

ALBERTA ENVIRONMENTAL APPEAL BOARD

Decision

Date of Decision: February 13, 2003

IN THE MATTER OF sections 91, 92 and 95 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 and sections 114 and 115 of the *Water Act*, R.S.A. 2000, c. W-3;

-and-

IN THE MATTER OF appeals filed by David Doull and the Lake Wabamun Enhancement and Protection Association, with respect to *Environmental Protection and Enhancement Act* Approval No. 18528-00-03 issued by the Director, Northern East Slopes Region, Regional Services, Alberta Environment, and with respect to *Water Act* Licence Amendment No. 00037698-00-02, issued by the Director, Central Region, Regional Services, Alberta Environment, both to TransAlta Utilities Corporation.

Cite as: Intervenor Decision: *Spilsted v. Directors, Northern East Slopes Region and Central Region, Regional Services, Alberta Environment*, re: *TransAlta Utilities Corporation* (13 February 2003), Appeal Nos. 01-082, 01-084, 02-002, and 02-003–ID3 (A.E.A.B.).

EXECUTIVE SUMMARY

Alberta Environment issued an Approval under the *Environmental Protection and Enhancement Act* and a Licence under the *Water Act* to TransAlta Utilities Corporation with respect to the construction, operation, and reclamation of a Water Treatment Plant at Lake Wabamun, west of Edmonton, Alberta. The purpose of the plant is to mitigate the effects of TransAlta's other operations at the Lake.

The Board received a total of eight appeals – four of which were subsequently withdrawn or dismissed. The Board held a Preliminary Meeting and commenced a Hearing (that was adjourned after a preliminary motion and subsequently reconvened), and in doing so, requested the participation of potential intervenors. Mr. C.G.P. Spilsted was recognized as a potential interested person and was granted limited intervenor status with respect to these appeals. However, when the Hearing adjourned, Mr. Spilsted requested that the Board reconsider its intervenor decision and grant him the right to participate more actively at the continuation of the Hearing. After receiving submissions from the parties, the Board decided to grant Mr. Spilsted's request for a more active role at the continuation at the Hearing.*

* The Board has made its Report and Recommendations in this matter and the Minister has accepted the Board's Recommendations. See: *Doull et al. v. Directors, Northern East Slopes Region and Central Region, Regional Services, Alberta Environment, re: TransAlta Utilities Corporation* (18 November 2002), Appeal Nos. 01-082, 01-084, 02-002, and 02-003-R (A.E.A.B.).

BEFORE:

William A. Tilleman, Q.C., Chair;
Dr. Steve E. Hrudehy; and
Frederick C. Fisher, Q.C.

Appellants: Mr. David Doull; and the Lake Wabamun
Enhancement and Protection Association,
represented by Mr. Locke Boros and Ms. Linda
Duncan.

Directors: Mr. Daryl Seehagel, Director, Northern East Slopes
Region, Regional Services, Alberta Environment,
and Mr. Larry Williams, Director, Central Region,
Regional Services, Alberta Environment,
represented by Mr. William McDonald and Ms.
Renee Craig, Alberta Justice.

Approval Holder: TransAlta Utilities Corporation, represented by Mr.
Ronald M. Kruhlak and Mr. Corbin Devlin,
McLennan Ross.

Intervenor: Mr. C.G.P. Spilsted.

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I. BACKGROUND

A. Procedural Background

[1] On July 30, 2001, the Director, Northern East Slopes Region, Regional Services, Alberta Environment (the “Directors”)¹ issued Amending Approval No. 18528-00-03 (the “Approval”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12² (the “Act” or “EPEA”) to TransAlta Utilities Corporation (the “Approval Holder”), repealing and replacing Approval No. 18528-00-01 and Amending Approval No. 18528-00-02, for the construction, operation, and reclamation of a Class III potable water treatment plant at the N 20-52-4-W5M and SE 29-52-4-W5M at Lake Wabamun, west of Edmonton, Alberta. On March 8, 2002, the Director, Central Region, Regional Services, Alberta Environment, issued Licence Amendment No. 00037698-00-02 (the “Licence”) under the *Water Act*, R.S.A. 2000, c. W-3,³ to the Approval Holder with respect to the same facility.

