



Safety Codes Council

COUNCIL ORDER No. 0015492

BEFORE THE PLUMBING SUB-COUNCIL

On March 4, 2019

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

AND IN THE MATTER OF the Order Pursuant to Section 43(1) of the *Safety Codes Act*, R.S.A. 2000 c. S-1 (see Appendix 1) and Section 26 b) of the Permit Regulation (see Appendix 2), issued December 18, 2018 by the Accrediated Municipality (“Respondent”) against the property owner of the subject property (“Appellant”).

UPON HEARING the testimony of witnesses and considering the evidence submitted at the hearing; AND UPON REVIEWING AND CONSIDERING the materials submitted including the Issued Order and the arguments made by the parties; THIS COUNCIL ORDERS THAT the Order is **VARIED**.

FROM

Supply required documentation and information sufficient to obtain a permit by February 11, 2019.

You are hereby ordered to immediately disconnect the septic tank from the installed treatment system. The tank will be used and operated as a holding tank to pump and haul sewage effluent to an approved facility for treatment until such time that the order has been satisfied.

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Either

Supply required documentation and information sufficient to obtain a permit by May 31, 2019 to use the existing design as per present soil logs as a holding tank, treatment plant, or mound system.

Or

Retain a certified specialist to conduct soil investigation to establish alternate soil logs, which may result in the installation of a different type of system, and apply for a permit by May 31, 2019.

Until May 31, 2019, you are ordered to immediately disconnect the septic tank from the installed treatment system. The tank will be used and operated as a holding tank to pump and haul sewage effluent to an approved facility for treatment until such time that the order has been satisfied.

Reasons for the Decision

Introduction:

1. The Appeal concerns a permit application for the installation of a septic tank and disposal system at the subject property.

Appearances, Preliminary, Evidentiary, or Procedural Matters:

2. Appearing for the Appellant, the Administrative Tribunal (“Tribunal”) heard from the property owner of the subject property.
3. Appearing for the Respondent, the Tribunal heard from the Plumbing Safety Codes Officer (“SCO”) for the Respondent and the Director of Client Partnerships for the Respondent.
4. Attending to provide technical support for the Tribunal was a Technical Advisor from Alberta Municipal Affairs (“AMA”), who participated via phone call.
5. At the commencement of the hearing, the Appellant and Respondent confirmed there were no objections to any members of the Tribunal, and that the Council in general and the Tribunal in particular had jurisdiction to hear and decide the appeal.
6. The Tribunal Chair then explained the process to be followed in hearing the appeal, and asked the parties to confirm whether there are any objections to The Record (Paragraph 7 below, items 1 to 5). The Appellant and Respondent confirmed that there were no objections to any of the written materials submitted to the Tribunal prior to the hearing.

The Record:

7. The Tribunal considered, or had available for reference, the following documentation received prior to the hearing:
 1. Acknowledgement letter from the Safety Codes Council dated 23 January 2019
 2. Stay of order letter dated 01 February 2019
 3. Written notification of the hearing dated 08 February 2019
 4. Hearing Brief from the Appellant marked as “Exhibit 1 Appellant” dated 21 February 2019
 5. Hearing Brief from the Respondent marked as “Exhibit 1 Respondent” dated 25 February 2019

Position of the Parties

Appellant's

- 8.** It is the position of the Appellants that they had approval to install the septic tank and disposal system on their property and they have already met the requirements of the order. They are seeking for the Tribunal to repeal the order.
- 9.** On 18 June 2018, the Appellants submitted a permit application along with a private sewage treatment system ("PSTS") design and permit fee to the Respondent.
- 10.** After discussion on 19 June 2018 with the SCO about the design where he noted concerns about vertical spacing and peak flow, the Appellants let the SCO know they would follow up with AMA.
- 11.** The Appellants forwarded a letter to an AMA representative providing supporting information to gain approval of their design resulting in a conference call on 3 July 2018 between the Appellants, the SCO, and the AMA representative. The Appellants were not asking for approval of the calculated flow for their PSTS, but were awaiting the go-ahead for the design from the AMA representative. The Appellants believed that the AMA representative was the authority having jurisdiction to approve the design and verbally approved the design as long as a note was added to title about the flow rate.
- 12.** At the end of July, the Appellants received the PSTS design back without notes, conditions, restrictions, or any issues requiring further action. The Appellants assumed this was the PSTS design and permit approval because when they were applying for a building permit, the drawings noted issues and steps on how to rectify them.
- 13.** The Appellants proceeded with the installation and informed the Respondent on 23 July 2018. The Respondent did not issue a Stop Work Order, which reinforced the Appellants' belief that they were doing everything right.
- 14.** On 8 August 2018, the Appellant received an email from the Respondent providing two options in order to proceed with approving the design. It was too late as installation already occurred with the exception of landscaping.
- 15.** The Appellants believed that without receiving a formal refusal of a permit, with the verbal approval of the system design during their call with AMA, and the return of the design without notes and corrections, that they could install the PSTS on their property. The subject property is the Appellants' retirement home and they just want to 'make everything right'.
- 16.** The Order does not make sense, as it requires submission of paperwork they already submitted.
- 17.** In summary, the Appellants expressed concerns about the delays, the misleading information, and the cost of using the system as a holding tank versus using it as originally designed. They do not feel the wastewater will get into the water table as the water table is at forty-four feet and they have eight feet of clay.

