
ALBERTA
ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

Date of Mediation Meeting – July 15, 2002
Date of Discontinuance of Proceedings – December 9, 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 section 115 of the *Water Act*, R.S.A. 2000, c. W-3.

-and-

IN THE MATTER OF a Notice of Appeal filed by Mr. Norman J. Spencer with respect to *Water Act* Preliminary Certificate 00176470-00-00 issued by the Director, Southern Region, Regional Services, Alberta Environment to J. Byrne, D. Cerney and 254175 Alberta Ltd.

Cite as: *Spencer v. Director, Southern Region, Regional Services, Alberta Environment re: J. Byrne, D. Cerney and 254175 Alberta Inc.* (9 December 2002), Appeal No. 02-013-DOP (A.E.A.B.).

**MEDIATION MEETING SETTLEMENT
CONFERENCE BEFORE:** Mr. Ron V. Peiluck

APPEARANCES:

Appellant: Mr. Norman J. Spencer, represented by Mr. R. Philip M. North.

Department: Mr. David McGee, Director, Southern Region, Regional Services, Alberta Environment and Mr. Ian Franks, Alberta Environment represented by Ms. Charlene Graham, Alberta Justice.

Certificate Holders: Mr. Jim Byrne, Ms. Dawna Cerney, Mr. Bob Byrne, 254175 Alberta Ltd., Mr. Stephen Mailath Bel·MK Engineering Ltd.

Board Staff Member: Ms. Marian Fluker, Senior Research Officer

EXECUTIVE SUMMARY

Alberta Environment issued a Preliminary Certificate to J. Byrne, D. Cerney and 254175 Alberta Ltd., stating that J. Byrne, D. Cerney and 254175 Alberta Ltd. will receive a licence to divert 4935.8 cubic metres of water annually from the well in SE 08-010-22-W4 for an eight home subdivision with priority no. 2001-11-22-004 upon compliance with conditions in the Preliminary Certificate.

The Board received a Notice of Appeal from Mr. Norman J. Spencer appealing the Preliminary Certificate.

The Board held a mediation meeting in Calgary, Alberta, following which discussions continued among the parties. As no resolution was reached by the due date agreed to at the mediation meeting of July 15, 2002, the Board requested the parties provide dates for a hearing of the appeal. In consultation with the parties the Board scheduled the hearing for December 13, 2002. While the Board had set the matter down for a hearing, the parties continued with their discussions and on November 27, 2002, Mr. Spencer withdrew his appeal as a resolution had been reached.

The Board therefore closes its file.

TABLE OF CONTENTS

| | |
|---------------------------------|---|
| I. BACKGROUND | 1 |
| II. THE MEDIATION MEETING | 2 |
| III. DECISION | 2 |

I. BACKGROUND

[1] On April 10, 2002, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”) issued Preliminary Certificate No. 00176470-00-00 (the “Certificate”) under the *Water Act*, R.S.A. 2000, c. W-3, to J. Byrne, D. Cerney and 254175 Alberta Ltd. (collectively the “Certificate Holders”). The Certificate states that the Certificate Holders will receive a licence to divert 4935.8 cubic metres of water annually from the well in SE 08-010-22-W4 for an eight home subdivision with priority no. 2001-11-22-004 upon compliance with conditions in the Certificate.

[2] On May 21, 2002, the Environmental Appeal Board (the “Board”) received a Notice of Appeal dated May 20, 2002 from Mr. Norman J. Spencer (the “Appellant”) appealing the Certificate.

[3] On May 22, 2002, the Board acknowledged receipt of the Notice of Appeal, notified the Director and Certificate Holders of the appeal and requested the Director provide a copy of the records related to the appeal (the “Record”) to the Board. The Appellant, Certificate Holders and Director (collectively the “Parties”) were also requested to provide the Board with available dates for a mediation meeting or 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 June 11, 2002, the Board received the Record from the Director and on June 12, 2002, forwarded a copy to the Appellant and Certificate Holders.

[6] On June 18, 2002, in consultation with the Parties, the Board scheduled the mediation meeting for July 15, 2002, in Lethbridge, Alberta.

II. THE MEDIATION MEETING

[7] Pursuant to section 11 of the Environmental Appeal Board Regulation, A.R. 114/93, the Board conducted a mediation meeting in Lethbridge, Alberta on July 15, 2002 with Mr. Ron Peiluck as the presiding Board Member (the “Mediator”).

[8] In conducting the mediation meeting, the Mediator 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.

[9] Notwithstanding detailed discussions, a resolution could not be reached by the Parties. The Parties agreed to continue discussions amongst themselves and to provide a status report to the Board. However, when the parties had not resolved the appeal by August 23, 2002, the Board advised that a hearing would be scheduled.

[10] In consultation with the Parties, the Board scheduled the hearing of this appeal for December 13, 2002 in Lethbridge, Alberta.

[11] On November 27, 2002, the Board received a letter from the Appellant advising that he wished to withdraw his appeal. The Appellant’s letter stated:

“...please be advised that having reached a mutually acceptable resolution agreement with the applicants of WA PC No. 00176470, which satisfactorily addresses my concerns...I wish to immediately withdraw my appeal to the aforesaid certificate”.

III. DECISION

[12] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, and based on the Appellant’s letter of November 27, 2002 the Board hereby discontinues its proceedings in Appeal No. 02-013 and closes its file.

Dated on December 9, 2002, at Edmonton, Alberta.

“original signed by”

William A. Tilleman, Q.C.
Chair