[2] The Environmental Appeal Board (the “Board”) received Notices of Appeal on August 30, 2001, from Mr. David Doull and on August 31, 2001, from the Lake Wabamun Enhancement and Protection Association (“LWEPA”), (collectively the “Appellants”). The Board also received Notices of Appeal from Mr. Blair Carmichael and Enron Canada Power Corporation (“Enron”) on August 30, 2001, and from Mr. Nick Zon on September 4, 2001.⁴

¹ As the appeals are in respect to both the Approval, issued by the Director, Northern East Slopes Region, Regional Services, Alberta Environment (designated a Director under EPEA) and the Licence Amendment, issued by the Director, Central Region, Regional Services, Alberta Environment (designated a Director under the *Water Act*) reference will be made to the “Directors” in this Decision.

² As of January 1, 2002, the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, has replaced the *Environmental Protection and Enhancement Act*, S.A. 1992, c. E-13.3.

³ As of January 1, 2002, the *Water Act*, R.S.A. 2000, c. W-3, has replaced the *Water Act*, S.A. 1996, c. W-3.5.

⁴ The appeal filed by Enron was dismissed by the Board on March 14, 2002. See: *Enron Canada Power Corporation v. Director, Northern East Slopes Region, Regional Services, Alberta Environment re: TransAlta Utilities Corporation* (26 June 2002), Appeal No. 01-081-D (A.E.A.B.). The appeal filed by Mr. Zon was dismissed on May 31, 2002. See: *Zon v. Director, Northern East Slopes Region, Regional Services, Alberta Environment re: TransAlta Utilities Corporation* (31 May 2002), Appeal No. 01-085-D (A.E.A.B.). The appeal filed by Mr. Carmichael was withdrawn on June 10, 2002. See: *Carmichael v. Directors, Northern East Slopes Region and Central Region, Regional Services, Alberta Environment re: TransAlta Utilities Corporation* (13 June 2002), Appeal Nos. 01-080 and 01-134-DOP.

[3] The Board acknowledged the Notices of Appeal and requested that the Approval Holder and the Directors respond to Mr. Carmicheal's request that the appeal under EPEA be held in abeyance until the Licence under the *Water Act* had been issued. In this same letter, the Board requested that the Directors provide a copy of all correspondence, documents, and materials relevant to these appeals (the "Record") by September 21, 2001.⁵

[4] On September 5, 2001, the Directors wrote the Board concurring with the requests to hold the appeals in abeyance pending the finalization of the *Water Act* Licence. On September 7, 2001, the Board received a letter from the Approval Holder in which it agreed with the Directors that the appeals should be held in abeyance. On September 7, 2001, the Board notified the Parties⁶ that it would hold the appeals in abeyance pending the issuance of the *Water Act* Licence.

[5] On March 8, 2002, the Director, Central Region, Regional Services, Alberta Environment, issued the Licence under the *Water Act* to the Approval Holder. The Board received Notices of Appeal with respect to the Licence on April 3, 2002, from LWEPa, and on April 8, 2002, from Mr. David Doull.⁷ The Directors and Approval Holder were notified of the appeals, and the Board requested the Directors forward a copy of all the documents related to these appeals (the "Water Record") to the Board.⁸

[6] The Board notified the Parties on April 4, 2002, that it would deal with the Licence appeals in conjunction with the Approval appeals.

[7] The Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board, regarding both the EPEA appeals and the *Water Act* appeals, asking whether these matters had been the subject of a hearing or review under their respective legislation. Both Boards replied in the negative.

⁵ The Directors provided a copy of the Record on September 21, 2001, and copies were forwarded to the other Parties in these appeals.

⁶ The "Parties" in this decision are the Appellants, Approval Holder, and Director.

⁷ Mr. Zon did not file an appeal of the *Water Act* Licence. The Board also received a Notice of Appeal from Mr. Blair Carmichael on March 28, 2002. This appeal was withdrawn on June 13, 2002. See: *Carmichael v. Directors, Northern East Slopes Region and Central Region, Regional Services, Alberta Environment re: TransAlta Utilities Corporation* (13 June 2002), Appeal Nos. 01-080 and 01-134-DOP.

