



Environmental Review Tribunal

Case Nos.: 12-027/12-028/12-029/
12-030/12-031/12-032

Delaney v. Director, Ministry of the Environment

In the matter of appeals by Vivienne Delaney, D. Dan Holt, Bob Jonkman, Derek Potma, Michael Purves-Smith and Sebastien Siebel-Achenbach filed on April 10, 2012 for a Hearing before the Environmental Review Tribunal pursuant to section 142.1 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended, with respect to Renewable Energy Approval No. 6428-8LGLBH issued by the Director, Ministry of the Environment, on March 26, 2012 to Woolwich Bio-En Inc., under section 47.5 of the *Environmental Protection Act*, regarding the construction, installation, operation, use and retiring of a Class 3 anaerobic digestion facility, located at 40 Martin's Lane, Lot 18 and 98, Part 9, Ref. Plan 58R-14363, in Elmira, Woolwich Township, within the Regional Municipality of Waterloo; and

In the matter of a mediation conducted on May 11 (via teleconference), June 13 and 25, 2012 in, Woolwich Township municipal office, 24 Church Street, West, in Elmira, Ontario.

Before: Alan D. Levy, Member

Appearances:

Eric Gillespie and Rebekah Church	-	Counsel for the Appellants, Vivienne Delaney, D. Dan Holt, Bob Jonkman, Michael Purves-Smith and Sebastien Siebel-Achenbach
Isabelle O'Connor and Justin Jacob	-	Counsel for the Director, Ministry of the Environment
Nicholas Macos	-	Counsel for the Renewable Energy Approval Holder, Woolwich Bio-En Inc.

Dated this 25th day of July, 2012.

Reasons for Decision

Background:

On March 26, 2012, Ian Parrott, Director, Ministry of the Environment (“MOE”) issued Renewable Energy Approval No. 6428-8LGLBH (the “REA”) to Woolwich Bio-En Inc. (the “Approval Holder”) under section 47.5 of the *Environmental Protection Act* (“EPA”). The REA authorizes the Approval Holder to construct, install, operate, use and retire a Class 3 anaerobic digestion facility to process biomass and generate electricity and thermal power at a 1.55-hectare site in the Town of Elmira, Woolwich Township, in the Regional Municipality of Waterloo (the “Project”).

On April 10, 2012, Shannon Purves-Smith filed a Notice of Appeal on behalf of Vivienne Delaney, Dr. Dan Holt, Bob Jonkman, Derek Potma, Michael Purves-Smith and Sebastien Siebel-Achenbach (the “Appellants”) with the Environmental Review Tribunal (the “Tribunal”) pursuant to section 142.1 of the *EPA*. The Appellants are local residents. A Notice of Preliminary Hearing and Hearing was issued by the Tribunal on April 26, 2012, appointing May 8, 2012, for a preliminary hearing in the City of Waterloo and July 3, 2012 (later revised), for commencement of the hearing of evidence. On May 7, 2012, Derek Potma notified the Case Coordinator at the Tribunal by email that he was withdrawing from the proceeding as an appellant.

The preliminary hearing commenced on May 8, 2012 and continued by way of teleconference on May 11, 2012. The parties requested Tribunal-assisted mediation and an in-person meeting was therefore scheduled for June 13, 2012. This was subsequently documented in an order issued by the Hearing Panel on June 26, 2012.

I was appointed as mediator, and conducted a preliminary meeting with counsel via teleconference on May 11, 2012. Nicholas Macos, counsel for the Approval Holder, advised that he intended to invite representatives of the municipalities, Woolwich Township and the Regional Municipality of Waterloo, to participate in the mediation as they had expressed interest in attending. There was no objection to this invitation by the other parties.

As part of the mediation process written submissions were circulated on behalf of the remaining Appellants prior to the meeting on June 13, 2012, in Elmira, and draft Minutes of Settlement were circulated and revised prior to the final meeting on June 25, 2012. The Approval Holder arranged to have two of its technical advisors in attendance at

both in-person meetings in order to provide information and advice to all parties, as needed. Despite the invitation, municipal representatives did not attend either meeting, however.

