
ALBERTA
ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – August 23, 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-

IN THE MATTER OF an appeal filed by Talisman Energy Inc.
with respect to the decision of the Inspector, Central Region,
Regional Services, Alberta Environment, to refuse to issue a
reclamation certificate to Talisman Energy Inc. for the Ashland
Pembina well located at 10-11-48-3-W5M.

Cite as: *Talisman Energy Inc. v. Inspector, Central Region, Regional Services, Alberta
Environment* (23 August 2004), Appeal No. 04-018-D (A.E.A.B.).

BEFORE:

William A. Tilleman, Q.C., Chair.

PARTIES:

Appellant: Talisman Energy Inc., represented by Mr. Todd Lane, Reclamation Specialist.

Inspector: Mr. Wayne Boyd, District Compliance Manager, Central Region, Regional Services, Alberta Environment, represented by Mr. Jeffrey W.A. Moore, Alberta Justice.

EXECUTIVE SUMMARY

Alberta Environment refused to issue a Reclamation Certificate to Talisman Energy Inc. for the Ashland Pembina well at 10-11-48-3-W5M in Leduc County, Alberta.

On June 2, 2004, the Board received a Notice of Appeal from Talisman Energy Inc. appealing Alberta Environment's decision. The appeal was filed past the prescribed time limit of 30 days and it did not respond to the Board's request for a rebuttal submission.

As Talisman Energy Inc. did not provide sufficient reasons for granting an extension for filing the Notice of Appeal and it did not respond to the Board's request for additional information, the Board dismissed the appeal.

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I. BACKGROUND

[1] On March 16, 2004, the Inspector, Central Region, Regional Services, Alberta Environment (the “Inspector”), refused to issue a Reclamation Certificate (the “Certificate”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”), to Talisman Energy Inc. for the Ashland Pembina well located at 10-11-48-3-W5M located in Leduc County, Alberta.

[2] On June 2, 2004, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Talisman Energy Inc. (the “Appellant”) appealing the Inspector’s decision.

[3] On June 11, 2004, the Board wrote to the Appellant and the Inspector (collectively the “Parties”) acknowledging receipt of the Notice of Appeal and notifying the Inspector of the appeal.

[4] In the same letter, the Board requested the Appellant advise if it wished to request an extension of time to appeal, and if so, to provide an explanation as to why the appeal was filed outside of the 30-day time limit as prescribed in EPEA. The Board also requested the Inspector provide the Board with a copy of the records (the “Record”) relating to this appeal and for the Parties to provide available dates for a mediation meeting or hearing.

[5] According to standard practice, the Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board asking whether this matter had been the subject of a hearing or review under their respective legislation. Both boards responded in the negative.

[6] On June 25, 2004, the Appellant advised the Board that it was seeking an extension of time to file its appeal. The Appellant stated it had received the refusal to issue letter from the Inspector on April 27, 2004, and the Inspector had indicated the appeal period would run from the time the Appellant received the letter. Further, the Appellant indicated it delayed

filing an appeal pending discussions between Alberta Environment and the Canadian Association of Petroleum Producers (“CAPP”) regarding reclamation liability.¹

[7] The Board acknowledged the Appellant’s letter on June 29, 2004, and requested the Inspector provide a response submission to the Appellant’s letter. The Appellant was to provide a rebuttal submission no later than July 15, 2004.

[8] On June 28, 2004, the Board received a copy of the Record from the Inspector, and on July 5, 2004, a copy was forwarded to the Appellant.

[9] On July 8, 2004, the Board received the written response submission from the Director. The Inspector noted that even if the appeal period started to run from April 27, 2004, the Notice of Appeal was received more than 30 days past that date. Further, the Inspector noted the discussions between CAPP and Alberta Environment regarding reclamation liability were of a general nature and not specific to the well in question.²

[10] On July 16, 2004, the Board wrote to the Appellants advising that no rebuttal submission had been received. The Board requested that the Appellant provide a rebuttal submission by July 20, 2004.³

[11] The Board did not receive a rebuttal submission from the Appellant by the specified date. The Board’s records show that it left a telephone message for the Appellant on July 29, 2004, but the Board never received a response to its July 16, 2004 letter or its July 29, 2004 telephone message.

