ALBERTA
ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – November 3, 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 appeals filed by Sheila Mizera, Gertie and Rudy Mizera, and Terry and Fay Mizera with respect to Approval No. 00142349-00-00 issued under the *Water Act* to the Village of Ryley by the Director, Central Region, Regional Services, Alberta Environment.

Cite as: *Mizera* v. *Director, Central Region, Regional Services, Alberta Environment*, re: *Village of Ryley* (3 November 2003), Appeal Nos. 01-040 and 01-041-DOP (A.E.A.B.).

EXECUTIVE SUMMARY

Alberta Environment issued a *Water Act* Approval to the Village of Ryley authorizing the discharge of sewage effluent into a tributary of Bible Creek, near the Village of Ryley, Alberta.

The Environmental Appeal Board received Notices of Appeal and Stay Applications from Ms. Sheila Mizera, Ms. Gertie Mizera, Mr. Rudy Mizera, Mr. Terry Mizera and Ms. Fay Mizera appealing the Approval.

The Board held a mediation meeting at which the parties reached an interim agreement, and agreed that the appeals would be held in abeyance for further discussion. Once the abeyance period expired the parties reached a second interim agreement, agreeing to continue further discussions with a view towards a resolution of the appeals.

A letter of withdrawal was received from Ms. Sheila Mizera on behalf of Ms. Sheila Mizera, Mr. Rudy and Ms. Gertie Mizera, and Mr. Terry and Ms. Fay Mizera. The Board therefore closes its file in this matter.

MEDIATION MEETING BEFORE Ms. Marilyn Kansky, Board Appointed Mediator.

APPEARANCES

Appellants: Ms. Sheila Mizera, Mr. Rudy Mizera, Ms. Gertie Mizera, Mr. Terry Mizera, Ms. Fay Mizera and Mr. Horst and Mr. Walter Glombick.

Director: Mr. Peter Pui, Director, Central Region, Regional Support, Alberta Environment and Mr. Doug Yeremy, Alberta Environment represented by Mr. Darin Stepaniuk, Alberta Justice.

Approval Holder: Mr. B. Hanewich, UMA Engineering Ltd., Mr. A. Short, the Village of Ryley, Ms. Rhonda Knudslien, the Village of Ryley, Mr. Ross Good, the Village of Ryley, His Worship Mayor Elston Solberg, the Village of Ryley, represented by Mr. William Barclay, Reynolds Mirth Richards and Farmer.

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I. BACKGROUND

[1] On April 9, 2001, the Director, Central Region, Regional Services, Alberta Environment[1], (the "Director") issued Approval 00142349-00-00 (the "Approval") under the *Water Act*, R.S.A. 2000, c. W-3[2], to the Village of Ryley (the "Approval Holder") authorizing the discharge of sewage effluent into a tributary of Bible Creek at the S½ 10-50-17-W4 subject to certain conditions. The Approval expires on December 15, 2004.

[2] The Environmental Appeal Board (the "Board") received Notices of Appeal from Ms. Sheila Mizera on behalf of herself and Ms. Gertie and Mr. Rudy Mizera on April 20, 2001, from Mr. Terry and Ms. Fay Mizera on April 24, 2001, and from Mr. Horst Glombick on April 27, 2001, (collectively the "Appellants"). The Board also received Stay applications from Ms. Sheila Mizera and Mr. Horst Glombick.

[3] On April 23, 2001, the Board acknowledged Ms. Sheila Mizera's appeal, notified the Director and the Approval Holder of the appeal, and requested the Director provide the Board with a copy of the records in relation to the appeal (the "Record").

[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 Board's legislation. Both Board's responded in the negative.

[5] On April 23, 2001, the Board wrote to Ms. Sheila Mizera, the Director and the Approval Holder, advising that the Board wished to schedule an oral hearing to deal with the Stay applications and the merits of the appeals on Thursday, April 26, 2001. The Board also proposed two options to the parties. Both were predicated on the Village of Ryley agreeing to delay the release from the sewage lagoon, which was first scheduled for April 23, 2001 and then for April 27, 2001. The first option was to participate in a mediation meeting. The second was, assuming the parties wished to proceed directly to a hearing, to plan the hearing in a way that gave the parties a better opportunity to prepare their presentations on the Stay and the merits.

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[1] Formerly Parkland Region, Natural Resources Service, Alberta Environment.
[2] Formerly *Water Act,* S.A. 1996, c.W-3.5.

[6] The Board received a letter dated April 23, 2001 from Ms. Sheila Mizera requesting information related to the Approval. In response to her letter, the Board asked the Director and the Approval Holder to assist Ms. Mizera with her request.

