3) the matter is vexatious and frivolous; and (4) mootness. The Director asked that the appeal be summarily dismissed.

[4] On January 18, 2012, the Board asked the Appellant to provide comments regarding the Director’s January 17, 2012 letter. The Appellant responded on January 25, 2012, clarifying he was asking for a connection test for wells located 5 to 8 km from the licenced well.

II. ANALYSIS

[5] The Licence Amendment set a specific date, December 20, 2011, for the Licence Holder to complete a review of the wells within a 1.6 km radius of the licenced well instead of

November 30, 2011. In the Licence, the Licence Holder had 90 days to complete the well review. The first two conditions in the amendment are the same as the clauses replaced in the Licence. Even though the Licence Amendment stated condition 4.2 was being deleted and replaced with the amendment, the result of the amendments would have the same effect because these conditions are the same. What was added in the Licence Amendment was the requirement of the Licence Holder to submit the report on the well study to the Director and that no water be withdrawn until the report is provided to the Director. The Appellant had no issue with these latter two clauses. What remains an issue for the Appellant is the radius distance that must be included in the well assessment and study.

[6] The Board notes the actions required under the Licence Amendment were to be completed by December 20, 2011. The clause is now moot. All of the provisions in the amendment have been spent. If the Licence Holder did not comply within the timeframe allotted, he would have to apply for another amendment. However, the Director confirmed the report was provided before December 20, 2011. Therefore, the Board dismisses the appeal because the appeal is moot.

[7] As stated above, the conditions are the same as in the Licence. Since the Appellant has submitted an appeal of the Licence and raised concerns of the limited 1.6 radius, the Appellant is still in a position to have the Board consider the issue if the Appellant is found to be directly affected and the Board determines it is a valid issue in the original appeal.

III. CONCLUSION

[8] The Board dismisses the appeal because the conditions in the Licence Amendment are now moot, but the matter of the 1.6 km radius for assessing and monitoring water wells remains a live issue under the Appellant's Notice of Appeal of the Licence.

Dated on February 9, 2012, at Edmonton, Alberta.

“original signed by”

D.W. Perras
Chair