⁸ The Board received a copy of the Water Record on April 10, 2002, and copies were forwarded to the other Parties to these appeals.

[8] On April 4 and 9, 2002, the Board requested that the Parties advise if, in their opinion, there are other persons that may have an interest in these appeals. On April 12, 2002, one of the Appellants, Mr. David Doull, responded by stating that Mr. C.G.P. (Pat) Spilsted may have an interest in these appeals. Mr. Doull noted that Mr. Spilsted owns lakefront property at Wabamun Lake and “was well acquainted with the problems at the lake.”

[9] On April 15, 2002, the Board wrote to Mr. Spilsted identifying him as a potentially interested party and provided him with a copy of Mr. Doull’s letter, the Approval, and the Licence.

[10] On April 17, 2002, the Board held a Preliminary Meeting to determine the issues to be dealt with at the Hearing scheduled for May 15 and 16, 2002. As referenced in the Board’s reasons respecting the Preliminary Meeting,⁹ Mr. Spilsted was in attendance, but he did not participate in the meeting. The Board stated:

“Although he [Mr. Spilsted] did not make a presentation to the Board on this occasion, it does not preclude him from participating in the substantive hearing. Once the notice of hearing is given, he may make an application to the Board for intervenor status in the substantive hearing.”¹⁰

[11] On April 19, 2002, the Board wrote to Mr. Spilsted again, attaching a copy of the Board’s Notice of Public Hearing advertisement placed in the *Edmonton Journal* on April 18, 2002, the *Wabamun Community Voice* on April 23, 2002, and the *Stony Plain Reporter* on April 19, 2002. The Notice of Public Hearing stated, among other things, that:

“Any person, other than the parties, who wishes to make a representation before the Board on this appeal must submit a request in writing to the Board at the address set out below on or before April 30, 2002. Such a request shall (a) contain the name, address and telephone and fax numbers of the person submitting the request, (b) indicate whether the person submitting the request intends to be represented by a lawyer or agent and, if so, the name of the lawyer or agent, (c) contain a summary of the nature of the person’s interest in this appeal, and (d) be signed by the person submitting the request. After April 30,

⁹ See: Issues Decision: *Carmichael et al. v. Directors, Northern East Slopes Region and Central Region, Regional Services, Alberta Environment re: TransAlta Utilities Corporation* (25 June 2002), Appeal Nos. 01-080, 01-082, 01-084, 01-085, 01-134, 02-002, and 02-003-ID2 (A.E.A.B.).

¹⁰ See: Issues Decision: *Carmichael et al. v. Directors, Northern East Slopes Region and Central Region, Regional Services, Alberta Environment re: TransAlta Utilities Corporation* (25 June 2002), Appeal Nos. 01-080, 01-082, 01-084, 01-085, 01-134, 02-002, and 02-003-ID2 (A.E.A.B.).

2002, the Board will, in its discretion, determine who may make representations and the manner in which they can be made.”

[12] On April 22, 2002, at the request of Mr. Spilsted, the Board provided him with a copy of the Approval, Licence, Notices of Appeal, written submissions related to the April 17, 2002 Preliminary Meeting, and the Board’s April 19, 2002 letter stating the issues for the Hearing.

[13] On April 25, 2002, the Board received an intervenor request from Mr. Spilsted stating: “Please accept this correspondence as a request to appear as an appellant to the above matter.” On April 30, 2002, the Board requested the Parties “...provide written comments to the Board with respect to Mr. Spilsted’s potential involvement at the hearing of these appeals...”

B. Initial Intervenor Decision

[14] The Directors responded to the Board’s request on May 1, 2002, stating their opposition to Mr. Spilsted’s request to participate as an intervenor. The Directors based their argument on the Board’s Rules of Practice¹¹ with respect to Third Party Intervention. The letter stated: “The record of the Directors does not disclose that Mr. Spilsted submitted a statement of concern with respect to these particular applications by TransAlta.” The Directors also argued that the

¹¹ Environmental Appeal Board’s Rules of Practice – June 1999 state:

“As a general rule, those persons or groups wishing to intervene must meet the following tests:

- their participation will materially assist the board in deciding the appeal by providing testimony, cross-examining witnesses, or offering argument or other evidence directly relevant to the appeal; the intervenor has a tangible interest in the subject matter of the appeal; the intervention will not unnecessarily delay the appeal;
- the intervenor in the appeal is substantially supporting or opposing the appeal so that the Board may know the designation of the intervenor as a proposed appellant or respondent’
- the intervention will not repeat or duplicate evidence presented by other parties; and
- if the intervention request is late, there are documented and sound reasons why the intervenor did not earlier file for such status.

