



Environmental Appeal Board

Citation: *The Beaches Property Development Ltd. and Hay U Ranch Resort Inc. v. Director, Environmental Management Act*, 2024 BCEAB 30

Decision No.: EAB-EMA-23-A012(a) and EAB-EMA-23-A013(a)

Decision Date: 2024-10-09

Method of Hearing: Conducted by way of written submissions concluding on April 22, 2024

Decision Type: Final Decision

Panel: Cynthia Lu, Panel Chair

Appealed Under: *Environmental Management Act*, SBC 2003, c.53

Between:

The Beaches Property Development Ltd. and Hay U Ranch Resort Inc.

Appellants

And:

Director, *Environmental Management Act*

Respondent

Appearing on Behalf of the Parties:

For the Appellants: Mike Seymour
Thys John Molland

For the Respondent: Micah Weintraub
David Brownell

FINAL DECISION

INTRODUCTION

[1] The Beaches Property Development Ltd. and Hay U Ranch Resort Inc. (the “Appellants”) are each appealing decisions made on May 29, 2023 (the “Decisions”). The Decisions were made by the Director (the “Respondent”), who was appointed under the *Environmental Management Act* SBC 2003, c.53, (the “Act”) and works in the Ministry of Environment and Climate Change Strategy (the “Ministry”). The Appellants appeal the Decisions to reject their requests to suspend a registration under Section 17 of the *Municipal Wastewater Regulation*, B.C. Reg. 87/2012 (a “Registration Suspension”).

[2] The appeals were grouped to be heard together due to the similar nature of the issues were being appealed, the decisions were issued on the same day by the same decision maker, and the Appellants’ representative is the same in both appeals.

[3] Section 103 of the *Act* specifies the powers of the Environmental Appeal Board (the “Board”) in deciding an appeal:

- 103** On an appeal under this Division, the appeal board may
- (a) send the matter back to the person who made the decision, with directions,
 - (b) confirm, reverse or vary the decision being appealed, or
 - (c) make any decision that the person whose decision is appealed could have made, and that the appeal board considers appropriate in the circumstances.

[4] The Appellants ask that the Board reverse the decisions on the Registration Suspension requests and grant the Registration Suspensions.

[5] The Respondent requests that the Board confirm its Registration Suspension decisions.

BACKGROUND

Relevant Law

[6] Sewerage systems are regulated by the *Municipal Wastewater Regulation* (the “MWR”) under the *Act*, and the *Sewerage System Regulation* (the “SSR”) under the *Public Health Act* SBC 2008, c. 28, (the “PHA”). The *Act* and *MWR* are the responsibility of the Ministry, whereas the *PHA* and *SSR* are the responsibility of the Ministry of Health. The Board has jurisdiction to hear appeals of decisions made under the *Act* but does not have jurisdiction under the *PHA*.

[7] Section 4(2) of the *MWR* outlines when the regulation applies:

Application

- 4** (1) In this section, "**parcel**", "**sewerage system**" and "**strata lot**" have the same meanings as in the Sewerage System Regulation, B.C. Reg. 326/2004.
- (2) Subject to subsection (3), this regulation applies to all discharges
- (a) to ground, if the discharge
 - (i) is equal to or exceeds maximum daily flows of 22.7 m³/d, and
 - (ii) is from a sewerage system or combination of sewerage systems that serve structures on one or more parcels or strata lots, or on a shared interest, and
 - (b) to water.
- (3) This regulation does not apply to a discharge to ground or water if the discharge is from a sewerage system that serves only a single family residence or duplex.

[8] Section 2 of the *SSR* outlines when it applies:

Application

- 2** This regulation applies to the construction and maintenance of
- (a) a holding tank,
 - (b) a sewerage system that serves a single family residence or a duplex,
 - (c) a sewerage system or combination of sewerage systems with a combined design daily domestic sewage flow of less than 22 700 litres that serves structures on a single parcel, and
 - (d) a combination of sewerage systems with a combined design daily domestic sewage flow of less than 22 700 litres that serves structures on one or more parcels or strata lots or on a shared interest.

[9] The flow value of 22.7 cubic metres per day (m³/day) referred to in *MWR* is the same value as 22,700 litres per day (L/day) referred to in *SSR*, expressed in different units. For consistency in this decision, I will use the units of m³/day when referring to flow values.

