

ALBERTA  
ENVIRONMENTAL APPEALS BOARD

Decision

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Date of Decision – September 16, 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** appeals filed by Slave River Exploration  
Ltd. with respect to the decision of the Director, Sustainable  
Resource Development to cancel Reclamation Certificates Nos.  
NW2-03-00226 and NW2-03-00227.

Cite as: *Slave River Exploration Ltd. v. Director, Sustainable Resource Development* (16  
September 2004), Appeal Nos. 04-048 and 04-049-D (A.E.A.B.).

**BEFORE:**

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

**PARTIES:**

**Appellant:** Slave River Exploration Ltd., represented by  
Mr. Jacob C. Vander Vinne.

**Director:** Mr. Glenn Selland, Executive Director, Land  
Use Operations Branch, Public Lands Division,  
Sustainable Resource Development,  
represented by Mr. Mark Greene, Alberta  
Justice.

## **EXECUTIVE SUMMARY**

On January 27, 2004, the Director, Sustainable Resource Development, cancelled Reclamation Certificate Nos. NW2-03-00226 and NW2-03-00227 held by Slave River Exploration Ltd. in connection with the wellsite and access road at 30-86-11-W5M near Fort Smith, Alberta.

On July 21, 2004, the Board received Notices of Appeal from Slave River Exploration Ltd. appealing the cancellations.

As the appeals were filed past the 30-day legislated time frame, the Board requested Slave River Exploration Ltd. provide reasons why an extension should be granted.

After reviewing the response, the Board determined no special circumstances existed to warrant an extension to file the appeals. Therefore, the Board dismissed the appeals.

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## **I. BACKGROUND**

[1] On January 27, 2004, the Director, Sustainable Resource Development, (the “Director”), cancelled Reclamation Certificate Nos. NW2-03-00226 and NW2-03-00227 (the “Certificates”) held by Slave River Exploration Ltd. in connection with the wellsite and access road at 30-86-11-W5M near Fort Smith, Alberta.

[2] On July 21, 2004, the Environmental Appeals Board (the “Board”) received Notices of Appeal filed on behalf of Slave River Exploration Ltd. (the “Appellant”) appealing the cancellations.

[3] On July 28, 2004, the Board wrote to the Appellant and the Director (collectively the “Parties”) acknowledging receipt of the Notices of Appeal and notifying the Director of the appeals. The Board requested the Appellant advise the Board if it wished to request an extension of time to appeal the Director’s decision, as the normal time limit prescribed in the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA” or the “Act”) for filing such an appeal is 30 days. The Board also requested the Director provide the Board with a copy of the records (the “Record”) relating to these appeals, and the Parties provide available dates for a mediation meeting or hearing.

[4] 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.

[5] On August 6, 2004, the Appellant wrote to the Board, explaining it

“... received the cancellation notices (letter dated January 27/04, received February 11/04...). Since the reason for the cancellation of the certificate[s] was based on noxious/restricted weeds, as defined by the Alberta Weed Act, on site, which are not in evidence in the control areas.

The Company delayed its appeal process until this time, till it could physically revisit the site/wait until the right conditions existed to evaluate the presence of the noxious/restricted weeds could be evaluated.

This is the reason why this appeal is dated/or made at the current time.

Secondly, the Company utilized a campsite at LSD 08-15-086-12W5, which is currently being used, and we understand, without authority from Alberta Environment, for the purpose of staging and storing construction equipment....

It is the contention of Slave River Exploration Ltd., that it cannot be held liable for restoration of a 'common-use' campsite.

Thirdly, per the regulations that are currently being acted upon, for the restoration and reclamation of MSL's or LOC's or other dispositions outstanding, it spells-out specifically that holders of dispositions would continue to be responsible for 'care taking' even if reclamation certificates had been issued. Then the question is raised, should the Reclamation Certificates, not be left, as previously issued."

[6] On August 10, 2004, the Board received a copy of the Record from the Director, and on August 16, 2004, forwarded a copy to the Appellant.

## II. ANALYSIS

[7] 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.<sup>1</sup> The onus is on the Appellant to demonstrate to the Board the time limit should be extended to allow the appeal.

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

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<sup>1</sup> 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.); *Talisman Energy Inc. v. Director, Central Region, Regional Services, Alberta Environment* (23 August 2004), Appeal No. 04-018-D (A.E.A.B.).

“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.”

In this case, section 91(4)(c), the 30 day time limit, is the applicable provision.

[9] The Appellant submitted its Notices of Appeal almost six months after the Director sent notification of his cancellation of the reclamation certificates. Even if the Board accepted the date the Appellant states it received the notification, February 11, 2004, the Notices of Appeal were filed over five months later, well over the 30-day time limit specified under the Act.

[10] 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.

[11] The Appellant stated it received the cancellation letter in February 2004, and the reason for the cancellations was noxious/restricted weeds on the sites. The Appellant stated it waited until it was able to physically revisit the site. Although the Appellant did not specifically state as to when it revisited the site, the Board assumes it was in the spring or summer of this year, after the snow melt.

[12] If the Appellant disagreed with the Director’s decision, it should have submitted its Notices of Appeal when it received notification of the cancellations. Included in its Notices of Appeal, the Appellant could have easily requested the appeals be held in abeyance until such time that it would be able to revisit the site and assess whether the cancellation was warranted. In situations such as that, the Board would consider the request, as long as it was reasonable. By approaching the appeals in this manner, the Appellant would have reserved its right to appeal,

and if later it agreed with the Director's decision, it had the right to withdraw its appeals. However, the Appellant chose to wait until well after the deadline to file its appeals.

[13] The second argument provided by the Appellant was that it should not be responsible for the restoration of a common-use campsite. The Certificates cancelled were with respect to a wellsite and access road located at 30-86-11-W5M, and according to the inquiry report filed by the Director, weeds were evident on the lease, thereby providing the basis for the cancellation of the Certificates.<sup>2</sup> In canceling the Certificates, the Director did not reference the campsite. It was noted only in the inquiry report. As the Director did not refer to the campsite in canceling the Certificates, the Board does not find the Appellant's arguments sufficient to warrant an extension of time. Also, the Appellant's concerns regarding the campsite were known to it in February 2004, when it received the notification letter. It was then that the Notices of Appeal should have been filed.

[14] The third argument relied upon by the Appellant does not provide the Board with any reason to grant an extension of time to file the Notices of Appeal. Although the Appellant continues to be liable for reclamation deficiencies after a certificate has been issued, this does not prevent the Director from canceling a certificate if, after an inquiry is held, deficiencies are noted that require the operator to deal with them in order to comply with the reclamation criteria.<sup>3</sup>

[15] 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 appeals must therefore be dismissed.

### **III. CONCLUSION**

[16] The Board finds the statutory prerequisites for filing a Notice of Appeal have not been met as the appeals were 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*

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<sup>2</sup> See: Director's record at Tab 3.

<sup>3</sup> Section 139(1)(c) of EPEA provides:

"The Director may cancel a reclamation certificate where no reclamation inquiry was conducted prior to the issuance of the certificate and the Director is of the opinion that further work may be necessary to conserve and reclaim the specified land to which the certificate relates."

*Enhancement Act*, and for the foregoing reasons, the Board dismisses the appeal of Slave River Exploration Ltd. for not being properly before the Board.

Dated on September 16, 2004, at Edmonton, Alberta.

*“original signed by”*

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