When the Board makes the determination as to whether or not the person submitting the request should be allowed to become a party, it shall give the person written notice of that decision. In the discretion of the Board, a person may be denied intervention in a matter in which he/she could have participated as a party, but failed in a timely fashion to avail himself/herself of the opportunity to do so. Those wishing to become involved in the appeal process must therefore make their intentions known to the Board as soon as possible.”

“...Board’s letter of April 19, 2002, prescribing issues, indicated that only the four issues listed would be dealt with at the hearing. As the issue of the Wabamun Outlet was not listed, it cannot be dealt with. The history of Seba Beach, although very interesting, does not appear to specifically relate to the four issues that the Board has specified.”

[15] On May 3, 2002, the Board received a submission from the Approval Holder also opposing the participation of Mr. Spilsted as an intervenor. The Approval Holder argued that: “Mr. Spilsted’s request comes late in the sense that he could have submitted a statement of concern or notice of appeal in this matter, and more importantly he does not present any new evidence or fresh perspective to benefit these proceedings.” The Approval Holder went on to state that “Mr. Spilsted’s primary concerns appear to be related to enforcement of the Licence and Approval, and adequacy of the weir ... he does not provide any indication how his evidence might materially assist the Board.” The Approval Holder also referenced the Board’s Rules of Practice with respect to duplicating evidence and reasons for submitting a late request stating:

“...there is no distinction between the position taken and evidence likely to be presented by Mr. Spilsted and the Appellants ... Mr. Spilsted does not provide ‘documented and sound’ reasons for failing to submit a statement of concern or notice of appeal or otherwise participate in a timely fashion.”

[16] On May 3, 2002, Mr. David Doull responded, stating that he had no concerns with Mr. Spilsted’s participation at the Hearing:

“Mr. Spilsted has clearly showed interest in both the EPEA Approval and Water Act Licence Amendment, by contacting the Board and allowing his name to stand as an interested party/appellant...Mr. Spilsted has also completed all the necessary paperwork etc. prior to any deadlines ... Mr. Spilsted has a long history as a property owner at the lake which should make his comments valuable to the Board in their decision making process.”

[17] On May 9, 2002, after considering these submissions, the Board made a decision in a letter to the Parties regarding the intervenor request and advised:

“In response to Mr. Spilsted’s intervenor request, the Board is granting him limited intervenor status. He is required to provide his written submissions summarizing his concerns and the information that he wishes the Board to consider by noon on May 14, 2002. He will be allowed 5 minutes to provide opening comments and 10 minutes to provide closing remarks. Mr. Spilsted will not be permitted to present evidence nor cross-examine.”

[18] On May 13, 2002, the Board received a letter from Mr. Spilsted objecting to the Board's decision with respect to his participation: "...I cannot believe that I will not be allowed to take an active part in the questioning of parties involved. I therefore protest, and ask the board to consider giving me a more active part in what may be a limited discussion." The Board acknowledged Mr. Spilsted's letter on May 14, 2002, and advised him that he could "...make an application to the Board at the start of the hearing on May 15, 2002."

C. Hearing Adjournment

[19] On May 15, 2002, the Board convened the Hearing and dealt with a number of preliminary motions, including a request to adjourn the Hearing. In its decision respecting these preliminary motions, the Board stated:

"We therefore adjourn the hearing for 90 days or until such time as all relevant documents and results of the current investigation regarding fish mortality and heavy metals in Lake Wabamun are made available. The Directors are required to provide copies of the results and all relevant documents to all of the Parties to these appeals and the Board according to the above schedule and subject to section 35(9) of EPEA. Following 90 days, if a motion is received from a Party, the Board will determine if water quality will be added as an issue at the hearing."¹²

Given that the result of the preliminary motions was to adjourn the Hearing, Mr. Spilsted did not have an opportunity to present his motion to the Board at that time.