[10] To be authorized to discharge under the *MWR*, persons must be registered in accordance with Division 2, Sections 10 to 17, of the regulation. These sections of *MWR* outline the director's requirements for registration including necessary supporting information and the use of qualified professionals.

Registration

- 10** (1) A person who registers in accordance with this Division is authorized to do either of the following in accordance with this regulation:
- (a) discharge municipal effluent to ground or water;
 - (b) discharge or use reclaimed water.

[11] Division 2 also provides for changes to, suspension, or cancellation of registrations. Section 17 of *MWR* gives authority to a director to suspend or cancel a registration for the same reasons a director could suspend or cancel a permit under Section 18 of the *Act*.

Suspension or cancellation of registration

- 17** (1) A director may suspend or cancel a registration in the same manner and for the same reasons as a director could suspend or cancel a permit or approval under section 18 of the *Act*.
- (2) A discharger must not release a discharge
- (a) during any period during which the discharger's registration is suspended, or
 - (b) if the discharger's registration is cancelled.

[12] The circumstances where a decision to suspend or cancel a permit or approval may be made are listed in Section 18(3) of the *Act*. Further, Section 18(5) of the *Act* reads in part:

Suspension or cancellation of permits and approvals

- 18** (5) In addition to the authority conferred by subsection (1), a director may, without notice to the holder,
- (a) suspend a permit or approval for the length of time requested if the holder requests that the permit or approval be suspended.

The Beaches Property Development Ltd.

[13] The Beaches Property Development Ltd. ("Beaches") is the developer of a residential community named Coldstream Landing, which is south of Windermere, British Columbia. Once complete, Coldstream Landing will comprise up to 22 homes and 1 site

caretaker home. Currently, 11 homes and 1 caretaker residence have been constructed on site.

[14] In 2005, Beaches applied for Registration under what was then the *Municipal Sewage Regulation*, now *MWR*. An Environmental Impact Study (“EIS”) was completed to support Beaches’ application. The EIS was based on a treatment facility designed for a peak capacity of 50 m³/day. A wastewater treatment plant was constructed in 2007. Beaches received a Registration Letter from the Ministry on March 26, 2008, confirming the registration was effective July 27, 2005.

[15] A Registration Letter is written notice provided by the Ministry to confirm receipt of the materials required by *MWR* Section 10 for registration. As stated in *MWR* Section 10(3), a Registration Letter is not evidence that the requirements of the *Act* or *MWR* have been met.

[16] Beaches submitted a Record of Sewerage System filing (“SSR Filing”) with Interior Health on July 30, 2014, based on a strata development with an estimated daily sewage flow of 21.5 m³/day. A Letter of Certification was provided by Interior Health on July 31, 2014.

[17] Between 2016 and 2017, the Ministry’s on-site inspections cited multiple instances of non-compliance with *MWR*. In January 2018, Beaches requested their *MWR* Registration be suspended. On April 5, 2018, the Ministry approved Beaches’ Registration Suspension request, for the period of January 31, 2018, to January 31, 2019.

[18] On June 28, 2022, Beaches submitted a letter to the Ministry requesting a three year Registration Suspension to January 2025. On July 5, 2022, Beaches resubmitted the request using the Ministry’s Abandonment, Cancellation and De-Registration Request Form. The Respondent rejected this request, and that decision is the subject of this appeal.

Hay U Ranch Resort Inc.

[19] Hay U Ranch Resort Inc. (“Hay U Ranch”) is a recreational vehicle (“RV”) resort located north of Yahk, British Columbia. Once complete, the development will serve up to 250 RV lots, a 60-seat restaurant, and a three-bedroom home for the site caretaker. Currently, there are 40 full-service RV sites and common washroom and laundry facilities on site.

[20] Hay U Ranch applied for *MWR* Registration in 2007, and a wastewater treatment plant was constructed in 2014¹. The EIS completed for Hay U Ranch in 2007 was based on

¹ The Appellant’s submissions indicate the facility was constructed in 2014, while in the Appellant’s response to the Respondent’s request for particulars, they indicated that the facility was constructed in 2009.

a 328 m³/day maximum wet weather flow. The Ministry confirms in a Registration Letter sent on June 4, 2015, that Hay U Ranch's registration was effective July 27, 2007.