Counsel for the Director were unable to attend the final meeting but Mohsen Keyvani, Senior Review Engineer at the MOE, was present at both meetings. He reported during the course of the final day to the Director, Ian Parrott, via telephone with respect to progress at that meeting. Negotiations led to further revisions to the draft Minutes of Settlement, and ultimately a final version was signed by the remaining Appellants and the Approval Holder. The Director was not a party to this agreement, as it does not alter the REA, but he was informed by Mr. Keyvani in advance of signing as to its terms, and had no objections to any of its contents. The final, signed version of the Minutes of Settlement is reproduced at Appendix A to this decision.

The following morning (June 26, 2012), Ms. Church notified the Tribunal via email that the remaining Appellants request that their appeals be withdrawn.

Relevant rules:

The Rules of Practice of the Tribunal include the following provisions:

Termination of Proceedings

198. A Proponent or Applicant who proposes to withdraw his or her application, an Appellant who proposes to withdraw his or her appeal, or a Director, a Risk Management Inspector or Official or a municipality who proposes to revoke the decision that is the subject of the appeal shall notify the Tribunal, other Parties, Participants and Presenters by letter. Any Party, Participant or Presenter who objects to the proposed withdrawal of an appeal or revocation, with the exception of the revocation of an order made under section 74 of the *Ontario Water Resources Act*, shall notify the Tribunal and the other Parties, Participants and Presenters within ten days of the date of the letter.
199. Where there has been a proposed withdrawal of an appeal agreed to by all Parties and the decision under appeal is not altered by a settlement agreement, a proposed withdrawal of an application, or a proposed revocation of an order made under section 74 of the *Ontario Water Resources Act*, the Tribunal shall issue a decision dismissing the proceeding.

Settlement at Mediation

160. Where a proposed settlement, withdrawal or revocation results from a mediation, Rules 198 to 202 apply with all references to “the Tribunal” being read as “the Tribunal member who has conducted the mediation,” unless the mediator has submitted the proposed settlement, withdrawal or revocation to the panel for consideration under Rules 199 to 202.

Issue:

The only issue remaining is the application of Rules 160, 198 and 199 to the withdrawal of the appeals in this matter.

Findings:

The appeal of Derek Potma has already been withdrawn without objection pursuant to Rule 198. No decision is required by the Tribunal in order to accept or confirm it.

The terms of the Minutes of Settlement (Appendix A) entered into by the Approval Holder and the remaining Appellants do not purport to alter any aspect of the REA. Based on their agreement, the remaining Appellants have indicated their intention to withdraw their appeals, and counsel submits that the Tribunal should therefore dismiss this proceeding.

Rule 160 provides that it is my role at this stage to render the Tribunal's decision. In these circumstances it is my finding that Rule 199 is applicable and this proceeding is therefore dismissed.

I commend the parties, counsel and their consultants for their effort to reach an amicable and constructive resolution in this matter. The parties have negotiated solutions which will hopefully prevent any serious problems developing in the future when the proposed facility is operational.

Decision

Pursuant to Rule 199 of the Tribunal's Rules of Practice, these appeals are withdrawn and dismissed. The Hearing is cancelled.

*Appeals Withdrawn
Appeals Dismissed
Hearing Cancelled*

Alan D. Levy, Member

Appendix A

Minutes of Settlement dated June 25, 2012

Final June 25, 2012

Case No.: 12-027

ENVIRONMENTAL REVIEW TRIBUNAL
Tribunal de l'environnement

IN THE MATTER OF appeals by Vivienne Delaney, Dr. Dan Holt, Bob Jonkman, Michael Purves-Smith and Sebastien Siebel-Achenbach filed on April 10, 2012 (the "Appeals") for a Hearing before the Environmental Review Tribunal (Tribunal) pursuant to section 142.1 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended with respect to a Renewable Energy Approval (the "REA") issued by the Director, Ministry of the Environment, on March 26, 2012 to Woolwich Bio-En Inc., under section 47.5 of the *Environmental Protection Act*, regarding the construct, installation, operation, use and the retiring of a 1.55-hectare Class 3 anaerobic digestion facility which will process 70,000 tonnes of Biomass per year to generate 2,852 kilowatts of electricity (kW el) and 3,020 kilowatts (kW therm) of thermal power; located at 40 Martin's Lane, Lot 18 and 98, Part 9 on Plan 58R-14363 in Elmira Woolwich Township within the Regional Municipality of Waterloo (the "facility").