[20] On June 20, 2002, the Board wrote to the Parties advising them that the continuation of the Hearing would be held on October 1 and 2, 2002.

D. Mr. Spilsted's Applications

[21] On August 28, 2002, the Board wrote to the Parties acknowledging a telephone conversation between Board staff and Mr. Spilsted on August 26, 2002. Mr. Spilsted requested the Board confirm his conversation in writing so that it may be included as part of his written submission. The letter also acknowledged and summarized Mr. Spilsted's written submission

¹² Adjournment Motion: *Carmichael et al. v. Directors, Northern East Slopes Region and Central Region, Regional Services, Alberta Environment re: TransAlta Utilities Corporation* (30 May 2002), Appeal Nos. 01-080, 01-082, 01-084, 01-085, 01-134, 02-002, and 02-003-ID at paragraph 56 (A.E.A.B.).

and his desire to participate and take an active role in the Hearing. Mr. Spilsted advised that the primary reason for participating in the proceedings was that he “wished to save the lake” and that “it is near and dear to his heart.” Mr. Spilsted provided a list of issues that he wished to pursue.

[22] In a further letter dated August 28, 2002, acknowledging a letter from Mr. Spilsted dated August 27, 2002, the Board asked the Parties to address Mr. Spilsted’s request to take a more active part in the October 1 and 2, 2002 Hearing.

[23] In Mr. Spilsted’s letter of August 27, 2002, he also requested interim costs. The letter stated: “Costs on the hearings in the past do not give appellants the funds to supply experts and solicitors to deal with these complex issues...I intend to submit additional thoughts of some items I believe have been overlooked.” On August 29, 2002, the Board received a follow up letter from Mr. Spilsted, again requesting interim costs, which states:

“Please accept this letter also to request that I be given consideration for interim costs as it is obvious that expertise in matters of this nature and legal representation is a direct necessity...to protect both the public and my personal interest as well as my family.”

[24] On August 30, 2002, the Board wrote to Mr. Spilsted outlining the requirements for interim costs and requested a detailed application containing specific information as outlined in the Board’s legislation and Rules of Practice. The Board did not receive an application for costs from Mr. Spilsted.

[25] The Board received and reviewed the submissions from the Parties on Mr. Spilsted’s application for a greater role in the Hearing, and on September 26, 2002, the Board wrote:

“The first motion is that filed by Mr. Spilsted, requesting greater participation at the hearing. The Board grants Mr. Spilsted’s motion and will allow him greater participation at the hearing. The Board will provide further details of Mr. Spilsted’s participation shortly and will also be providing a decision outlining the reasons for its decision.”

These are the reasons referred to in the Board’s letter.

[26] On September 30, 2002, the Board issued a letter outlining the procedure that would be used at the Hearing and detailing the level of participation that Mr. Spilsted would be allowed. It provided that Mr. Spilsted would be allowed 5 minutes for an opening statement, 15 minutes to present direct evidence, 10 minutes each to cross-examine the other parties, and 10 minutes to present closing arguments.

II. SUBMISSIONS

[27] On September 5, 2002, the Board received the Directors' response to Mr. Spilsted's request for a greater role at the Hearing. The Directors stated that Mr. Spilsted's request for increased status in the Hearing should be denied. The Directors argued that: "Before Mr. Spilsted could be granted any greater status, his participation must materially assist the Board and be directly relevant to the appeal." The Directors referenced Mr. Spilsted's letter of August 28, 2002, advising that there was no additional evidence that directly related to the issues in these appeals. The Directors further stated: "It appears that Mr. Spilsted has information and wishes to provide comments on other matters that are tied to Lake Wabamun but are not included within the issues that this Board has determined to be relevant for the expansion of the Water Treatment Plant."

[28] Mr. Doull wrote to the Board on September 6, 2002, in complete support of expanding Mr. Spilsted's status:

"...Mr. Spilsted ... has been very active in the preservation of Wabamun Lake and he has also taken the time to make several very informative and beneficial presentations.... His continued participation whenever possible in trying to save the lake...should be acknowledged by Alberta Environment.... Given all the circumstances pertaining to this request...it is inconceivable that the Board would refuse someone with his strong desire to save the lake a reasonable amount of time to make a reasonable presentation to the Board...."

