



Environmental Appeal Board

APPEAL No. 96/24-- HEALTH

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

BETWEEN:	Tom Campbell	APPELLANT
AND:	Environmental Health Officer	RESPONDENT
AND:	Blaire Duke	PERMIT HOLDER
BEFORE:	A Panel of the Environmental Appeal Board Carol Martin, Chair	
DATE OF HEARING:	January 7, 1997	
PLACE OF HEARING:	Parksville, B.C.	
APPEARING:	For the Appellant: Tom Campbell	
	For the Respondent: Glenn Gibson	
	For the Permit Holder: Earl Rhodes	

APPEAL

This was an appeal against the September 24, 1996 decision of the Environmental Health Officer ("EHO") to approve a permit for a sewage disposal system for Lot A, Plan VIP 53591, DL 84, Nanoose District (the "Property").

The Board has the authority to hear this appeal under section 11 of the *Environment Management Act* and section 5 of the *Health Act*. The Environmental Appeal Board, or a Panel of it, may, after hearing all evidence, decide to vary, rescind or confirm the decision of the EHO.

The order sought by the Appellant in this case is that the permit issued for a sewage disposal system for the Property be set aside due to its location in a drainage area where storm water can flow across the disposal field area. The Appellant submits that the water will then flow into a road ditch and then onto the Appellant's and other developed properties below, passing by the Appellant's shallow drinking water well and onto the beach below.

BACKGROUND

The property in question lies upland from older waterfront properties located south of Parksville on the east side of Vancouver Island at North West Bay. The relatively

recently logged 8.03 ha parcel has one residence located on it, occupied by the permit holder, Mr. Blaire Duke.

On September 4, 1996, Mr. Duke applied for a conventional sewage disposal permit for two residences (mobile homes @ 250 gallons/day) and a "maintenance washroom for farm shower washroom facilities," for a total of 540 gallons/day. The permit indicates that there is at least 48" of soil in the field area, at least 100 feet to the nearest well, a slope of 3 - 4%, and at least 48" to the water table. The site plan attached shows that the field is approximately 70 feet from the property line bordering Higginson Road. The new disposal field is located more than 100 feet from the shoreline of Georgia Strait. Percolation tests measured by the applicant showed 1.8, 2.3 and 2.1 minutes/inch. Information provided on the application indicates plus or minus 100 feet to a breakout point.

Because of the difficulty in finding four feet of undisturbed native soil on the property, the applicant selected a site located at the foot of a gully which drains the rest of the property above it. The run-off water, somewhat redirected around the field by a new interceptor ditch, joins another drainage stream from above before entering the road ditch. It then passes under the ditch through a culvert, and flows from there across the properties below, eventually finding its way into a ditch which runs between lots D and E, which are owned by the Appellant and one of his witnesses, who are long term residents. Both property owners draw their drinking and household water from dug wells located only a few metres from the ditch.

During periods of heavy rainfall the run-off water from the Property increases in the gully, flooding the road ditch and sometimes the residents' front lawns across the road. Occasionally, the storm water overflows the stream/ditch bordering Mr. Campbell's property flooding the area near Mr. Campbell's well.

On September 24, 1996, the EHO, Mr. Glenn Gibson, issued a sewage disposal permit as applied for, with no conditions other than that the system be built according "to plan and Health Act Regulations."

On October 8, 1996, Mr. and Mrs. Campbell, who live below the Property across Higginson Road, filed a notice of appeal with the Environmental Appeal Board on the grounds that there could be potential pollution of the aquifer, downstream wells and the oyster and clam beds on the beach in North West Bay. By the time of the January 6, 1997 hearing in Parksville the field had been built.

ISSUES AND LEGISLATION

The key issue in this appeal is whether or not, according to the *Health Act*, Sewage Disposal Regulation, the EHO erred in issuing the Sewage Disposal Permit for the Property. The relevant provisions are found in sections 2 (2), 3 (3), and in schedules 1 and 2 of the Regulation. Section 3(3) requires that the "ultimate use" of the system for which a permit has been issued will not contravene the *Act* or Regulation. Section 3(5) states that the EHO may apply additional conditions.

Section 4.4 of the Ministry of Health's Policy for On-site Sewage Disposal states that the suggested 50 foot minimum setback requirement from a potential break-out point should be relaxed only when a professional engineer can attest that the sewage will be attenuated before it leaves the property, and that once the setback distance has been determined, it should be noted as a condition of the permit pursuant to section 3(5).

Of particular note is section 26 of schedule 2 which states: "A sewage disposal system must be so located, constructed and the ground surface landscaped to protect the system from storm water."

