



# Environmental Appeal Board

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## APPEAL NO. 94/36 HEALTH

In the matter of an appeal under s.5 of the *Health Act*, R.S.B.C. 1979, c. 161

**BETWEEN:** Don Walde **APPELLANT**

**AND:** Environmental Health Officer **RESPONDENT**

**BEFORE:** Mr. J. Basran, Chair

**DATE OF HEARING:** May 26, 1995

**PLACE OF HEARING:** Cranbrook, BC

**APPEARING:**

|                       |              |
|-----------------------|--------------|
| <b>For Appellant</b>  |              |
| Spokesperson:         | Don Walde    |
| <b>For Respondent</b> |              |
| Spokesperson:         | Ron Popoff   |
| Witness:              | Don Corrigan |

This is an appeal of a decision of the Environmental Health Officer to refuse to issue the Appellant a sewage disposal permit for Lot 23, Plan 5212, District Lot 5799, Kootenay Land District, Braunagel Road, Moyie, BC, South Moyie Lake.

## BACKGROUND

There are ninety-seven (97) lake-front properties along Moyie Lake (South). This lot in question was created and registered in August 1964, and has been owned by the Appellant's family since 1968. Since that time, the matter of a sewage disposal system has been handled by way of an outhouse (pit toilet) with grey water being disposed of on the surface of the ground. The Appellants and the Respondent agree that a conventional septic tank sewage disposal system cannot be constructed on the property.

On October 11, 1994, application was made for a sewage disposal permit to construct a "pump-out tank" sewage disposal system on this property. This application was rejected on October 24, 1994. The reason for the rejection was that such a system would not meet the requirements of section 6.6(d) of the Public Health Protection Policy, for on-site sewage disposal. (see Exhibit #2)

This rejection is being appealed whether or not the Public Health Inspector was correct in refusing to exercise his section 7 discretion in refusing to issue a permit.

**ISSUES:****The Law**

The British Columbia *Health Act*: Sewage Disposal Regulation 411/85.

The Policy, On-Site Sewage Disposal, British Columbia Ministry of Health Public Protection.

***Health Act* Regulation 411/85, section 7(1), states in part that:**

Where a medical health officer or public health inspector is satisfied that it is impossible for a person to comply with

- (a) in the case of a conventional septic tank system, sections 1, 16 or 22 or Schedule 2, or
- (b) in the case of a conventional package treatment plant system, sections 11, 12, or 18 of Schedule 3,

but that person can comply with all other provisions of the appropriate schedule, he may issue a permit to construct under section 3, containing conditions that he considers appropriate to meet the omitted standards having regard to safeguarding public health.

This section gives the medical health officer power to make exception to certain sections of Schedule 2.

***Health Act* Regulation 411/85, Section 3 states:**

- 3 (1) No person shall construct, install alter or repair a sewage disposal system or cause it to be constructed, installed, altered or repaired unless he holds a permit.
- (2) Application for a permit must be made in a manner and form satisfactory to the Ministry of Health with all relevant details completed by the applicant.
- (3) No permit shall be issued under subsection (1)
  - (a) in the case of construction or installation until site investigation tests set out in or required by Schedule 1 have been carried out to the satisfaction of the medical health officer or public health inspector, and either of them is satisfied that, having regard to the provisions of that schedule, the construction, installation and ultimate use of the system will not contravene the Act or this regulation, and
  - (b) where one sewage disposal system serves more than one panel, or serves more than one building in a strata plan under the *Condominium Act*, until acceptance of responsibility for operation and maintenance of it has been accepted in writing.