[29] On the same day, the Approval Holder wrote to the Board requesting it restrict Mr. Spilsted's extended intervenor status. The Approval Holder argued that, since Mr. Spilsted's circumstances had not changed, this does not warrant a reconsideration of his role at the Hearing. The Approval Holder further noted that even if Mr. Spilsted's circumstances had changed, this

would still prevent a change in the decision previously set out by the Board due to the absence of key procedures: “Mr. Spilsted did not follow the steps set out in the legislation and in the Board’s Rules of Practice, or participate at the early stages of this process by submitting a Statement of Concern or a Notice of Appeal.” The Approval Holder again referred to the similar role Mr. Spilsted previously played in the *Bailey et al. #2 Decision*,¹³ where he applied late for the right to make a submission before the Board, but had, at that time, been restricted to participate via written submission only.

III. DISCUSSION AND ANALYSIS

A. Greater Role in the Hearing

[30] The question before the Board is whether to grant Mr. Spilsted’s request for a greater role in the continuation of the Hearing.

[31] It is important to note the tests that the Board must use when deciding to change the status of an intervenor. With respect to Third Party Intervention, the Board’s Rules of Practice provide that:

“As a general rule, those persons or groups wishing to intervene must meet the following tests:

- their participation will materially assist the board in deciding the appeal by providing testimony, cross-examining witnesses, or offering argument or other evidence directly relevant to the appeal; the intervenor has a tangible interest in the subject matter of the appeal; the intervention will not unnecessarily delay the appeal;
- the intervenor in the appeal is substantially supporting or opposing the appeal so that the Board may know the designation of the intervenor as a proposed appellant or respondent;
- the intervention will not repeat or duplicate evidence presented by other parties; and
- if the intervention request is late, there are documented and sound reasons why the intervenor did not earlier file for such status.

¹³ *Bailey et al. #2 v. Director, Northern East Slopes Region, Environmental Service, Alberta Environment re: TransAlta Utilities Corporation* (18 May 2001), Appeal Nos. 00-074, 077, 078, and 01-001-005-R (A.E.A.B.).

When the Board makes the determination as to whether or not the person submitting the request should be allowed to become a party, it shall give the person written notice of that decision. In the discretion of the Board, a person may be denied intervention in a matter in which he/she could have participated as a party, but failed in a timely fashion to avail himself/herself of the opportunity to do so. Those wishing to become involved in the appeal process must therefore make their intentions known to the Board as soon as possible.”

[32] Given the information submitted to the Board by Mr. Spilsted, there is no question in our mind that Mr. Spilsted has a “tangible interest” in the subject matter of these appeals. However, some of the concerns he has raised to date are also shared by the Appellants to these appeals, and hence there could be a duplication of concerns already expressed. Additional issues were broached by Mr. Spilsted in his August 27, 2002 letter such as:

- “1. lake basin study;
2. a study re: Pike and Whitefish;
3. warm water – more growth of Eurasian milfoil
4. the “itch” is back – any other dangers to children;
5. ecoli in lake isle and vicinity; and
6. dog death at Lac La Nonne.”

Given that the Board has already determined the issues to be discussed at the October 1 and 2, 2002 Hearing, the introduction of new concerns to be explored and analyzed would be unwarranted and in direct opposition to section 95(4) of EPEA which states: “Where the Board determines that a matter will not be included in the hearing of an appeal, no representations may be made on that matter at the hearing.”

[33] This having been said, the Board recognizes Mr. Spilsted’s long history and obvious commitment to Lake Wabamun – as he has stated it is a matter that is “near and dear to his heart.” It is apparent to the Board, based on his previous participation in hearings before the Board, that Mr. Spilsted has significant experience with the Lake. While the Board believes that it would not be appropriate for Mr. Spilsted to add further issues to these appeals, and the Board wishes to avoid the duplication of evidence, the Board believes that, based on his extensive experience, Mr. Spilsted may have unique and relevant information to present to the Board with respect to the issues before it. For this reason, the Board has decided to grant him an opportunity to intervene and have a greater role at the Hearing.

