

# ALBERTA ENVIRONMENTAL APPEAL BOARD

## Decision

Date of Decision – February 25, 2002

**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 Mount Vista Estates Co-operative Ltd. with respect to Approval No. 147324-00-00 issued by the Director, Bow Region, Alberta Environment for the construction, operation and reclamation of a waterworks system for Mount Vista Estates subdivision located in the E ½ 26-26-4-W5M in the Municipal District of Rocky View No. 44.

Cite as: *Mount Vista Estates Co-operative Ltd. v. Director, Bow Region, Regional Services, Alberta Environment.*

## EXECUTIVE SUMMARY

Alberta Environment issued an Approval to Mount Vista Estates Co-operative Ltd. authorizing the construction, operation and reclamation of a waterworks system for the Mount Vista Estates subdivision located in E ½ 26-26-4-W5M in the Municipal District of Rocky View No. 44.

Mount Vista Estates Co-operative Ltd. filed an appeal with the Board, appealing the condition under part 4 of the Approval under which a certified operator is required to operate the waterworks system.

A mediation meeting was scheduled, however, it was subsequently cancelled in consultation with the parties and a conference call took place between the Board's General Counsel and Settlement Officer, Alberta Environment and Mount Vista Estates Co-operative Ltd. During the conference call Mount Vista Estates Co-operative Ltd. agreed to pursue further avenues for complying with the requirement to have a certified operator. Discussions and the endeavours of Mount Vista Estates Co-operative Ltd. did not result in the resolution of the appeal and a motion was brought forward by Alberta Environment to dismiss the appeal.

In order to bring the appeal to a conclusion, the Board scheduled a hearing via written submissions. The Board did not receive the initial written submission from Mount Vista Estates Co-operative Ltd. on the due date. After writing again to Mount Vista Estates Co-operative Ltd., requesting they submit their written submission, and after telephone conversations with them, it became apparent that they were neither going to provide a written submission or a letter of withdrawal to the Board.

The Board therefore dismisses this appeal pursuant to section 95(5) of *the Environmental Protection and Enhancement Act* for failing to comply with a written notice.

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## **I. BACKGROUND**

[1] On August 30, 2001, the Director, Bow Region, Regional Services, Alberta Environment (the “Director”) issued Approval No. 147324-00-00 (the “Approval”), under the *Environmental Protection and Enhancement Act* (the “Act”) to Mount Vista Estates Co-operative Ltd. authorizing the construction, operation and reclamation of a waterworks system for the Mount Vista Estates subdivision located in the E ½ 26-26-4-W5M in the Municipal District of Rocky View No 44.

[2] On October 9, 2001, the Environmental Appeal Board (the “Board”) received a Notice of Appeal dated October 5, 2001 on behalf of Mount Vista Estates Co-operative Ltd. (the “Appellants”). The Appellants were appealing condition 4.2.2 of the Approval which deals with the operation of the waterworks system, and requires the system to be directly supervised by a certified operator. The Board acknowledged the Notice of Appeal on October 11, 2001, notified the Director of the appeal and requested a copy of the records related to this appeal (the “Record”) from the Director. The Board also requested that all parties to the Appeal provide their available dates for a mediation meeting/settlement conference or hearing.

[3] 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.

[4] On October 24, 2001, the Board received the Record from the Director and provided a copy to the Appellants on October 25, 2001.

[5] On October 29, 2001, the Board received a letter from the Director. The letter stated in part:

“...it seems as the only issue is the requirement of this system being directly supervised by a certified operator...In regards to the requirement of the certified operator, the Approval Holder may either hire such an operator or some of the residents of the Mount Vista Estates subdivision could obtain the necessary certification...Perhaps the Approval Holder/Appellant can advise the Department and the Board if this could be a solution to this appeal...”

[6] On November 2, 2001, the Board received a response to the Director's letter from the Appellants confirming that the only issue was the requirement of the system to be directly supervised by a certified operator.

[7] In consultation with the parties, the Board proceeded to schedule a mediation meeting/settlement conference for December 14, 2001.

[8] On December 10, 2001, the Board received a letter from the Appellants stating:

“...Although the resident members of the Co-op do not take issue with the certification of an operator per se, various significant tangential concerns arise, particularly with respect to the potential liability which may arise for such volunteer or volunteers, in the unlikely event problems arise with respect to water quality or otherwise. This is of particular concern in light of the difficulties which the Co-op has encountered in obtaining liability insurance coverage for its directors...”

The letter went on to advise that the Appellants were using their best efforts to obtain insurance coverage and that because the certification courses and exams are only offered periodically, that they could not immediately comply with the certification requirement in the Approval.

[9] All parties agreed to cancel the mediation meeting/settlement conference scheduled for December 14, 2001 and replace it with a conference call as “...the issues in respect of the appeal were more practical than substantive in nature...”, as stated by the Appellants in their December 10, 2001 letter.

[10] Further to telephone conversations between the parties and the Board's General Counsel and Settlement Officer, the Board wrote to the parties advising they were hopeful that the matter could be resolved by the parties. The Board requested the parties provide available dates for a conference call as well as available dates for a hearing should the matter not be resolved.

