



ALBERTA
ENVIRONMENTAL APPEALS BOARD

March 1, 2005

Via Fax or Courier

To Distribution List

Dear Sir or Madam:

Re: EPCOR Power Development Corporation/EPEA Application 012-773
Our File No.: EAB 04-086-089, 04-092-121

The Board acknowledges receipt of the attached letter dated February 18, 2005, from Mr. Moore advising that Alberta Environment has yet to issue a decision regarding the merits of EPCOR's approval renewal application.

Section 91(1) of the *Environmental Protection and Enhancement Act* (attached) provides information on who may file an appeal with the Board and under which circumstances an appeal can be filed. Section 91(1)(a) states:

"A notice of appeal may be submitted to the Board...where the Director issues an approval, makes an amendment, addition or deletion pursuant to an application under section 70(1)(a) or makes an amendment, addition or deletion pursuant to section 70(1) or (2)..." of the *Environmental Protection and Enhancement Act*.

Upon review of Mr. Moore's February 18, 2005 letter and the notices of appeal filed in this matter, it appears to the Board that the appeals are premature, as Alberta Environment has not yet made a decision with respect to EPCOR's approval renewal application.

The Alberta Court of Queen's Bench recently considered the issue of filing a premature action in *Cardinal River Coals Ltd. v. Environmental Appeals Board (Alberta)*, a copy of which is attached. In this decision, the approval holder (Cardinal River Coals), filed a Judicial Review of the Board's decision granting the appellant directly affected status. The Court ruled the Judicial Review action was premature, as the Board had not yet made its decision on the substantive matter of the appeal. The Court dismissed the Judicial Review application.

Although the Cardinal River Coals decision was in response to a Judicial Review of the Board's decision of a preliminary matter, the same principles apply in these appeals. The appellants have filed Notices of Appeal of a preliminary decision of the Director, Alberta Environment, here the rejection of their Statements of Concern, but the Director, Alberta



Environment has yet to make his decision regarding the substantive matter, whether or not to issue the renewal of the approval. If the approval renewal is issued, then the appellants can file Notices of Appeal with the Board with respect to Alberta Environment's decision to issue the renewal.

In addition to the appeals being filed prematurely, it appears to the Board that the Notices of Appeal are appealing the decision of Alberta Environment to refuse to accept the letters as statements of concern in relation to EPCOR's application. The decision of Alberta Environment to deny statements of concern cannot be directly appealed to the Environmental Appeals Board, unless an appeal is properly before the Board. The Board's attached decision, *Metis Nation of Alberta Zone II Regional Council v. Director, Bow Region, Environmental Service, Alberta Environment re: AEC Pipelines Ltd.*, states:

"...the Board does not have the jurisdiction to review the Director's decision respecting the Statement of Concern or the Appellants' directly affected status in the absence of an appeal properly filed under section 84(1)..." (now section 91(1)) of the *Environmental Protection and Enhancement Act*.

Therefore, pursuant to section 95(5) of the *Environmental Protection and Enhancement Act*, and for the reasons given above, appeal no's 04-086, 087, 088, 089, 092, 093, 094, 095, 096, 097, 098, 099, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120 and 121 are dismissed as they are not properly before the Board.

Alberta Environment is aware of the interest in their decision of whether or not they issue a renewal of EPCOR's approval. Although not required to do so, the Board sees value in having Alberta Environment provide direct notification of their decision to all the individuals who filed Notices of Appeal, whether they were deemed directly affected or not by Alberta Environment. The Board has recommended in previous decisions that Alberta Environment should take additional steps to inform the public of the decision when the circumstances warrant it. Considering the number of appeals filed, there is a definite public interest in Alberta Environment's decision regarding the renewal application. The Board hopes Alberta Environment will take additional steps in these circumstances and provide a copy of their decision to the Notice of Appeal filers.

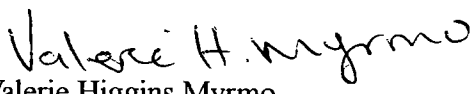
However, the appellants must remember it is still their responsibility to keep in contact with Alberta Environment if they wish to find out when the decision is issued with respect to EPCOR's approval renewal application. It is important to note there are strict timelines for filing an appeal with the Environmental Appeals Board.

If the Appellants wish to file appeals of a decision made by Alberta Environment with respect to EPCOR's approval renewal application, they should file them once the decision has been made whether to issue the Approval or not. At that time, they may include in their appeals their comments in relation to Alberta Environment's decision to refuse to accept their letters as statements of concern. Attached please find a Notice of Appeal form and information on filing an appeal with the Board.

Since the Environmental Appeals Board is separate and apart from Alberta Environment, normally the Board asks Alberta Environment to provide a copy of Alberta Environment's record regarding the approval when an appeal is received. However, given the circumstances of these appeals, the Board does not require a copy of Alberta Environment's record at this time.

If you have any questions or concerns about the above, please do not hesitate to contact me directly at 780-427-6569 or valerie.higgins@gov.ab.ca.

Yours truly,


Valerie Higgins Myrmo
Registrar of Appeals

Att.