[21] Hay U Ranch submitted a *SSR* Filing to Interior Health on July 4, 2014, based on a three-bedroom home, restaurant, and RV sites with an estimated daily sewage flow of 17.0 m³/day. A Letter of Certification was provided by Interior Health on September 8, 2014.

[22] In 2017, a Ministry on-site inspection noted multiple instances of non-compliance with the *MWR*. On January 31, 2018, Hay U Ranch submitted a request to suspend their Registration. On April 26, 2018, the Ministry approved Hay U Ranch's Registration Suspension request, for the period of January 31, 2018, to January 31, 2021. On May 16, 2022, the Ministry conducted another on site inspection noting compliances issues and the inspection record was referred for an Administrative Penalty on June 17, 2022.

[23] On May 24, 2022, Hay U Ranch submitted a letter to the Ministry requesting a five year Registration Suspension. On July 14, 2022, Hay U Ranch resubmitted the request using the Ministry's Abandonment, Cancellation and De-Registration Request Form. The Respondent rejected this request, and that decision is the subject of this appeal.

Decisions to Reject Registration Suspension Requests

[24] In both Decisions, the rationale provided for rejecting the Registration Suspension requests was that the *PHA* and the *Act* do not allow for "dual jurisdictional authorization for the same discharge under different actual daily discharge flow conditions." The Appellants appeal on the basis that they are discharging under one jurisdiction, the *SSR*, and that since the estimated design flows do not exceed the 22.7 m³/day threshold, the *MWR* does not apply.

ISSUES

[25] The parties agree that where "maximum daily flow" meets or exceeds 22.7 m³/day the *MWR* applies, and where "design daily domestic sewage flow" is less than 22.7 m³/day, the *SSR* applies. However, neither term is specifically defined in its respective regulation. Additionally, the parties reference the term "estimated design flow" in their submissions, another term that is not defined in either *MWR* or *SSR*. The interpretation of these terms is a central issue in these appeals.

[26] In deciding these appeals, I consider the following issues:

- Did the Appellants use the correct flow values to justify their Registration Suspension requests?
- When does the *MWR* apply to the Appellants' sewerage systems' discharge flows?

- Is it possible to hold a Suspended *MWR* Registration and still legally discharge municipal wastewater to ground?

APPELLANTS' SUBMISSIONS

[27] The Appellants ask the Board to reverse the Respondent's Decisions and to grant the Registration Suspensions. The Appellants disagree with the Respondent's interpretation of the *SSR* and *MWR* provided in the Decisions. The Appellants submit that their current respective discharges are authorized by their *SSR* Filings and Letters of Certification from Interior Health. The Appellants submit that neither the *SSR* nor *MWR* state that a discharger cannot hold a *MWR* Registration while discharging under *SSR*.

[28] The Appellants interpret the regulations to mean that *SSR* applies when estimated design flows of a sewerage system are less than 22.7 m³/day. The Appellants submit that the *MWR* applies after a discharger notifies the Ministry, as required by Section 46 of *MWR*, that the discharges will be more than 22.7 m³/day. The Appellants argue that a transfer of jurisdictional authority occurs, between *SSR* and *MWR*, when the Ministry is notified of the Appellants' intent to discharge.

[29] The Appellants submit the discharge flows at both sites were estimated correctly, by a qualified professional, using the appropriate estimated flow values. The Appellants submit the estimated design flows for Beaches is 21.5 m³/day, as per their 2014 *SSR* Filing, and for Hay U Ranch is 17.0 m³/day as per their 2014 *SSR* Filing.

[30] The Appellants describe their use of the Standard Practice Manual Version 3 (the "SPM V3") to determine the "daily design flows" at Coldstream Landing and Hay U Ranch. Within the appeal process, each Appellant provided slightly different flow numbers to the Respondent. The Appellants submitted that the design daily flow for Beaches was 21.5 m³/day and for Hay U Ranch was 14.7 m³/day. Regardless of these discrepancies in the submitted flow values from their original *SSR* Filings, the Appellants argue their relevant flows are less than the 22.7 m³/day threshold set by *MWR* and therefore *SSR* applies.

[31] The Appellants submit that effluent flows are recorded monthly at Coldstream Landing for Beaches. Continuous effluent flow monitoring is not conducted at Hay U Ranch. The Appellants submit that the actual flow data from Coldstream Landing was shared with the Ministry and show discharges well under both the estimated flow and the 22.7 m³/day maximum daily flow threshold.

