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# ALBERTA ENVIRONMENTAL APPEALS BOARD

## Decision

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Date of Decision – July 20, 2007

**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 Topeka Energy Inc.  
with respect to the decision of the Director, Southern Region,  
Regional Services, Alberta Environment to refuse to issue a  
Reclamation Certificate to Topeka Energy Inc. for the Elnora 1-31-  
34-23 W4M Wellsite.

Cite as: *Topeka Energy Inc. v. Director, Southern Region, Regional Services, Alberta Environment* (20 July 2007), Appeal No. 07-001-D (A.E.A.B.).

**BEFORE:**

Dr. Steve E. Hrudehy, Chair.

**SUBMISSIONS FROM:**

**Appellant:** Topeka Energy Inc., represented by Mr. Ed Cunningham.

**Director:** Mr. Martin Foy, Director, Southern Region, Regional Services, Alberta Environment, represented by Ms. Alison Peel, Alberta Justice.

## **EXECUTIVE SUMMARY**

On July 11, 2005, Alberta Environment refused to issue a reclamation certificate to Topeka Energy Inc. for the Elnora 1-31-34-23 W4M wellsite in Kneehill County.

On April 23, 2007, Topeka Energy Inc. appealed the decision. The Board noted the appeal was filed significantly past the legislated deadline and asked Topeka Energy Inc. to provide additional information as to why the appeal was filed late.

After reviewing the submissions from Topeka Energy Inc. and Alberta Environment, the Board did not grant an extension for filing the Notice of Appeal and dismissed the appeal. Topeka Energy Inc. failed to show there were extenuating or special circumstances that warranted accepting an appeal filed more than 19 months past the deadline.

Miscommunication between Topeka Energy Inc and its consultant did not make the special circumstances required to file an appeal late.

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## **I. BACKGROUND**

[1] On July 11, 2005, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”), pursuant to the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”) refused to issue a reclamation certificate to Topeka Energy Inc. for the Elnora 1-31-34-23 W4M wellsite in Kneehill County.

[2] On April 23, 2007, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Topeka Energy Inc. (the “Appellant”) appealing the decision of the Director.

[3] On April 24, 2007, the Board wrote to the Appellant and the Director (collectively the “Parties”) acknowledging receipt of the Notice of Appeal and notifying the Director of the appeal. The Board noted the appeal was filed significantly past the legislated deadline and asked the Appellant to provide additional information as to why the appeal was filed late. The Appellant provided the information on May 7, 2007.

[4] Prior to the Board making its decision on whether to grant an extension to file the Notice of Appeal, the Board scheduled a submission process to receive comments from the Parties.

[5] Submissions were received from the Director and the Appellant on May 17 and 22, 2007, respectively.

## **II. SUBMISSIONS**

### **A. Appellant**

[6] The Appellant explained its consultant tried to get the landowner’s approval on the points that the reclamation application was denied, but the consultant could not get the landowner’s cooperation. The Appellant believed the “...landowner has been advised to withhold any consent or approval thereby creating grounds for refusal of Reclamation

applications and thereby creating perpetual lease rental income.”<sup>1</sup> In an attached letter to the Appellant from its consultant, the consultant noted that the landowner would not sign a release for the first 0.41 hectare of the road, but that it was not essential because the survey plan shows it as an existing trail. The consultant also informed the Appellant that the landowner could not comment on the status of the lease site because of drought conditions, and the consultant recommended that the area should be reviewed prior to the reclamation inquiry. The Appellant referred to a March 29, 2006 letter written from the Appellant to the landowner in which it states the consultant believed a reclamation certificate was justified for the lease site as the reclamation had been completed to provincial standards, and the two problems encountered in 2004-05 were remedied promptly and neither caused operational inconvenience nor agricultural production shortfall.

[7] The Appellant stated it was unaware that its consultant cancelled the reclamation application on May 19, 2005 because of landowner concerns, but the Appellant noted the message was an unsigned email and questioned why the consultant would not have notified the Appellant. The Appellant pointed out that its consultant had represented to them on March 16, 2006, that the application was in good standing with a reclamation inquiry expected in the summer of 2006. The Appellant stated it does not know why the consultant handled the file in that manner, but that was the reason why the Notice of Appeal was filed late. The Appellant stated it was under the impression that the consultant had successfully handled the appeal and that a reclamation certificate would be issued in due course.