[11] The conference call between the Appellants, the Director and Board's General Counsel and Settlement Officer was scheduled for January 8, 2002. During the conference call the Appellants agreed to pursue four possible avenues for complying with the requirement to have a certified operator. The Board confirmed this in a letter to the parties on January 8, 2002, as follows:

“...1. The Appellants have agreed to seek confirmation from the Alberta

Federation of Water Co-ops that as a result of their membership in the Federation, the Mount Vista Water Co-op is entitled to insurance coverage. Along with this, the Appellants agreed to apply for a conditional certificate for their operator and apply for and have the operator write the examination for certification in Banff on March 12, 2002;

2. The Appellants have agreed to contact other water co-ops in the area and see if some arrangement can be made to share an operator;
3. The Appellants have agreed to contact non-traditional operators - i.e. the operator of the Emerald Bay Water and Sewer Co-op - to see if some arrangement can be made to provide an operator; and
4. The Appellants have agreed to contact small water companies to see if some arrangement can be made to have an operator put forward by the Mount Vista Water Co-op to work under the umbrella of the water company...”

During the conference call the Director agreed to advise if they knew of any companies that may act as an operator for the Appellants. The parties were requested to provide a status report to the Board by January 18, 2002.

[12] On January 10, 2002, the Board received a telephone call from the Director providing the information that she had agreed to during the conference call. On January 21, 2002, the Board received a status report from the Appellants advising that all endeavours were being made to move towards a resolution.

[13] The Board responded to the Appellants' status report on January 22, 2002. The Board advised that it would like to move this appeal to a conclusion as quickly as possible and would like to set a hearing. The Board requested the parties provide available dates for a hearing in February.

[14] The Board received a letter from the Director on January 24, 2002 requesting the appeal be dismissed as it is not properly before the Board. The Director advised that the Appellants were no longer disputing the requirement for a certified operator and as such the appeal is moot and should be dismissed.

[15] The Appellants' response to the Director's letter was received by the Board on January 29, 2002. The Appellants re-iterated their position that their willingness to certify an operator was conditional on their being able to obtain liability insurance.

[16] Upon receipt of the letters from the Director and the Appellants, the Board decided to proceed to hear both the motion of the Director dated January 24, 2002 and the substantive matters included in the Notice of Appeal.<sup>1</sup> The Board also decided that these matters would be heard via written submissions. Specifically, the Board requested submissions on the following:

1. "The Appellants wish discretion to be exercised in order that the requirement that:

'The day to day operation of the water treatment plant and the water distribution system shall be directly supervised by a certified operation operator who holds a valid Level 1 Operators Certificate or a valid Small Water System Operators Certificate.'

as specified in Clause 4.2.2 of the Approval, be dispensed with, and that the Appellant be permitted to continue to operate and manage its water distribution system internally and independently as it as done so without incident for the past 26 years."

2. "[T]he Director wishes to bring a motion to dismiss this appeal as it is not properly before the Board. ... In this appeal, the sole issue put forward by the Appellant/Approval Holder – Mount Vista Estates Co-operative (the 'Co-op') – was the requirement that this waterworks system had to be supervised by a certified operator (Section 4.2.2 of the Approval) and the sole relief requested was the deletion of clause 4.2.2. ... [T]he Appellant/Approval Holder is no longer disputing the requirement for a certified operator. As such, it is the Director's submission that this appeal is now moot and should be dismissed."

The Appellants were requested to provide their initial written submission to the Board by February 15, 2002, followed by the Director's response submission by February 22, 2002 and finally, a rebuttal submission from the Appellants by March 1, 2002.

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<sup>1</sup> A Notice of Public Hearing was placed in the *Cochrane Times* on January 6, 2002 and a News Release was issued on January 31, 2002 providing details of the hearing.

[17] The Board did not receive the Appellants' initial written submission by the due date and subsequently Board staff placed a telephone call to the Appellants on February 19, 2002. The Appellants advised that they would contact their president and would then contact the Board. The Appellants did not contact the Board again that day and therefore the Board sent a letter to the Appellants requesting they provide their written submission to the Board by February 20, 2002. The Board cautioned the Appellants that failure to respond to the Board in a timely manner may result in the dismissal of the appeal.

[18] On February 20, 2002, the Board staff received a telephone call from the Appellants. The Appellants advised that the only outstanding matter was the confirmation of insurance. The Appellants advised that they probably would not be sending in a submission and probably would not ask for an extension as they were advised by the Board's General Counsel and Settlement Officer that extensions are not routinely granted, and therefore they may withdraw. The Appellants were advised by Board staff to respond to the Board in writing or the appeal may be dismissed. By February 22, 2002, the Board had not heard further from the Appellants either in writing or by telephone.

## **II. DECISION**

[19] Pursuant to section 95(5)(a)(iv) of *the Environmental Protection and Enhancement Act* the Board dismisses this appeal for failing to comply with a written notice.

Dated on February 25, 2002, at Edmonton, Alberta.

"original signed by"  
William A. Tilleman, Q.C.