[32] Additionally, the Appellants argue that previous advice from Ministry staff and previous Registration Suspension decisions support their interpretation of the *MWR* and *SSR*. The Appellants submit that the situation has not materially changed since the previous Registration Suspensions were approved by the Ministry in 2018. The Appellants submit that previous correspondence from the Ministry regarding Beaches' Registration Suspension advised that while Beaches would not be authorized to discharge under *MWR* with a suspended registration, it does not preclude them from discharging under the *SSR*.

[33] The Appellants also argue that a suspended registration would be most time and cost-effective solution for both Appellants and the Respondent in the long term. Finally, the Appellants submit examples of situations where dual registrations, under *SSR* and *MWR* would be likely encountered.

RESPONDENT'S SUBMISSIONS

[34] The Respondent submits that *SSR* and *MWR* are complementary, non-overlapping regulatory regimes, and are clear in their application regardless of fluctuations in actual discharge. The Respondent submits that the regulatory regime does not “contemplate shifting responsibilities based on actual use.” The Respondents argue that a plain reading of *SSR* and *MWR* clearly shows the Appellants’ discharges are subject to *MWR* and not *SSR*. The Respondent submits that the Appellant should not rely on their erroneous *SSR* Filings to authorize their discharges.

[35] The Respondent argues that facilities with design flows of less than 22.7 m³/day are regulated under *SSR*, and facilities with design flows equal or greater to 22.7 m³/day are regulated under the *MWR*. The Respondent argues the “maximum daily flow” in *MWR* is the estimated design maximum and is synonymous with the “design daily domestic sewage flow” in *SSR*.

[36] The Respondent argues the correct flows to measure against the 22.7 m³/day flow threshold are the estimated design flows of the systems accepted for registration, those values being 50 m³/day at Beaches and 328 m³/day at Hay U Ranch. Since the Appellants’ treatment facilities have design flows of greater than 22.7 m³/day, both are regulated under *MWR*. The Respondent argues that the plain wording of *SSR* states it can only apply to facilities designed to output less than 22.7 m³/day.

[37] The Respondent says that *MWR* allows operators to “depart from using the calculated maximum capacity of a system” in narrow terms specified in *MWR* Section 74(2). The Respondent submits that the Appellants do not meet the requirements of Section 74(2).

[38] The Respondent submits that the *MWR* defines discharge as “...the total amount of municipal wastewater, including reclaimed water, released into the receiving environment from works,” (Respondent’s emphasis). Therefore, the relevant maximum discharge described in Section 4(2) of the regulation is that of the Appellants’ works servicing their developments.

[39] The Respondent submits that their interpretation is supported by the descriptions of flow provided in policy and guidance documents including the *Sewerage System Regulation and Municipal Wastewater Regulation: Jurisdictional Flow Divide for Onsite Sewerage Systems* (“Flow Divide Guidance”) published by the Ministry of Health and Ministry of Environment; and Engineers and Geoscientists of BC’s *Professional Practice Guidelines: Onsite Sewerage Systems* (“EGBC Guidelines”).

[40] The Respondent submits that the *MWR* regulates a range of activities, regardless of the actual flows of systems. *MWR* covers the planning and design, construction, and operations of municipal wastewater systems. The obligations put on dischargers, such as notifying the Ministry under Section 46, are not conditions precedent to enforcing the regulation.

[41] The Respondent submits that the Appellants cannot legally discharge under *SSR* given the design capacity of their facilities, and therefore their *MWR* Registration Suspension requests cannot be granted. The Respondent submits if the requested suspensions are approved, the Appellants would be prohibited from discharging altogether, or the Ministry would be condoning discharges contrary to Section 17(2) of *MWR*. Neither situation would be tolerable for the Appellants or the Ministry.

DISCUSSION AND ANALYSIS

Did the Appellants use the correct flow values to justify their Registration Suspension requests?

Terminology Used to Describe “Flow”

[42] The parties use several terms in their submissions to describe “flow.” These terms include “design daily domestic sewage flow,” “maximum daily flow,” “estimated design flow,” “estimated flow,” “daily design flow,” “facility design output flow,” “facility design flow,” and “actual daily discharge flow.” Not all these terms are found in *SSR* or *MWR*. Some terms, but not all, are referred to in government policies and guidance documents. Some terms, but not all, are described in those guidance documents as synonymous. The definitions of “design daily domestic sewage flow” and “maximum daily flow,” used in *SSR* and *MWR* respectively, are not obvious. The interpretation of these terms is central to these appeals.