ARGUMENTS AND EVIDENCE

Did the Environmental Health Officer err when issuing a Sewage Disposal Permit for the Property and did he fail to safeguard public health?

Appellant's position:

Mr. Tom Campbell, the Appellant, described the location of the new disposal field on the property across the road from his home. He argued that it is poorly located at the base of a gully which drains the entire upper parcel. He noted that the area is often flooded during heavy rainfall causing erosion, particularly of the new field. The Appellant stated that his understanding is that some years ago the parent parcel of the property in question was refused approval for subdivision by the Regional District of Nanaimo due to the potential for contamination of drinking water in the area. He referenced a 1990 Regional District report, known as the Hardy report, which was written in response to the earlier rezoning/subdivision proposal, and which showed, according to the Appellant's interpretation, that the area was unsuitable for on-site sewage disposal due to the type of soil and the use of ground water for domestic water supply in that area. He provided a drawing from the report which showed the drainage patterns of the property in question, including the location of culverts under the roadways both above and below the Property.

The Appellant called four witnesses, all long-term residents, three of whom live directly across the road from the property, to confirm that they had been affected by water running from the Property. They noted that if the storm water, as it passed by or over the field, were now to receive effluent from the field during the wet season of the year, their properties and the quality of the groundwater feeding downstream wells could be affected. They noted also that, during some of the year, the run-off water tends to pool along the topside of Higginson Road before passing through the culvert under the road. They argued that if the water were to become contaminated as it crossed the field, there could be a potential threat to public health.

The Appellant and his witnesses provided photographs taken during the winter months which, they said, showed the storm water passing across the field and pooling to a depth of 2 to 3 feet below the field before passing into the road ditch,

through the culvert and onto the lots below. In addition, they contended that significant erosion to the field was caused by the floodwaters.

The Appellant also stated that during construction of the field, he had noticed that material had been “pushed down” from above and used to build up the field, contrary, he believed, to Ministry guidelines and the Hardy report which recommend that local soils not be used for sewage disposal fields.

The Appellant stated that the Permit is unclear about what buildings are being permitted. He raised questions about the meaning of “maintenance washroom for farm shower.” He provided a 1995 water test report for his own well which showed it as being “very clean.” He recalled that the area of the new disposal field was once a skidder road left from logging and that it then became a run-off gully for storm water.

Respondent’s position:

The Respondent EHO argued that all the regulations had been complied with in the approval of the permit. He outlined the chronology of events leading up to the issuance of the permit, including the search for a site on the property with sufficient soil depth. He described his meeting with the Appellants regarding the possible breakout point where the water pools below the field and his subsequent requirement that the field be situated at a location that would provide at least a 50 foot setback from that point.

The EHO presented a video he had taken on the site in September 1996 which showed that the field area was relatively dry and, presumably, in compliance with all setback requirements.

A video, filmed in November of the same year, showed an interceptor ditch, some 25–30 feet uphill from the field area and somewhat beside it, which had been installed to divert storm water from above. The interceptor ditch then allows the water to meander into the bush and the gully which empties onto Higginson Road. The EHO further noted that the Permit Holder had been instructed to crown the field to prevent water from crossing over it.

The EHO concluded by stating that he had determined during the site visit that, in his view, all minimum setback distances from wells and from the sea had been complied with and that the site was the best on the property for soil depth. He noted that the gully and the water running to the sea from it (across the neighbouring properties below), was not a designated creek. He also said he believed that the wells were too far away to be contaminated by the new disposal field. He stated that the field now meets the 50 foot minimum distance from any potential breakout point.

The EHO agreed, however, that the interceptor ditch above the field needs further work, as water does still flow across the field during periods of heavy rainfall. When questioned further by the Appellant regarding the heavy amount of runoff water in the interceptor ditch and in the gully beside the field, the EHO noted that he had

issued the permit based on the information given to him. He submitted that if the interceptor ditch were extended somewhat, further away from the field area, the problem of storm water flowing back onto the field could be alleviated. In addition, he questioned the Appellants' concern about shallow wells and the difficulty in protecting them when the Appellants' own septic fields could perhaps pollute those wells.

The Respondent asked that the Permit be upheld subject to the following conditions:

- work being conducted to ensure adequate functioning of existing drainage work;
- his looking at the site again to determine the degree of flooding from above; and
- extension of the interceptor ditch to ensure that no water would cover the field.

