

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Report and Recommendations

Date of Mediation – November 20, 2001

Date of Report and Recommendations – November 21, 2001

IN THE MATTER OF Sections 84, 85, 87, 91, 92 and 93 of the *Environmental Protection and Enhancement Act*, S.A. 1992 c. E-13-3 and Section 115 of the *Water Act*, S.A. 1996, c.W-3.5;

-and-

IN THE MATTER OF an appeal filed Ms. Hilda Hanson, Chair of the River Breakup Task Force of the Regional Municipality of Wood Buffalo by with respect to *Water Act* Approval 00154730-00-00 issued by the Director, Northeast Boreal Region, Regional Services, Alberta Environment to TBG Contracting Ltd.

Cite as: *River Breakup Task Force v. Director, Northeast Boreal Region, Regional Services, Alberta Environment re: TBG Contracting Ltd.*

MEDIATION BEFORE

Mr. Ron V. Peiluck

APPEARANCES

Appellant: Ms. Hilda Hanson, Chair, River Breakup Task Force, Regional Municipality of Wood Buffalo; and Mr. Fred Baehl, Director, Emergency Preparedness, Regional Municipality of Wood Buffalo.

Director: Mr. Patrick Marriott, Director, Northeast Boreal Region, Regional Services, Alberta Environment represented by Mr. Darin Stepaniuk and Mr. Randy Didrikson, Alberta Justice; Mr. Larry Garner, Technologist, River Engineering Branch, Water Management Division, Alberta Environment; and Ms. Tracy Knight, Regional Technologist, Northeast Boreal Region, Alberta Environment.

Approval Holder: Mr. Wayne Woodhouse, Operations Manager, TBG Contracting Ltd.; Mr. Fred Lynch, TBG Contracting Ltd.; and E. Girard, Girard Enterprises Inc.

Board Staff: Ms. Denise Black, Acting Executive Director.

EXECUTIVE SUMMARY

On October 4, 2001, Alberta Environment issued a *Water Act* Approval to TBG Contracting Ltd. for the construction of an ice bridge on the Athabasca River near Fort McMurray, Alberta. The Environmental Appeal Board received a Notice of Appeal from Ms. Hilda Hanson, Chair of the River Breakup Task Force of the Regional Municipality of Wood Buffalo appealing the Approval. The Task Force was struck as a result of the flooding in Fort McMurray in 1997 and reports to the Protective Services Standing Committee of the Regional Municipality of Wood Buffalo.

In consultation with the parties, the Board held a mediation meeting/settlement conference in Fort McMurray, Alberta following which an agreement was reached by all the parties. The Board recommends that the Minister of Environment accept the agreement.

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I. BACKGROUND

[1] On October 4, 2001, the Director, Northeast Boreal Region, Regional Services, Alberta Environment (the “Director”) issued *Water Act* Approval 00154730-00-00 (the “Approval”) to TBG Contracting Ltd. (the “Approval Holder”) authorizing the construction of an ice bridge on the Athabasca River in NW 28 and NE 29-089-09-W4M, near Fort McMurray, Alberta.

[2] On October 17, 2001, the Environmental Appeal Board (the “Board”) received a Notice of Appeal from Ms. Hilda Hanson, Chair of the River Breakup Task Force of the Regional Municipality of Wood Buffalo (the “Appellant”) appealing the Approval issued to the Approval Holder. This Task Force was struck as a result of the flooding in Fort McMurray in 1997 and reports to the Protective Services Standing Committee of the Regional Municipality of Wood Buffalo. The Board acknowledged the appeal, requested a copy of the records (the “Record”) related to the appeal from the Director, and requested that all parties provide 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. The Natural Resources Conservation Board responded in the negative and the Board has not heard from the Alberta Energy and Utilities Board.

[4] In response to the Board’s letter of October 17, 2001, the Director provided his available dates for a mediation meeting/settlement conference and Board staff received telephone calls from the Appellant and Approval Holder also providing their available dates.

[5] The Board received the Record from the Director and on October 31, 2001 provided a copy to the Appellant and the Approval Holder.

