

ALBERTA
ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – October 8, 2004

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

-and-

IN THE MATTER OF an appeal filed by William and Martha Kashmere with respect to *Water Act* Licence No. 00199977-00-00 issued to Jaydel Farms Ltd. by the Director, Central Region, Regional Services, Alberta Environment.

Cite as: *Kashmere v. Director, Central Region, Regional Services, Alberta Environment re: Jaydel Farms Ltd.* (8 October 2004), Appeal No. 04-010-D (A.E.A.B.).

BEFORE:

Dr. Frederick C. Fisher, Q.C., Chair.

APPEARANCES:

Appellants: Mr. William and Ms. Martha Kashmere.

Director: Mr. Tom Slater, Director, Central Region, Regional Services, Alberta Environment, represented by Mr. William McDonald, Alberta Justice.

Licence Holder: Jaydel Farms Ltd., represented by Mr. Arnold DeLeeuw.

EXECUTIVE SUMMARY

On April 14, 2004, Alberta Environment issued a *Water Act* licence to Jaydel Farms Ltd., authorizing the diversion of 14,693 cubic metres of water annually from the well in NE 30-53-13-W5M for the purpose of agriculture (confined feeding operation), near Carrot Creek, Alberta.

On May 31, 2004, the Board received a Notice of Appeal from Mr. William and Ms. Martha Kashmere. The appeal was filed past the prescribed time limit of 30 days.

As Mr. William and Ms. Martha Kashmere did not provide sufficient reasons for granting an extension for filing the Notice of Appeal, the Board dismissed the appeal.

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I. BACKGROUND

[1] On April 14, 2004, the Director, Central Region, Regional Services, Alberta Environment (the “Director”), issued Licence No. 00199977-00-00 (the “Licence”) under the *Water Act*, R.S.A. 2000, c. W-3, to Jaydel Farms Ltd. (the “Licence Holder”) authorizing the diversion of 14,693 cubic meters of water annually from the well in NE 30-53-13-W5M for agricultural purposes (confined feeding operation) near Carrot Creek, Alberta.

[2] On May 31, 2004, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Mr. William and Ms. Martha Kashmere (the “Appellants”), appealing the Licence.¹ The Appellants stated work commitments prevented them from accessing their mail and their ability to respond to any letters prior to May 31, 2004.

[3] On June 1, 2004, the Board wrote to the Appellants, the Licence Holder, and the Director (collectively the “Parties”) acknowledging receipt of the Notice of Appeal and notifying the Licence Holder and the Director of the appeal. The Board also requested the Parties provide available dates for a mediation meeting or hearing.

[4] In the same letter, the Board scheduled a written submission process to provide the Licence Holder and the Director the opportunity to respond to the Appellants’ reasons for filing their Notice of Appeal late.

[5] On June 4, 2004, the Appellants provided additional concerns regarding the Licence Holder’s operations.

[6] On June 9, 2004, the Director filed his submission, stating the Appellants had filed a Statement of Concern along with a number of other individuals, and notice of the decision to issue the Licence was sent to the Appellants on April 14, 2004. The Director argued there are no provisions under the *Water Act* that allows the Board to extend the statutory time frames and section 93 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA” or the “Act”), only applies to administrative time limits set by the Board, not

¹ On May 17, 2004, the Board also received Notices of Appeal from Mr. Bill and Ms. Linda (Margaret) Heintz (Appeal No. 04-006) and Ms. Marjorie Bencz on behalf of herself and E.K. Atkinson-Place (Appeal No. 04-007).

timeframes prescribed by the legislation. The Director submitted the Appellants could intervene in the other appeals, so “...no inequities would arise from the Board dismissing this appeal.”

[7] On June 10, 2004, the Licence Holder provided its submission, stating the Notice of Appeal was well outside the time line prescribed in the *Water Act*, and the statements made by the Appellants were false and off the subject.

[8] On June 14, 2004, the Board received the rebuttal submission from the Appellants. The Appellants explained he works in the oil industry and is on call 24 hours a days seven days a week. The Appellants stated he started a 30 day to six week job before they received the Director’s letter and had no way of responding at that time.

[9] On July 5, 2004, the Board advised the Parties that the appeal was dismissed.

II. ANALYSIS

[10] The legislation has provided the Board with some flexibility to allow for late filed appeals in certain circumstances, but the Board uses this authority in only limited situations.² The onus is on the Appellant to demonstrate to the Board the time limit should be extended to allow the appeal.