MINUTES OF SETTLEMENT

In consideration of the mutual covenants contained herein Vivienne Delaney, Dr. Dan Holt, Bob Jonkman, Michael Purves-Smith and Sebastien Siebel-Achenbach (the "Appellants") and Woolwich Bio-En Inc. ("Woolwich") agree to settle the Appeals on the following terms:

1. The Community Liaison Committee referenced in conditions 61 to 70 of the REA shall initially be constituted by two representatives selected by the Appellants and two representatives selected by Woolwich who shall meet on or before July 31, 2012 and shall select at least two (2) additional/new members of the Community Liaison Committee from interested members of the public. After such initial selection one representative from Woolwich shall resign. The Community Liaison Committee shall be permitted to continue until the final decommissioning of the facility. The frequency and timing of meetings of the Community Liaison Committee shall be determined by the Community Liaison Committee.
2. Woolwich shall record net weight, nature of materials (as required by MOE) and time of arrival and departure for each vehicle delivering or receiving processing material at the facility, including water trucks.

Final June 25, 2012

3. Provided the Community Liaison Committee is active (i.e. is meeting twice per year), Woolwich agrees to file with the Community Liaison Committee copies of annual reports produced in compliance with the requirements of the REA and copies of the monthly summaries that support such annual reports on a quarterly basis. Woolwich shall provide timely information about complaints as may be specifically requested by the Community Liaison Committee. Woolwich shall provide monthly summaries for traffic (as recorded pursuant to Section 2) and a list of complaints, during such time as the Community Liaison Committee meets monthly. In addition, upon request, publically available components of reports submitted to the MOE will be made available to the Community Liaison Committee. All information that may reasonably be deemed to be proprietary may be removed from the reports at the discretion of Woolwich. Woolwich shall provide the Community Liaison Committee with the emergency response plan, once approved by the MOE.
4. Woolwich shall ensure that the phone line for the receipt of complaints from the public is monitored either at the facility or by a person available to be onsite within a typical 30 minute commute to the facility, and regularly to ensure that any complaint can be investigated and addressed in a timely way.
5. At the option of the Community Liaison Committee, Woolwich shall provide funding to the Community Liaison Committee for a reasonable budget for the resources referred to in Condition 65 (b) of the REA. The Community Liaison Committee shall retain administrative control of the budget provided that it is spent on the resources referred to in Condition 65 (b) of the REA.
6. Prior to commencing operations at the facility, Woolwich shall deliver a letter of credit in the one-time amount of \$25,000 with the Community Liaison Committee as beneficiary which may be drawn upon at the sole discretion (subject to the matching condition set out below) of the Community Liaison Committee only for use for the payment of technical engineering or scientific advice about or review of the operations of the facility and only if any amount to be so drawn is matched dollar for dollar by contributions, to the

Final June 25, 2012

Community Liaison Committee specifically for the intended advice or review, made by either the public or the Corporation of the Township of Woolwich.

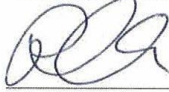
7. A senior officer of Woolwich shall appear before Woolwich Township Council with a delegation of the Community Liaison Committee to confirm that Woolwich has agreed to provide a letter of credit to the Community Liaison Committee on the terms set out above.
8. The terms and conditions of REA #6428-8LGLBH that is the subject matter of the appeal are unaffected and unchanged as a result of the within settlement of the appeal. The terms and conditions within these minutes of settlement are in addition to the REA and are binding, save and except, as they may conflict with the terms of the REA.
9. The Appellants direct counsel to withdraw the Appeals.

DATED at ELMIRA this 25th day of June, 2012.




Vivienne Delaney

WOOLWICH BIO-EN INC.

for 

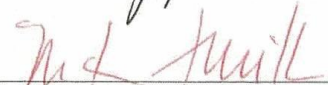
Dr. Dan Holt

Per: 


Name: P.C. Martin
Title: President
I have authority to bind the
Corporation



Bob Jonkman



Michael Purves-Smith

for 

Sebastien Siebel-Achenbach