



SAFETY CODES COUNCIL

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COUNCIL ORDER No. 15401

ORDER

**BEFORE THE PLUMBING TECHNICAL COUNCIL
On January 20, 2012**

IN THE MATTER OF the Safety Codes Act, Statutes of Alberta 2000, Chapter S-1.

AND IN THE MATTER OF an **Order** dated May 30, 2011 issued by the Accredited Municipality (Respondent) against a Property Owner (Appellant).

UPON REVIEWING the Order **AND UPON HEARING** the Appellant and the Respondent, **THIS COUNCIL BY ORDER DIRECTS THAT** the Order is **Varied**:

From:

“You are hereby ordered to remove all components of this unapproved private sewage system, including the septic tank and all associated piping, on or before June 30, 2011.”

To:

“You are hereby ordered to remove all components of the private sewage disposal system, including the septic tank and all associated piping, on or before June 30, 2012. Further, the property is to remain unoccupied until the plumbing safety codes officer permits occupancy.”

Issue:

1. The Appeal concerns a private sewage disposal system installed at a property.

The Record:

2. The Appeal Panel considered, or had available for reference, the following documentation:
 - a. Accredited Municipality order dated May 30, 2011 and affidavit of service of delivery May 31, 2011.
 - b. Letter from Appellant requesting an appeal to the order, dated June 30, 2011.
 - c. Letter from the Coordinator of Appeals acknowledging receipt of appeal request, dated July 7, 2011.

Position of the Parties:

Appellant

3. The Appellant's position is that:
 - a. Officials with the Municipality have made it so no possible resolution to this matter could be reached.
 - b. This private sewage disposal system was installed under the direction of the Municipality's Mayor and Solicitor.
 - c. The private sewage disposal system installed at the property complies with the Alberta Private Sewage systems Standard of Practice 1999.

Respondent

4. The Respondent's position is that:
 - a. A private sewage disposal system has been installed without permit as required by the *Safety Codes Act* and the Alberta Private Sewage Systems Standard of Practice 2009.
 - b. The private sewage disposal system must be removed and a proper code-compliant system can then be installed through the permitting process.

Findings of Fact:

5. All areas of Alberta are subject to the laws, codes, regulations and policies of the *Safety Codes Act*.

6. The *Safety Codes Act* provides:

13(1) The Minister administers this Act but an accredited municipality, an accredited regional services commission and an accredited corporation shall provide for the administration of this Act in accordance with the order that designated it as an accredited municipality, accredited regional services commission or accredited corporation.

33(2) A local authority shall provide for safety codes officers for the purpose of administering all or part of this Act that an accredited municipality is authorized to administer.

38(1) An Administrator or a safety codes officer may issue a written variance with respect to any thing, process or activity to which this Act applies if the administrator or officer is of the opinion

that the variance provides approximately equivalent or greater safety performance with respect to persons and property as that provided for by this Act.

43(1) If this Act requires a person to have a permit to sell, construct, control or operate any thing or supervise, operate or undertake any process or activity, no person shall do so unless the person has the appropriate permit.

44(1) On Receipt of an application, a safety codes officer or other person designated by an Administrator may issue a permit to a person who complies with the requirements of this Act or issue a permit with respect to a thing, process or activity if it complies with the requirements of this Act.

67(1) A person who interferes with or in any manner hinders an Administrator or a safety codes officer in the exercise of the Administrator's or officer's powers and performance of the Administrator's or officers duties under this Act is guilty of an offense.

67(4) A person who

(a) contravenes this Act,

(b) contravenes a condition in a permit, certificate or variance

(c) contravenes an order, or

(d) fails to carry out any action required in an order to be taken within the time specified in it,

is guilty of an offense.

7. The *Safety Codes Act* Permit Regulation AR 204/2007 provides:

Private Sewage Disposal Permit

16(1) A permit in the private sewage discipline is required for a private sewage disposal system undertaking.