Permit Holder's Position:

Mr. Earl Rhodes, the spokesperson for the Permit Holder, explained that the owner had complied with the EHO and the regulations and that they had always listened to the neighbours' concerns. He noted that the past winter had been a record year for snow and rainfall. He offered to meet with the EHO again to discuss extending the interceptor ditch in order to correct the situation. He urged the residents to upgrade their shallow wells if they had concerns about possible pollution. As well, Mr. Rhodes maintained that the permit had been posted properly on a tree on the property.

Both the EHO and the Permit Holder objected to the Appellant's use of the Hardy report as evidence because, while the general statements were acceptable, they were not necessarily specifically speaking of his Property. He asked that the appeal therefore be dismissed because no facts had been presented to support the grounds of appeal, and that the problem of run-off could be resolved quite easily by extending the interceptor ditch.

SITE VISIT

At the Appellant's request and with the agreement of all parties a site visit was scheduled for the next morning. Upon arrival, Mr. Duke, the Permit Holder who resides on the property, lead all the parties and the Panel around the disposal field area, entering from Higginson Road.

DISCUSSION AND ANALYSIS

With regard to compliance with the specific sections of the Sewage Disposal Regulation, the Panel agrees with the EHO that the setbacks from wells, water bodies, and break-out points met the requirements of the legislation. In addition,

depth of native percable soil, distance to ground water, slope and percolation rates satisfy the provisions of the Regulation.

Section 2(2) of the Regulation requires that no sewage reach the surface of the land. The EHO has assured the Panel that the disposal field, as approved, is so situated as to meet the 50 foot minimum setback from the potential breakout point noted by the Appellant. No sewage should, therefore, be able, in his view, to escape into the wet area below the field.

Regarding section 3 (3), which states that no permit shall be issued until the EHO is satisfied that the site requirements of Schedule 1 have been satisfied such that the "construction, installation and ultimate use of the system will not contravene the Act or the Regulation," the EHO did note that he was satisfied that the site was the best one for the property and that it met the necessary requirements.

The Panel sympathizes with the Appellant's concern for the quality of his well water and appreciates that there has been a long term problem with water draining from the property in question onto the Appellant's and neighbouring properties. The Panel notes, however, that if the field has been built in compliance with the Regulations, no effluent should be present in the storm water either below the field (greater than 50 feet), or in the ditch which the water travels through on the way to the beach below, unless there were a problem remaining with erosion of the field from storm water. This should be addressed by the proposed improvements to the interceptor ditch.

Schedule 2 of the same Regulation requires in section 1 that a conventional field have 48" of undisturbed native soil before excavation or fill. While the Appellant recalled seeing excavation and the moving of soil near the top of the field, the Panel was unable to confirm that this was prior to the approval of the permit and not part of the creation of the interceptor ditch above the field.

The Panel has considered whether the requirements regarding the percolation rate of the soil, and the minimum slope percentages were met, and has concluded that they have been. Additionally, the required setback distances from wells, buildings, property lines and water bodies, have been met, including to the beach which is greater than 300 feet away.

Section 26 of Schedule 2, however, requires that the field be protected from storm water. The Panel finds that the interceptor ditch, as built, fails to do this and agrees with the EHO's suggestion that it be extended by 50 feet to ensure that no storm water flows back onto it.

With regard to the Hardy Report, which the Regional District commissioned to review an earlier proposal for smaller lot subdivision of the parent property of which the Permit Holder's property is a part, the Panel appreciates that the author concluded that the many on-site sewage disposal systems which would have been required could have seriously impacted the shallow wells used by the residents living on the existing lots below. The Panel shares this concern, however it notes that the study assumed that there would be development on the existing larger lots

already there. It agrees, therefore, that care must be taken to ensure that all setbacks and other requirements of the Regulations must be complied with to preclude any threat to public health.

DECISION

In making its decision, the Panel has carefully considered all of the relevant documented evidence and all comments made during the hearing, whether or not they have been specifically reiterated here.

After reviewing all of the material presented at the hearing, as well all of the relevant legislation, the Panel finds that the decision of the Environmental Health Officer to approve a Permit for a sewage disposal system for the property should be upheld, but that the Permit should be amended to include the following condition which shall be attached to and form a part of the Permit:

the interceptor ditch which lies above and somewhat beside the disposal field area shall be retrenched and extended approximately 50 feet further away from the field to ensure that no storm water flows back over the field.

The EHO, as he proposed, should re-inspect the field area after the above work is completed to ensure that no storm water can flow onto the field and that the interceptor ditch is working correctly.

"Carol Martin"

Carol Martin, Panel Chair
Environmental Appeal Board

April 14, 1997