[11] Section 116(1) of the *Water Act* stipulates the timeframe in which a notice of appeal must be filed. It provides:

“A Notice of Appeal must be submitted to the Environmental Appeals Board

² See: Preliminary Motions: *Hanson et al. v. Director, Southern Region, Regional Services, Alberta Environment re: Apple Creek Golf and Country Club* (29 November 2002), Appeal Nos. 01-123-131, 02-001, 02-050-058-D (A.E.A.B.); *Dyck v. Director, Southern Region, Regional Services, Alberta Environment re: Coyote Cove Golf Course Inc.* (14 February 2003), Appeal No. 02-137-D (A.E.A.B.); *Shennan et al. v. Director, Central Region, Regional Services, Alberta Environment re: Parkbridge Communities Inc.* (13 February 2003), Appeal Nos. 02-066 and 068-D (A.E.A.B.); *Seabolt Watershed Association v. Director, Central Region, Regional Services, Alberta Environment re: Mountain Creeks Ranch Inc.* (14 February 2003), Appeal No. 02-085-D (A.E.A.B.); *Seniuk v. Director, Enforcement and Monitoring, Parkland Region, Regional Services, Alberta Environment* (4 June 2002), Appeal No. 01-112-D (A.E.A.B.); *Warner et al. v. Director, Central Region, Regional Services, Alberta Environment re: AAA Cattle Company Ltd.* (15 June 2002), Appeal Nos. 01-113 and 01-115-D (A.E.A.B.); *Municipal District of Rocky View No. 44 v. Director, Southern Region, Regional Services, Alberta Environment re: Apple Creek Golf and Country Club* (25 June 2002), Appeal No. 02-006-D (A.E.A.B.); *Proft v. Director, Licensing and Permitting Standards Branch, Environmental Assurance, Environmental Operations Division, Alberta Environment re: Her Majesty the Queen in Right of Alberta* (1 October 2001), Appeal No. 01-037-D (A.E.A.B.); and *Rew v. Director, Central Region, Regional Services, Alberta Environment re: Capstone Energy* (30 October 2003), Appeal No. 03-009-D (A.E.A.B.).

- (a) not later than 7 days after
 - (i) receipt of a copy of a water management order or enforcement order, or
 - (ii) in the case of an approval, receipt of notice of the decision that is appealed from or the last provision of notice of the decision that is appealed from, or
- (b) in any other case, 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.”

Therefore, in the case of a licence issued under the *Water Act*, the normal time limit for filing a Notice of Appeal is 30 days.

[12] In their Notice of Appeal, the Appellants stated they received notice of the Director’s decision on April 27, 2004. However, they did not submit their Notice of Appeal until May 31, 2004, 35 days after they received notification of the issuance of the Licence. This exceeds the 30-day time limit specified under the Act.

[13] The Board examined whether the Appellants had provided sufficient reasons to grant an extension of time to file an appeal. To allow an extension of time, the Appellants must be able to show extenuating or special circumstances existed that prevented them from filing within the legislated timeframe. The Appellants stated they did not receive the decision letter until April 27, 2004, because of prior work commitments. However, they did receive the letter 17 days before the expiry of the appeal period, which would be sufficient time to submit the Notice of Appeal and reserve their right to appeal. They chose to wait an additional two weeks before responding to the Director’s letter. This does not support their arguments that they did not have an earlier opportunity to file their Notice of Appeal.

[14] The Appellants have not provided the Board with evidence of the special circumstances required to grant an extension of time to file an appeal, and the appeal must therefore be dismissed.

[15] The Board must also respond to the Director’s arguments regarding the application of section 93 of EPEA. Section 93 states:

“The Board may, before or after the expiry of the prescribed time, advance or extend the time prescribed in this Part or the regulations for the doing of anything where the Board is of the opinion that there are sufficient grounds for doing so.”

[16] The Director argued section 93 only applies to administrative time limits set by the Board and does not apply to legislated time frames. The Board does not agree with this analysis. The section clearly states the Board can "...extend the time prescribed in this Part or the regulation...." Administrative time lines are not included in Part 4 of EPEA, and therefore, based on the Director's arguments, section 93 would have no relevance, which surely must not have been the intent of the legislators. The only time periods included in Part 4 refer to the time limits to file a notice of appeal. Therefore, simple reading of the legislation supports the premise that section 93 does apply to the extension of time limits for filing appeals.

[17] The legislation requires the Board to have sufficient reasons to grant the extension, and the Board has limited its discretion to those instances where there are special or exceptional circumstances. This maintains certainty in the appeal process that is required by all concerned.

[18] In this case, special circumstances did not exist, and the Board will not extend the time period for filing the Notice of Appeal.

III. CONCLUSION

[19] The Board finds the statutory prerequisites for filing a Notice of Appeal have not been met as the appeal was filed out of time and no special circumstances exist to extend the appeal deadline. Therefore, pursuant to section 95(5) of the *Environmental Protection and Enhancement Act*, and for the foregoing reasons, the Board dismisses the appeal of Mr. William and Ms. Martha Kashmere for not being properly before the Board.

Dated on October 8, 2004, at Edmonton, Alberta.

"original signed by"

Dr. Frederick C. Fisher, Q.C.
Chair