[6] On November 2, 2001, the Board advised the parties that it would proceed to a mediation meeting/settlement conference on November 20, 2001 in Fort McMurray and further details would follow shortly. Parties were also asked to re-examine their schedules with a view to

scheduling a hearing immediately following the mediation meeting, in the event that the mediation meeting was unsuccessful.

[7] On November 7, 2001, the Board confirmed with the parties that the mediation meeting would be held on November 20, 2001, provided details of the time and location, a copy of the Participants Agreement to Mediate for their review and requested that each party provide the names of all participants that would be involved in the mediation meeting. The Appellant advised that any resolution reached at the mediation meeting would require the approval of the Regional Municipality of Wood Buffalo Regional Council. On November 13, 2001, a Notice of Mediation Meeting/Settlement Conference was placed in the *Fort McMurray Today* advising of the mediation meeting/settlement conference taking place between the parties only.

[8] On November 15, 2001, the Board requested that the Appellant provide a copy of the Terms of Reference of the River Breakup Task Force as well as the authority granted to them by the Regional Municipality of Wood Buffalo. This information was provided on November 16, 2001.

II. THE MEDIATION MEETING/SETTLEMENT CONFERENCE

[9] Pursuant to section 11 of the Environmental Appeal Board Regulation, A.R. 114/93, the Board conducted a mediation meeting in Fort McMurray, Alberta, with Mr. Ron Peiluck as the presiding Board member.

[10] In conducting the mediation meeting, Mr. Peiluck reviewed the appeal and mediation process and explained the purpose of the mediation meeting. He then circulated copies of the Participants Agreement to Mediate. All parties signed the Agreement and discussions ensued.

[11] Following productive and detailed discussions, a resolution evolved at the November 20, 2001 mediation meeting and the attached settlement was signed (pages 4 and 5).

[12] On November 21, 2001, the Board received a letter from the Appellant confirming that the Regional Municipality of Wood Buffalo had ratified the settlement.

III. RECOMMENDATIONS

[13] In accordance with section 91 of the *Environmental Protection and Enhancement Act*, S.A. 1992, c. E-13.3, the Board recommends that the Minister of Environment amend Approval 00154730-00-00 issued by the Director, Northeast Boreal Region, Regional Services, Alberta Environment, by replacing Condition 12 of the Approval with the following:

“The approval holder shall cease hauling and commence dismantling of the ice bridge by March 15, 2002 or another date as authorized in writing by the Director. The removal of the ice bridge shall be completed by April 7, 2002 or another date as authorized in writing by the Director.”

Attached for the Minister’s consideration is a draft Ministerial Order implementing the recommendation.

[14] Further, with respect to section 93(2) and 93 of the *Environmental Protection and Enhancement Act*, the Board recommends that copies of this Report and Recommendations and of any decision by the Minister be sent to the following parties:

- Ms. Hilda Hanson, Chair, River Breakup Task Force;
- Mr. Fred Baehl, Director, Emergency Preparedness, Regional Municipality of Wood Buffalo;
- Mr. Wayne Woodhouse, Operations Manager, TBG Contracting Ltd.; and
- Mr. Patrick Marriott, Director, Northeast Boreal Region, Regional Services, Alberta Environment, represented by Mr. Darin Stepaniuk, Alberta Justice.

Dated on November 21, 2001, at Edmonton, Alberta.

□original signed by□

Mr. Ron V. Peiluck

IV. RESOLUTION

RESOLUTION OF APPEAL NO. 01-095 REGARDING APPROVAL NO. 00154730-00-00 ISSUED UNDER THE *WATER ACT* BY THE DIRECTOR, NORTHEAST BOREAL REGION, REGIONAL SERVICES, ALBERTA ENVIRONMENT, TO TBG CONTRACTING LTD., FOR THE PURPOSE OF CONSTRUCTING AN ICE BRIDGE ACROSS THE ATHABASCA RIVER IN NW 28 & NE 29-089-09-W4, NEAR FORT MCMURRAY.

All parties to the appeal have agreed to the following terms and conditions:

1. THAT Condition 12 of the Approval be replaced with the following:

“The approval holder shall cease hauling and commence dismantling of the ice bridge by March 15, 2002 or another date as authorized in writing by the Director. The removal of the ice bridge shall be completed by April 7, 2002 or another date as authorized in writing by the Director.”