Respondent's

- 18.** It is the position of the Respondents that the Appellant did not provide the necessary documentation to complete their permit application and installed the PSTS without having an approved permit in place.
- 19.** The Respondent received a permit application for a PSTS on 18 June 2018 and determined that the load rate based on the soil conditions at a depth of 52 inches as submitted was .14 Imperial Gallons/square foot/day. This did not meet the 2015 Standard of Practice ("SOP") so further clarification on the soil was required and the SCO followed up by phone with the Appellant on 19 June 2018.
- 20.** Between 19 June and 23 July 2018, numerous calls occurred between the Appellants, the SCO and AMA resulting in confusion about who provides the approval of the design.
- 21.** On 24 July 2018, an email to the Appellants confirms that the soil conditions did not meet the standard for the proposed design. In this communication, it is clear that the AMA representative did not verbally approve the design, but provided interpretation of the SOP article dealing with metered flow as a basis of determining a peak flow for the design.
- 22.** The Respondent returned the application as submitted without a permit date or a signature. The permit did not indicate a refusal or approval.
- 23.** The Respondent did not issue a Stop Work Order because installation of the system already occurred and it was covered. The plan was to work with the Appellants to reach a solution.
- 24.** The intention of the Order was not to have a permanent holding tank as the system, but to ensure the safe operation of the system while working with the Appellants to obtain the required information to issue the permit and to achieve compliance.

Findings of the Administrative Tribunal :

The Administrative Tribunal makes the following findings:

- 25.** The authority of the Technical Advisor at AMA is to provide guidance on interpretation of the code and standard of practice, not to approve permits or designs. The evidence demonstrates that the Technical Advisor at AMA provided interpretation of the standard of practice dealing with metered flow to determine the peak flow rate and subsequently determined the Respondent should register the metered flow rate on title.
- 26.** There was a breakdown in the communication between the parties and AMA, which led to assumptions and misunderstanding.
- 27.** The Appellants acted in good faith and believed they could go ahead with the install; however, it is clear from the evidence that further information was required to complete the application and the SCO communicated this on June 19.
- 28.** There is a willingness by both parties to reach a resolution.
- 29.** The Order is varied to provide the Appellant the time necessary to meet one of the two

options provided by the SCO including the submission of a soil report by a certified person or to apply for a permit to install a holding tank, treatment plant, or treatment mound.

Signed at the City Edmonton)
in the Province of Alberta)
this 14th Day of March A.D. 2019)

Chair, Plumbing Sub-Council Administrative Tribunal

Appendix 1

Provisions of the Safety Codes Act:

The *Safety Codes Act* (S-1, RSA 2000), as amended provides, *inter alia*:

Part 3

Standards

Permits required

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.

Appendix 2

Provisions of the Permit Regulation:

Alberta Regulation 204/2007, with amendments up to and including Alberta Regulation 208/2017, provides:

Refusal to issue, suspension or cancellation

26 Without restricting the generality of section 46 of the Act, a permit issuer may refuse a permit and, without restricting the generality of section 44 of the Act, a safety codes officer may suspend or cancel a permit that has been issued if

(b) incorrect or insufficient information is submitted with respect to the permit or the undertaking to be governed by the permit,

(b.1) incorrect or insufficient information is provided under section 11 of the New Home Buyer Protection (General) Regulation or section 2 of the New Home Buyer Protection (Regional Municipality of Wood Buffalo) Regulation,

(b.2) evidence provided under section 6.1(2) was incorrect or is no longer correct[.]