B. Mr. Spilsted's "Appeal"

[34] The Board also wishes to take this opportunity to clear up a point of confusion. Following conversations between Board Staff and Mr. Spilsted and Mr. Doull, there seemed to be confusion as to whether Mr. Spilsted filed what he understood to be a Notice of Appeal on April 25, 2002. It appears that Mr. Spilsted was under the impression that he filed a Notice of Appeal, and therefore should be granted full-party status.¹⁴

[35] After reviewing all of the information before it, the Board has determined that Mr. Spilsted did not file a Notice of Appeal. Mr. Spilsted's letter and correspondence dated April 25, 2002, and received by the Board on April 29, 2002, is missing key information that would qualify it as a "proper" Notice of Appeal. First, the correspondence submitted by Mr. Spilsted does not take into consideration Part 5 of the Board's Rules of Practice with respect to information contained in a Notice of Appeal which states:

"A notice of appeal must contain the following information:

- the provision of the *Environmental Protection and Enhancement Act* or *Water Act* under which the notice of appeal is submitted;
- the name and title of the person whose decision is the subject of the notice of appeal and the details of the decision objected to;
- a description of the relief requested by the person objecting;
- the signature of the person objecting, or the person's agent; and
- an address in Alberta for service for the person objecting."

Second, the Board was notified of Mr. Spilsted's potential interest in the appeals by one of the Appellants, Mr. David Doull. Mr. Doull was requested by the Board on April 9, 2002, to advise if there were other persons that may have an interest in these appeals. In response to this request, Mr. Doull submitted Mr. Spilsted's name and the Board then contacted him. Therefore, it was through this initial contact by the Board that Mr. Spilsted was introduced to the appeals.

¹⁴ Had Mr. Spilsted filed a Notice of Appeal on April 25, 2002, he would have been significantly out of time in that the Approval was issued on July 30, 2001 and the Licence was issued on March 8, 2002.

[36] Further, after reviewing the Director's Record, the Board has determined that Mr. Spilsted did not file a Statement of Concern, as the Appellants did. The Record notes that on June 25, 2001, the Directors responded to a request from Mr. Spilsted requesting copies of the Statements of Concern filed. However, there is no record of Mr. Spilsted filing a Statement of Concern on his own. Further, letters advising of a meeting for all Statement of Concern filers were sent out by Alberta Environment only to those individuals who filed a Statement of Concern. Mr. Spilsted did not receive a letter, however he attended an information meeting. On the attendance sheet, it is noted that Mr. Spilsted was acting on behalf of Mr. Nick Zon, who did receive a notification letter but did not attend.

[37] By not filing a Statement of Concern with the Director, Mr. Spilsted precluded himself from filing a Notice of Appeal with the Board. Further, even if Mr. Spilsted had filed a Statement of Concern and attempted to file a Notice of Appeal on April 25, 2002, his information would have been received outside the timelines prescribed in section 116 of the *Water Act*. Under section 116(1)(b) of the *Water Act*, a notice of appeal must be submitted to the Board "...not later than 30 days after receipt of notice of the decision that is appealed from or the last provision of notice of the decision that is appealed from."

[38] Given the fact that the Directors issued the Approval on July 30, 2001, and the Licence on March 8, 2002, Mr. Spilsted would have had to file a Notice of Appeal with the Board by approximately August 6, 2001, and March 14, 2002, respectively. As already noted, Mr. Spilsted submitted his information to the Board on April 25, 2002, and hence outside the prescribed timelines the Board must adhere to.

[39] The Board therefore concludes that Mr. Spilsted filed a request to intervene and not a Notice of Appeal.

IV. DECISION

[40] For the reasons listed above, the Board grants Mr. Spilsted the right to participate as a full intervenor in these proceedings, but the amount of time allotted to Mr. Spilsted for each stage of the proceedings will be limited.

Dated on February 13, 2003, at Edmonton, Alberta.

“original signed by”
William A. Tilleman, Q.C.
Chair

“original signed by”
Dr. Steve E. Hurdey
Member

“original signed by”
Fredrick C. Fisher, Q.C.
Member