2. THAT based on material already prepared by Trillium Engineering and Hydrographics Inc., the approval holder shall submit a report by December 14, 2001, approved by Trillium Engineering and Hydrographics Inc. providing a thorough evaluation of crossing alternatives and outlining the risks, mitigation, and rationale for the ice bridge that is the subject of this Approval (the “ice bridge”).

3. THAT the approval holder shall provide local media with notice of commencement of the construction of the ice bridge.

4. THAT the approval holder shall provide tours of the ice bridge to interested persons upon request of the River Break Up Task Force or officials of the Regional Municipality of Wood Buffalo.

5. THAT the approval holder shall provide local media with information about the dismantling of the ice bridge.

6. THAT before dismantling the ice bridge, the approval holder shall, in consultation with the Waterways Community Association, hold an open house in the Waterways community about the ice bridge.

7. THAT in consideration of the foregoing, and upon ratification of this agreement by the Regional Municipality of Wood Buffalo Regional Council, the Appellant, Ms. Hilda Hanson on behalf of the River Breakup Task Force, shall forthwith withdraw her Notice of Appeal.

RESOLUTION AGREED TO BY:

“original signed by” Date: November 20, 2001
Ms. Hilda Hanson, Chair
River Breakup Task Force

“original signed by” Date: November 20, 2001
Mr. Fred Baehl
Director, Emergency Preparedness
Regional Municipality of Wood Buffalo

“original signed by” Date: November 20, 2001
Mr. Wayne Woodhouse
TBG Contracting Ltd.

“original signed by” Date: November 20, 2001
Mr. Patrick Marriott
Director, Northeast Boreal Region
Regional Services
Alberta Environment
Represented by Darin Stepaniuk, Alberta Justice

V. DRAFT ORDER

**Ministerial Order
/2001**

Environmental Protection and Enhancement Act
S.A. 1992, c. E-13.3

Water Act
S.A. 1996, c. W-3.5

**Order Respecting Environmental Appeal Board
Appeal No. 01-095**

I, Dr. Lorne Taylor, Minister of Environment, pursuant to section 92 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeal Board Appeal No. 01-095.

Dated at the City of Edmonton, in the Province of Alberta this _____ day of _____, 2001.

Honourable Dr. Lorne Taylor
Minister of Environment

Draft Appendix

Order Respecting Environmental Appeal Board Appeal No. 01-0-95

With respect to the decision of Mr. Patrick Marriott, Director, Northeast Boreal Region, Alberta Environment (the "Director"), to issue Approval 00154730-00-00 (the "Approval") under the *Water Act*, S.A. 1996, c. W-3.5, to TBG Contracting Ltd., I, Dr. Lorne Taylor, Minister of Environment, order that the Approval be varied by replacing Condition 12 of the Approval with the following:

"The approval holder shall cease hauling and commence dismantling of the ice bridge by March 15, 2002 or another date as authorized in writing by the Director. The removal of the ice bridge shall be completed by April 7, 2002 or another date as authorized in writing by the Director."

**Ministerial Order
42/2001**

Environmental Protection and Enhancement Act
S.A. 1992, c. E-13.3

Water Act
S.A. 1996, c. W-3.5

**Order Respecting Environmental Appeal Board
Appeal No. 01-095**

I, Dr. Lorne Taylor, Minister of Environment, pursuant to section 92 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeal Board Appeal No. 01-095.

Dated at the City of Edmonton, in the Province of Alberta this 26- day of November, 2001.

“Original signed by”

Honourable Dr. Lorne Taylor
Minister of Environment

Appendix

Order Respecting Environmental Appeal Board Appeal No. 01-0-95

With respect to the decision of Mr. Patrick Marriott, Director, Northeast Boreal Region, Alberta Environment (the "Director"), to issue Approval 00154730-00-00 (the "Approval") under the *Water Act*, S.A. 1996, c. W-3.5, to TBG Contracting Ltd., I, Dr. Lorne Taylor, Minister of Environment, order that the Approval be varied by replacing Condition 12 of the Approval with the following:

"The approval holder shall cease hauling and commence dismantling of the ice bridge by March 15, 2002 or another date as authorized in writing by the Director. The removal of the ice bridge shall be completed by April 7, 2002 or another date as authorized in writing by the Director."