- (i) in either case, by a municipality or regional district, or
  - (ii) in the case of a strata plan, by the strata corporation in which the common property of that plan is vested.
- (4) It is a condition of every permit that
- (a) all material facts disclosed in the application for it are true and not designed to mislead,
  - (b) it is not transferable,
  - (c) it is valid for not more than 6 months,
  - (d) no variation shall be made to the plans and specifications which formed the basis of the application for the permit unless approved, and
  - (e) the construction, installation, alteration or repair complies with the standards for the appropriate sewage disposal system set out in this regulation
- (5) The grantor of a permit may impose conditions additional to those set out in subsection (4).
- (6) A violation of a condition of a permit operates to confer a right upon the grantor of it to cancel the permit.

The following criteria as stated in the British Columbia Ministry of Health Public Health Protection Policy, On-Site Sewage Disposal, Chapter 6, Alternate Systems, should be considered to help meet the omitted standards:

#### **6.6. HOLDING TANKS**

- Conditions of Use    Holding tanks shall only be considered for existing lots. However, a holding tank may be considered for an existing lot where no other system is workable if:
- Circumstances        (a)    a local bylaw grants the municipality access and ensures maintenance. The bylaw shall cover:
- the frequency of pumping;
  - the charges; and
  - the point of ultimate disposal; or
- (b)    sanitary sewers will be installed and operational within twelve (12) months of installation of the pump-out tank and the applicant submits a letter of commitment from the municipality;

- (c) the tank accommodates construction sites for less than twelve (12) months; or
- (d) a government guarantees control, access, maintenance, servicing and ultimate disposal of waste material;
- (e) the holding tank corrects a malfunctioning system until sanitary sewers are available, and its permit does not provide for further development or increased sewage flows.

|                   |   |
|-------------------|---|
| Applicant         | The applicant is responsible for providing the following: an Responsibility assurance that the ultimate destination of stored sewage is covered by a Waste Management Permit in good standing.  |
| Extra Precautions | To prevent intrusion of water and floating of the tank, additional precautions may be required in areas where there is a high water table.  |
| Camps             | Temporary use of a holding tank in industrial and silviculture camp requires:<br><br>proof that a conventional or alternate system would not be acceptable under the regulations;<br><br>an alarm system to indicate when the tank is 75% full and again when it is 90% full;<br><br>a copy of the contract with a sewage hauler; and<br><br>proof that a waste facility has been approved to accept septic tank effluent and has agreed to accept it. (Exhibit #2) |

## **PARTIES POSITIONS**

The problem arises because East Kootenay Regional District does not have a bylaw to regulate the issuance of holding tank permits.

The Appellant wishes to update the services for his cabin located on this property by installing a water-carried sewage disposal system. The Appellant corresponded with the East Kootenay Regional District on April 5, 1994, requesting that, as the local governing body, they accept liability for a pump-out sewage tank on Lot 23, Plan 75-54, D.L. 5719. (see Exhibit #1)

On April 15, 1994, the Regional District responded by letter, stating that it did not consider the Regional District was in a position to accept liability on behalf of an individual for development over which has no authority to approve. (see Exhibit #1)

On August 31, 1994, the Appellant wrote again to the East Kootenay Regional District, stating that he had contacted the East Kootenay Health Unit and was advised that a pump-out tank is acceptable where no other means exists for sewage disposal. There are conditions attached to the implementation of such a system, such conditions being self-explanatory and in place to safeguard public health.

The letter of August 31, 1994, goes on to say that the East Kootenay Health Officer states that one condition that is causing this entire process to stall is, "a government guarantees the control, access, maintenance, service and ultimate disposal of waste material". Simply put, this condition provides for a local government, i.e., The Regional District of East Kootenay, to enact a bylaw which would allow for the enforcement and prosecution of any person who violates any conditions of a permit issued by the Health Unit to install such a system. (see Exhibit #1)

The Regional District of North Okanagan has such a bylaw. The Appellant has given the East Kootenay Regional District a copy of the North Okanagan document. (see Exhibit # 2)