[7] On April 24, 2001, the Board wrote to Ms. Sheila Mizera to confirm that she was representing Mr. Terry and Ms. Fay Mizera. Ms. Sheila Mizera responded by advising that she owned land with her parents Mr. Rudy and Ms. Gertie Mizera and Mr. Terry and Ms. Fay Mizera owned adjacent property. The Board also wrote to Ms. Sheila Mizera, Mr. Terry and Ms. Fay Mizera confirming their advice to the Board that they would be prepared to participate in a mediation meeting.

[8] The Board received letters from the Director and Approval Holder dated April 23, 2001 and April 24, 2001 respectively. The Director outlined his concerns with the short notice of the hearing, stating he agreed that the manner in which to deal with potential emergency situations is through the Stay process, and advised he would be available for a mediation meeting. The Approval Holder advised in their letter that they would participate in a mediation meeting and confirmed that "…the Village will not discharge their sewage lagoon without first giving reasonable notice to the Board, so that a Stay Application can be made, if necessary." The Approval Holder went on to say that they would be in a better position, in a week's time, to advise when discharge would become necessary. The Board responded to the parties advising it had cancelled the oral hearing scheduled for April 26, 2001, would be scheduling a mediation meeting as quickly as possible once available dates were provided, and would await the Approval Holder's confirmation as to how long the Village of Ryley would be able to delay the discharge of effluent.

[9] On April 26, 2001, the Board acknowledged letters from Ms. Sheila Mizera, the Approval Holder and the Director. The Board also acknowledged a letter from Mr. John Hunter, Q.C., counsel for the Beaver Regional Waste Management Commission, to Ms. Sheila Mizera regarding comments contained in her Notice of Appeal. The parties were advised that the Board had scheduled a mediation meeting for May 7, 2001, to be held at Board's office in Edmonton.

[10] On April 27, 2001, the Board forwarded copies of the record, received from the Director, to the parties.

[11] The Director responded to Ms. Sheila Mizera's request for information advising in its letter of April 27, 2001, that the Approval Holder would be providing a copy of the Hanewich/UMA Engineering Report, an estimate of the lagoon volume to be discharged and an analysis of the discharge. In reference to her additional requests, the Director advised that the balance of the information was irrelevant to the appeals. The Director, however, would consider any explanation of the relevance of the information during the mediation meeting of May 7, 2001.

[12] On April 27, 2001, the Board received a Notice of Appeal from Mr. Horst Glombick as well as a request for a Stay. On May 2, 2001, the Board acknowledged the appeal and request for a Stay and also advised the Director and the Approval Holder of Mr. Glombick's appeal. The letter also requested Mr. Glombick's participation at the May 7, 2001 mediation meeting.

[13] The Board advised the parties on May 2, 2001, that it had retained Ms. Marilyn Kansky as a Board Appointed Mediator.

II. THE MEDIATION MEETING

[14] Pursuant to section 11 of the Environmental Appeal Board Regulation, A.R. 114/93, the Board conducted a mediation meeting in Edmonton, Alberta, on May 7, 2001 with Ms. Marilyn Kansky as Board Appointed Mediator (the "Mediator").

[15] In conducting the mediation meeting, the Mediator reviewed the appeals and mediation process and explained the purpose of the mediation meeting. She then circulated copies of the Participants' Agreement to Mediate. All participants signed the Agreement and discussions ensued.

[16] Following productive and detailed discussions, an Interim Agreement evolved at the May 7, 2001 mediation meeting. The parties agreed to hold the appeals in abeyance in order for them to discuss the matter further, and to provide the Board with a status report by December 31, 2001.

[17] Status reports were subsequently received from the parties and with the assistance of the Mediator a second Interim Agreement evolved and the parties agreed to continue with

discussions towards a resolution of the appeal. The Board continued to receive regular status reports from the parties.

[18] On May 26, 2003, the Board received a letter from Mr. Horst Glombick withdrawing his appeal.[3]

[19] On October 28, 2003, the Board received a letter from Mr. Sheila Mizera withdrawing the appeals on behalf of Ms. Sheila Mizera, Mr. Rudy and Ms. Gertie Mizera, and Mr. Terry and Ms. Fay Mizera. The October 28, 2003 letter stated:

> "We appreciate all the efforts the Village of Ryley has taken to deal with their sewage discharge problem. At this time we are requesting our appeals be withdrawn…."

III. DECISION

[20] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*. R.S.A. 2000, c. E-12, and based on the letter of October 28, 2003 from Ms. Sheila Mizera, the Board hereby discontinues its proceedings in Appeal Nos. 01-040 and 01-041 and closes its files in this matter.

Dated on November 3, 2003, at Edmonton, Alberta

"*original signed by*"

William A. Tilleman, Q.C.
Chair

[3] *Glombick* v. *Director, Central Region, Regional Services, Alberta Environment*, re: *Village of Ryley* (29 May 2003), Appeal No. 01-043-DOP (A.E.A.B.).