[43] The parties agree that *MWR* and *SSR* share the same non-overlapping 22.7 m³/day (or 22,700 litres/day) flow threshold. I agree with this conclusion. In my analysis below, I will refer to this idea of being above, equal to, or below 22.7 m³/day as the “Flow Threshold.”

[44] There are other commonalities between the *MWR* and *SSR*. *MWR* borrows its Section 4 definition of “sewerage system” directly from the *SSR*. *MWR* also defines “domestic wastewater” to have the same meaning as “domestic sewage” in the *SSR*. Municipal wastewater is defined in *MWR* to mean “domestic wastewater or municipal liquid waste.” Given these overlapping definitions and the shared Flow Threshold, I agree with the Respondent and find *SSR* and *MWR* should be read together as complementary regulations. These shared concepts and the similarities in contexts also indicate that “design daily domestic sewage flow” from *SSR* and “maximum daily flow” from *MWR* are intended to share the same meaning. It is only if these meanings are the same that the

MWR and *SSR* integrate in practice (even to the point that a value equal to the Flow Threshold is included in the *MWR* and excluded from the *SSR*), as I consider they should because of their similar contexts and shared core definitions required to interpret the application of each regulation, as set out in Section 4 of the *MWR* and Section 2 of the *SSR*.

[45] Government policies and professional practice guidelines also support this notion of shared meaning. The parties each referred me to the Flow Divide Guidance created by the Ministry and Ministry of Health to support regulatory staff. The Flow Divide Guidance states that “design daily flow” is considered synonymous with “estimated daily sewage flow” and “maximum daily flow.”

[46] SPM V3, referenced by the Appellants, defines “design daily flow” as the “estimated peak flow to be discharged. For the purposes of the SPM this is synonymous with the *SSR* terms ‘estimated daily domestic sewage flow’ and ‘daily design domestic sewage flow’...” The SPM V3 goes on to describe “design daily flow” as “selected for sizing and specification of the sewerage system, based on the estimated peak (maximum) daily flow of the system” (page III-43). Section 8 of *SSR* requires those making a filing with the health authority to have regard for SPM V3. The parties also refer to the EGBC Guidelines that reiterate these to be synonymous terms.

[47] The parties do not appear to take issue with the accuracy or applicability of the Flow Divide Guidance, EGBC Guidelines, or SPM V3. While not binding on me, I find that these policy documents are helpful in interpreting how the regulations are applied in practice.

[48] In addition to flow terminology, it is also important to draw a distinction between the words “sewage” and “sewerage.” In their plain meaning, the words “sewage” and “sewerage” have different meanings. Their definitions in *SSR* are similarly distinct:

“domestic sewage” includes

- (a) human excreta, and
- (b) waterborne waste from the preparation and consumption of food and drink, dishwashing, bathing, showering, and general household cleaning and laundry, except waterborne waste from a self-service laundromat;

[49] and

“sewerage system” means a system for treating domestic sewage that uses one or more treatment methods and a discharge area, but does not include a holding tank or a privy.

[50] The Flow Divide Guidance provides a helpful diagram that depicts sewerage systems (page 4). Sewerage systems are connected to some source of sewage (e.g. house, RV sites), have methods for treating the sewage, and discharging the treated sewage. “Sewage” is the material and wastewater that flows through and is treated by a “sewerage

system.” The distinction between these words becomes important when interpreting the terms at issue in these appeals.

Statutory Interpretation – Discharge and Maximum Daily Flow

[51] The generally accepted approach to statutory interpretation is to read the regulations “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament” (E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87). Citing *Tran v. Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50, and *Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, 2012 SCC 68, the Respondent cautions the Board to avoid interpretations that produce “absurd” results, and where there are multiple possible interpretations, to adopt the interpretation that favours “harmony, consistency, and coherence.”

[52] The parties do not agree on which flow values should be used to measure against the Flow Threshold. The Appellants argue the appropriate flows should be the estimated design flows of 21.5 m³/day (Beaches) and 14.7 m³/day (Hay U Ranch). The Respondent argues the relevant flows are the design capacities for the facilities, of 50 m³/day (Beaches) and 328 m³/day (Hay U Ranch). In addressing these differing positions, the question becomes what flow value is meant by the term “maximum daily flow” in Section 4(2)(a)(i) of *MWR*?