On September 9, 1994, the Regional District of East Kootenay responded to the Appellant's letter of August 31, 1994. It stated in part that, at their meeting of September 2, 1994, the Regional Board reviewed the Appellant's comments. A resolution (#24380) was passed stating that the Regional District is not prepared to enact a holding tank sewage disposal regulatory bylaw at this time. The matter is to be further studied, and a report prepared for the Board's consideration. (see Exhibit #1)

The Respondent states that:

1. It is paramount that a level of government act as a controller to safeguard public health regarding the operation of holding tank sewage disposal systems. There does not seem to be a means for the Provincial Ministry of Health to act as this controller because, among other things, it involved the administration of a sewage disposal operation with specific ongoing financial requirements, for example:
  - (a) having the authority to require, as a condition of permit approval, the holding tank owner to establish an ongoing service contract for pump and haul whether the tank is full or empty, or
  - (b) having the authority to undertake the pumping of sewage by a third party if the holding tank system is creating an unsanitary condition, or
  - (c) having the authority to charge to the owner of the real property, or to form part of the taxes payable, any necessary expenses involved in correcting an unsanitary condition from holding tank use or misuse. refer to Regional District of North Okanagan Bylaw No. 671) (see Exhibit #2)

2. The Sewage Disposal Regulation and the Public Health Protection Policy for On-Site Sewage Disposal are clear on the criteria on which the Environmental Health Officer or Medical Health Officer can accept an application for a Holding Tank System. (refer to Sewage Disposal Regulations and Public Health Policy for On-Site Sewage Disposal) (see Exhibit #2)
3. To allow holding tanks without the bylaw or a government guarantee as per section 6.6 of the policy creates a threat which will be impossible to control by the current public health mandate. If an individual is determined to avoid the expense of proper pump and haul disposal, then he/she will find various ways and means to illegally discharge their sewage, for example:
  - (a) rupturing the bottom of the holding tank causing sewage to contaminate ground water, well water, lake/river water;
  - (b) pumping out sewage to the ground, a ditch, lake, river, etc.; or
  - (c) hiring a pump and haul company that knowingly or unknowingly does not dispose of sewage at approved sites. (see Exhibit #2)

It was noted that Mr. Walde is not accused of being such a person but, without government controls, the issue rests with the integrity of the owner of new owners.

#### **DISPOSITION:**

Both parties agree that there should be government control of these issues. The Appellants confirm their position by stating, in their letter of August 31, 1994, to the Regional District of East Kootenay, that the Ministry of Health Policy Conditions are self-explanatory and in place for obvious reasons. (see Exhibit #1)

The Respondents confirm their position by stating that, to allow tanks without the bylaw or government guarantee as per section 6.6 of the Ministry of Health Policy, is to create a health threat which would be impossible to control by the current public health mandate.

The Environmental Appeal Board agrees that, without enforcement, the Public Health cannot be safeguarded. The law is binding. The Board has considerable sympathy for both the Appellant and Respondent. In their presentations, both realized the difficulties experienced and frustrations felt by the other.

The Environmental Appeal Board has the power to confirm, vary or reverse a decision under the *Health Act*.

Having considered all of the information presented to me, I have come to the following decision.

#### **DECISION**

The Public Health Inspector correctly denied the permit to construct a sewage disposal system.

**COMMENTS**

It was very frustrating for me to not be able to help both sides of this argument. The situation seemed to be bogged down by an overlapping of the jurisdictions of different Ministries. The primary responsibility of all levels of government should be to serve the people.

There are many developed lots in our province that do not meet today's standards for sewage disposal ensuring that the health of our citizens is safeguarded. Times are changing. Conditions are changing.

All levels of government should be working together to best serve the interests of people. I recommend an inter-Ministerial investigation into what appears to be an overlapping of jurisdictions. The Ministry of Health, the Ministry of Environment, Lands and Parks and the Ministry of Municipal Affairs should sit together and develop inter-Ministerial protocols, including policies and regulations to safeguard the public health, and serve the needs of our citizens.

Johnder Basran, Panel Chair  
Environmental Appeal Board

August 29, 1995