[12] On August 4, 2004, the Board advised the Parties that the appeal was dismissed.

II. DISCUSSION

A. Late Filed Appeal

[13] 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.⁴

¹ See: Appellant’s letter, dated June 25, 2004.

² See: Inspector’s letter, dated July 8, 2004.

³ See: Board’s letter, dated July 16, 2004.

The onus is on the Appellant to demonstrate to the Board the time limit should be extended to allow the appeal.

[14] Section 91(4) of EPEA stipulates the timeframe in which a notice of appeal must be filed. It states:

“A notice of appeal must be submitted to the Board

- (a) Not later than 7 days after receipt of a copy of the enforcement order or the environmental protection order, in a case referred to in subsection (1)(e), (f) or (h),
- (b) not later than one year after receipt of a copy of the reclamation certificate, in a case referred to in subsection (1)(i) relating to the issuing of a reclamation certificate, and
- (c) not later than 30 days after receipt of the decision appealed from or the last provision of notice of the decision appealed from, as the case may be, in any other case.”

[15] The Appellant submitted its Notice of Appeal 78 days after the Inspector sent notification of his refusal to issue the reclamation certificate. Even if the Board accepted the date the Appellant states it received the notification, April 27, 2004, the Notice of Appeal was filed 36 days later, still over the 30-day time limit specified under the Act.

[16] The Board examined whether the Appellant had provided sufficient reasons to grant an extension of time to file an appeal. To allow an extension of time, the Appellant must be able to show that extenuating or special circumstances existed that prevented it from filing within the legislated timeframe. The Appellant stated it did not receive the refusal letter until

⁴ 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.); and *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.); *Rew v. Director, Central Region, Regional Services, Alberta Environment re: Capstone Energy* (30 October 2003), Appeal No. 03-009-D (A.E.A.B.).

April 27, 2004, but the Notice of Appeal was still filed late based on that date. The Appellant's further explanation was that it was awaiting results of a discussion between CAPP and Alberta Environment on the issue.

[17] There was no indication the outcome of the meeting would have been available immediately after the meeting or if further meetings would be required. In the letter from CAPP, it is clear the meeting was simply the start of further discussions between the industry and Alberta Environment. In addition, the meeting was with respect to general reclamation and liability issues and did not specifically deal with the Appellant's application.

[18] Since there was no certainty as to the outcome of the meeting, the Appellant should have taken the opportunity to file a Notice of Appeal, and if the meeting had resolved its issues, then it could have simply withdrawn its appeal at a later date. This would have preserved its right as an appellant until such time the results of the meeting were available. However, the Appellant chose to wait until after the deadline to file its appeal.

[19] The Appellant has 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.

B. Failure to Respond

[20] The Board provided the Appellant with an opportunity to provide additional information to explain why the Notice of Appeal was filed late. The Appellant did not respond to the Board's request.

[21] Section 95(5)(a)(iv) of the EPEA states:

“95 (5) The Board

- (a) may dismiss a notice of appeal if ...
 - (iv) the person who submitted the notice of appeal fails to comply with a written notice under section 92 . . .”

Section 92 provides:

“Where the Board receives a notice of appeal, it may by written notice given to the person who submitted the notice of appeal require the submission of

additional information specified in the written notice by the time specified in the written notice.”

[22] The Appellant was required to provide a rebuttal submission or at least indicate to the Board it had no further arguments. The Board had extended the deadline to provide a response and had contacted the Appellant by telephone. The Appellant did not respond to any of the Board’s requests.

[23] Therefore, pursuant to section 95(5)(a)(iv) of the Act, the Board dismisses the appeal.

III. CONCLUSION

[24] 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. The Appellant also did not respond to the Board when additional information was requested. Therefore, pursuant to section 95(5) of the *Environmental Protection and Enhancement Act*, and for the foregoing reasons, the Board dismisses the appeal of Talisman Energy Inc. for not being properly before the Board.

Dated on August 23, 2004, at Edmonton, Alberta.

“original signed by”

William A. Tilleman, Q.C.
Chair