[53] While I have concluded that “design daily domestic sewage flow” and “maximum daily flow” share the same meaning, neither are defined terms in their respective regulations. In order to determine the appropriate meaning of “maximum daily flow” as used in *MWR* Section 4(2)(a)(i), I first consider the meaning of the term “discharge”, as the discharge is what is compared to the “maximum daily flow.” Section 1 of *MWR* provides the follow definition:

“discharge” means,

- (a) when used as a noun, the total amount of municipal wastewater, including reclaimed water, released into the receiving environment from works, and
- (b) when used as a verb, to release a discharge;

[54] Discharge is used as a noun in the context of *MWR* Section 4(2)(a)(i). Discharge then, is the total amount of municipal wastewater released into the receiving environment from works. “Discharge” also contains a significant defined term. The *MWR* defines “municipal wastewater” to mean “domestic wastewater” or “municipal liquid waste.” The *MWR* further defines “domestic wastewater” to have the same meaning as “domestic sewage” in *SSR*.

[55] Considering the definitions of discharge and municipal wastewater, I interpret Section 4(2)(a)(i) of the *MWR* as follows: *MWR* applies to all discharges, to ground, if the total amount of municipal wastewater (also known as domestic wastewater, or domestic

sewage) released into the receiving environment from works, is equal to or exceeds maximum daily flows of 22.7 m³/day (emphasis added).

[56] The Respondent argues that the maximum daily flow under Section 4(2)(a)(i) should be based on the facility design output flow, emphasizing the term “works” in the definition of discharge. The Respondent argues “the only plausible reading of the *MWR* is that it applies to facilities that have a design maximum flow equal to or greater than 22.7 m³/d.”

[57] The terms “facility” and “facility design output flow,” used by the Respondent, are absent in Section 4 of *MWR*. Furthermore, as described above, “sewage” is distinct from “sewerage system”. Similarly, wastewater, as defined above, is also different than a wastewater facility, which is defined as “any facility or works that gathers, treats, transports, stores, uses or discharges municipal wastewater or reclaimed water.”

[58] Section 4(2)(a)(i) of the *MWR* does not say it applies if the wastewater facility has design output flows equal to or exceeding 22.7 m³/day; it says it applies if the discharge is equal to or exceeds Flow Threshold.

[59] Section 2(d) of *SSR* also ties its application to sewage flows and not the capacity of a sewerage system:

(d) a combination of sewerage systems with a combined design daily domestic sewage flow of less than 22 700 litres that serves structures on one or more parcels or strata lots or on a shared interest. (emphasis added)

[60] The Appellants submit that a qualified professional used the appropriate estimated flow values referenced in SPM V3 to calculate design flows for each site. In their submissions, the Appellants appear to interchangeably use the terms “estimated flows,” “estimated design flows,” “estimated sewage flows,” “design daily flow,” and “maximum daily flow.” *MWR* does not use the word “estimated” to qualify flows, while *SSR* does use “estimated” in Sections 6 and 9. Considering the context of the Appellants’ submissions, I interpret their use of these terms to refer to an office-based estimation or calculation of flows, as opposed to physical measurements taken on site of actual flows.

[61] The Respondent did not submit alternative calculated maximum daily flow values, nor contest the Appellants’ calculations using SPM V3. Rather, the Respondent argues that the correct flow value to measure against the Flow Threshold should be estimated design flows of the systems accepted for registration, or the maximum design output flows of the treatment facilities.

[62] As I have described above, the words “facility,” “facility design output flow,” “facility design flow,” and “wastewater facility” are absent from Section 4 of *MWR*. The Respondent’s argument that maximum daily flow should be interpreted as equal to facility design output flow is inconsistent with a plain reading of the *MWR*. Therefore, I am not persuaded by the Respondent’s argument that the facility design output flow value should be the value compared to the Flow Threshold.