8. The Appellant's property (the property) is located within the Municipality.

9. In presentation, the Appellant and the Respondent both indicated that they had met on April 10, 2010 and discussed permit application for a private sewage disposal system and that the Respondent, at that time, advised the Appellant that a permit was required and that the applicable standard of practice for installation was the Alberta Private Sewage Systems Standard of Practice 2009 (SOP 2009).

10. The Appellant did not apply for a permit for a private sewage disposal system.

11. In presentation, the Appellant indicated that he met with the Municipality's Solicitor to get permission to install a private sewage disposal system complying with the standard of practice in force in 2006. The Appellant also indicated that he had conversations with other municipal officials and elected officials regarding the installation of the private sewage disposal system.

12. The applicable code in force in 2006 was the Alberta Private Sewage Systems Standard of Practice 1999 (SOP 1999).

13. Sometime after April 10, 2010, and before the ground completely froze in 2010, the Appellant installed a private sewage disposal system at the property.
14. In presentation, the Appellant indicated familiarity with the permit process when asked about obtaining other required permits for the development of the property and residence.
15. The Appellant indicated that he was aware that the installed private sewage disposal system was not compliant with the SOP 2009. In testimony, the Appellant advised that the installer stated that the private sewage disposal system was compliant with the SOP 1999.
16. On May 30, 2011, the Respondent ordered the Appellant to remove the private sewage disposal system.
17. On June 30, 2011, the Appellant submitted a letter to the Coordinator of Appeals requesting an appeal of the Respondent's order. The Appellant did not submit any other documentation for consideration by the Appeal Panel.
18. It is unlikely that removal of the private sewage disposal system could occur now as it is anticipated that the ground is currently frozen.

Reasons for Decision:

19. The Appellant installed a private sewage disposal system without permit. The Appellant was aware of the permitting process as evidenced by the Appellant's meeting with the Respondent in April 2010 and the Appellant's knowledge and experience of obtaining other development permits for the property.
20. The Appellant knew at the time of installing the private sewage disposal system that the system was not compliant with the current standard of practice.
21. The Appellant attempted to subvert the permit process by trying to obtain permission from other municipal officials and elected officials to install a private sewage disposal system.
22. The *Safety Codes Act* is the enabling legislation that allows, in part, that organizations such as municipalities may become accredited to administer safety codes processes. The authority to conduct permit or plans reviews resides only with a safety codes officer, and the issuance of permits resides only with an appropriately designated safety codes officer or other person so designated, such as a permit issuer. In the exercising of their duties and powers, these individuals must have the ability and opportunity to make decisions relative to compliance monitoring independently, without undue influence of management, appointed or elected officials.
23. The permitting process allows for the issuance of a variance upon request by an applicant. Such a request requires evidence in support of the application to indicate the proposal meets or exceeds the objective and function of the code. A safety codes officer has the authority to utilize discretion to

issue a variance if the safety codes officer is of the opinion that the proposal provides equivalent or greater safety performance than that required by the safety codes. If the Appellant had followed the permitting process and provided the required documentation and testing results in support of the proposed system, the Appellant could have applied to the Respondent for a permit and/or variance.

24. The purpose and intent of the safety codes system is to provide assurance of safety and health to persons and property. This is primarily achieved through a permitting and inspection process. As no evidence was provided to the Appeal Panel to which the Panel could determine whether the private sewage disposal system complied in part or whole with any private sewage system standard of practice, the Panel has no alternative but to require the removal of the private sewage disposal system.
25. The Appeal Panel, in its opinion, provided a reasonable amount of time for removal of the private sewage disposal system in order to accommodate current ground conditions.
26. This Order does not preclude the Appellant from applying for a future permit. Upon satisfying this Order, should the Appellant choose to have a private sewage disposal system, the Appellant is encouraged to follow the permitting process.

Dated at Edmonton, Alberta this 3rd day of February 2012.

Chair, Plumbing Technical Council Appeal Panel