[63] The maximum daily flow of municipal wastewater is a value independent of a wastewater facility's design capacity. This interpretation is consistent with how the terms "maximum daily flow," "wastewater facility," and "capacity" are used throughout *MWR*. A wastewater facility should be designed with the capacity to manage the maximum daily flow; however, this does not mean the design capacity and maximum daily flow values are or ought to be the same. The maximum daily flow (also referred to by the Appellants as design daily flow or estimated flow) values submitted by the Appellants are the only maximum daily flow values before me. The Appellants' submitted maximum daily flows are what I interpret should be used to compare against the Flow Threshold and to determine whether Section 2 of *SSR* or Section 4 of *MWR* applies.

Did the Appellants use "actual daily discharge" flows to determine whether *SSR* or *MWR* should apply?

[64] The Respondent's rationale for the Decisions was that the *PHA* and the *Act* do not allow for "dual jurisdictional authorization for the same discharge under different actual daily discharge flow conditions." The Respondent points to Section 74 of *MWR*, noting that these circumstances do not apply to either Appellant and there is no provision in *MWR* to rely on actual flows when they are less than 37 m³/day.

[65] Section 74 of *MWR*:

Calculating flow

- 74** (1) A qualified professional must determine the calculated or actual maximum daily flow.
- (2) A qualified professional may use the actual maximum daily flow to design the wastewater facility if
- (a) the actual daily flow is equal to or greater than 37 m³/d,
 - (b) water conservation measures are used, and
 - (c) a restrictive covenant is placed on each property requiring that water conservation measures are continuously used.

[66] A plain reading of Section 74(1) is clear that maximum daily flows can either be "calculated" or "actual." The specific circumstances where "actual" flows can be used are described in Section 74(2). Unless the factors listed in Section 74(2) are satisfied and the qualified professional uses their discretion to use "actual" flows, the applicable maximum daily flows are "calculated" flows. Unless the factors in Section 74(2) are satisfied, calculated maximum daily flows ought to be used to design wastewater facilities and to determine if the *MWR* applies to discharges.

[67] The Appellants differentiate between estimated flows and actual flows, and they submit that their actual flows are much lower than their estimated flows. The Appellants

argue their estimated flows, not actual flows, form the basis for their *SSR* Filings and authorization to discharge under the *SSR* and *PHA* framework.

[68] The Appellants submit that due to low system flows, actual flows are not recorded at Hay U Ranch because continuous flow monitoring is not required by the *SSR*. The Respondent also submits a recent inspection that found the flow meter at Hay U Ranch was not in use. It follows then, that actual flows are not currently available for Hay U Ranch, nor could they be used to justify discharges under *SSR* or *MWR*.

[69] The evidence in this appeal does not support the notion that the Appellants should use “actual” maximum daily flows to justify their discharges under *SSR* instead of *MWR*. Nor have the Appellants argued that they should do so. The Appellants do not assert that the factors in *MWR* Section 74(2) to use actual flows are met or applied in their cases. There is not sufficient evidence to support the Respondent’s assertion that the Appellants used “actual daily discharge flow conditions” as opposed to the “calculated” or “estimated” flows they describe.

Panel’s Findings

[70] As described in the analysis above, I agree with the Appellants, that they did not rely on actual flows to justify their Registration Suspension requests. In these appeals, to determine whether *MWR* Section 4 applies, I find the appropriate flows to compare against the Flow Threshold are the calculated maximum daily flows. I disagree with the Respondent and find that the Appellants’ facility capacities or maximum facility design output flows are not the correct flows to measure against the Flow Threshold. The Appellants’ submitted maximum daily flows are the only maximum daily flows before me and are below the 22.7 m³/day Flow Threshold.

[71] The Appellants submitted their calculated maximum daily flows. The Respondent did not contest these calculations or submit alternative calculated maximum daily flows for the Board’s consideration. In the absence of any alternatives or any persuasive reason why I should not accept the flow rates described by the Appellants, I find those values persuasive. Given the Appellants’ submitted maximum daily flows of 21.5 m³/day (Beaches) and 17.0 m³/day (Hay U Ranch), I find that Section 4 of *MWR* does not apply to these flows.

When does *MWR* apply to the Appellants’ sewerage systems discharge flows?

[72] The Appellants argue a “transfer of jurisdiction” occurs from *SSR* to *MWR* when they notify the Ministry of discharge under Section 46 of the *MWR*. The Respondent argues that Section 46 of the *MWR* is one of several obligations of dischargers under the regulation. A holder of a Registration is subject to the provisions in the regulation, whether they have notified the Ministry, as required in Section 46, of the discharge or not.

[73] I find that Section 4 of *MWR* is clear, the regulation applies to discharges to ground when the maximum daily flows equal or exceed 22.7 m³/day. The applicability of *MWR* is determined by flows, regardless of the status of a discharger's registration, or whether they have notified the Ministry of discharge or not. In the case of these Appellants, *MWR* applies when their calculated maximum daily flow meets or exceeds 22.7 m³/day. I agree with the Respondent that Section 46 is not a condition precedent to enforcement of the regulation.

Is it possible to hold a Suspended *MWR* Registration and still discharge municipal wastewater to ground?

[74] The parties also made submissions on whether the Appellants can hold dual authorizations or registrations under both *SSR* and *MWR*. The Appellants argue that a discharger can hold filings and authorizations under both the *SSR* and *MWR* at the same time. The Respondent argues that there is no overlapping jurisdiction and one of either *SSR* or *MWR* applies.

[75] Any maximum daily flow value is either is less than, equal to, or greater than 22.7m³/day. A maximum daily flow value cannot be simultaneously less than, and also equal or greater than 22.7m³/day. I agree with the Respondent that discharges to ground can only be authorized by either *SSR* or *MWR*, not both. "Dual authorizations" to discharge are not possible under this regime.

[76] However, Registration under the *MWR* is not the same as authorization to discharge under the regulation. All dischargers must be registered but not all those who have registered may be authorized to discharge. Registrations can be cancelled or suspended as described in Section 17 of *MWR*. In the case of a suspended registration, the *MWR* is not authorizing the discharge. Section 17(2) of *MWR* is clear in that a person may be registered with *MWR* and at the same time be prohibited from releasing a discharge if their registration is suspended. That is, a person might have registered in accordance with Division 2 of *MWR*, and have obtained Registration at some point, but not be authorized to release a discharge under the regulation.

[77] The Respondent submits if the registrations are suspended, the Appellants would be prohibited from releasing a discharge as stated in *MWR* Section 17(2). The Respondent submits this would not work in practice, as the Appellants are already discharging and intend to continue their discharges if the Registration Suspensions were granted.

[78] The Respondent's Decisions were made under the incorrect interpretation that the *MWR* authorizes the Appellants' discharges. As described in my analysis above, the calculated maximum daily flow values submitted by the Appellants in these appeals do not meet the Flow Threshold for *MWR* to authorize the discharges. It is possible for an operator to hold a Suspended *MWR* Registration while discharging under authorization of the *SSR* and *PHA* if requirements of the *SSR* and *PHA* are met. In the context of these

appeals, however, I do not need to determine, nor do I have the information to determine, whether the requirements of the *SSR* and *PHA* are met.

DECISION

[79] In making this decision, I have considered all relevant documents, affidavits, and submissions, whether or not they are specifically referred to above.

[80] During the appeal, the Respondent took issue with contents of the Appellants' Reply Submission. In particular, the Respondent argues that the reply submission introduced new evidence and does not comply with the Board's Rules or Practices and Procedures Manual. I find the contents of the Appellants' Reply did not influence my analysis and statutory interpretation presented above. As a result, I did not need to consider that evidence provided along with the Appellant's Reply Submission.

[81] I also appreciate that the Appellants made submissions on the processing timelines and financial costs associated with obtaining *MWR* Registration, and on the impact of the Ministry's approvals of Registration Suspension requests previously; however, I did not find those arguments persuasive and did not address them in greater detail as I allow the Appellants' appeals on other grounds.

[82] The Appellants' maximum daily flows are not equal to or exceeding 22.7 m³/day, therefore *MWR* does not apply to their discharges to ground.

[83] Under the authority of Section 103 of the *Act*, I allow the Appeals and grant the Registration Suspension requests sought by the Appellants.

[84] For Beaches Property Development Ltd. the Registration Suspension is effective to January 31, 2025. For Hay U Ranch Resort Inc. the Registration Suspension is effective to May 31, 2027. During the suspension period, the Appellants are prohibited from discharging to the environment under the *MWR* and *Act*. The *MWR* applies to the Appellants' discharges when their maximum daily flows are equal to or exceed 22.7 m³/day, regardless of the status of their Registrations.

"Cynthia Lu"

Cynthia Lu, Panel Chair
Environmental Appeal Board