[8] The Appellant stated it is not aware of any site reclamation concerns except the landowner’s refusal to cooperate with the Appellant’s reclamation efforts. The Appellant explained that, until it can contact its consultant and confirm the email canceling the application for the reclamation certificate, it “...suspects that some mischief may have occurred.”<sup>2</sup>

[9] The Appellant stated it has made every effort to reclaim the site to provincial standards or better, but a communication breakdown and change of career for its consultant has left the Appellant in a difficult position.

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<sup>1</sup> Appellant’s submission, dated May 4, 2007.

<sup>2</sup> Appellant’s submission, dated May 22, 2007.

[10] The Appellant submitted that it had demonstrated that special and unusual circumstances exist that warrant an extension of time to file its appeal.

**B. Director**

[11] The Director argued an extension of time should not be allowed and the appeal should be dismissed because the delay for filing the Notice of Appeal was significant and the Appellant did not provide any evidence of special or exceptional circumstances that prevented the filing of the Notice of Appeal on time.

[12] The Director stated the Notice of Appeal was filed more than 600 days past the deadline set out in EPEA.

[13] The Director pointed out that the Appellant's documentation indicated that the lease site was in the final reclamation process and an inquiry was expected for the summer of 2006, well after the July 11, 2005 refusal and the deadline for filing a Notice of Appeal had passed.

[14] The Director explained the release referred to by the Appellant in its Notice of Appeal was provided in support of a previous reclamation certificate application. The Director also explained the current owners owned the land at the time the application was made. The Director stated a release was also required from the municipality for a portion of the access road and culvert.

[15] The Director suggested that, if the Appellant feels aggrieved by the current rental payments, it can seek other remedies, including through the Surface Rights Board. The Director explained rental rates and arrears are irrelevant to the issue of whether a complete and accurate application for the reclamation certificate was filed and they do not demonstrate special or exceptional circumstances that prevented filing the Notice of Appeal on time.

**III. ANALYSIS**

[16] Section 91(4) of EPEA provides:

“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 notice 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.”

Therefore, in this case, the appeal period was 30 days after receipt of the Director’s decision not to issue the reclamation certificate.

[17] The Board has the authority to extend the filing time if there are sufficient grounds to do so. Section 93 of EPEA 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.”

[18] The Board will grant an extension to file a Notice of Appeal only when there are extenuating circumstances warranting the extension.

[19] One of the purposes of having deadlines incorporated into legislation is to bring some element of certainty to the regulatory process. The time limit in which an appeal must be filed is stipulated so that all participants, the applicant, the people who are directly affected, and the regulator, know when the process is complete, and in this case, it would also include the landowner who has an interest in the site. The time lines included in the legislation, and the certainty that they create, balance the interests of all the participants. That is why the Board is reluctant to extend appeal periods unless it can be shown there are circumstances that prevented the appellant from filing in time.

[20] The Board notes the letter from the Director refusing the reclamation certificate is addressed to the Appellant’s consultant at the Appellant’s address, and the Appellant stated in its Notice of Appeal that it became aware of the Director’s decision on July 11, 2005. From this, the Board assumes the Appellant was aware at that time, or should have been aware, that the reclamation certificate was refused and that it had a right to appeal to the Board within 30 days.

Although the Appellant may have thought its consultant had taken care of the appeal, it was the responsibility of the Appellant to ensure the Notice of Appeal had been filed.

[21] The Appellant took over 19 months past the deadline to file its Notice of Appeal. It would be very rare circumstances that would warrant the Board allowing the appeal period to be extended for that amount of time.

[22] In this case, the Appellant thought its consultant was dealing with the reclamation certificate and had “successfully handled the appeal.”<sup>3</sup> The Board is uncertain as to whether the Appellant thought the consultant had talked to the Director, appealing his decision, or whether the Appellant is referring to an appeal in front of this Board. The Board can assure the Appellant that, had an appeal been filed with this Board, the Appellant, as the entity seeking the reclamation certificate, would certainly have been included in the Board’s process. It would have been prudent on the Appellant’s part to investigate where matters stand, particularly when there are timelines that must be followed.

[23] Taking into consideration the importance of providing a reasonable level of certainty in any decision made by the Director and the amount of time that has passed since the Director made his decision, the Appellant has not presented sufficient reasons to justify allowing the appeal to proceed at this late date, and therefore the appeal must be dismissed.

[24] 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 was asked to provide reasons why an extension of time should be allowed for it to file a Notice of Appeal. The Appellant’s response did not provide direct reasons other than to state that it believed its consultant had taken care of the matter. A lack of communication between the Appellant and its consultants does not form the basis of extenuating or special circumstances that would have to be shown to warrant a time extension to file a Notice of Appeal.

[25] The issue of yearly rentals is not a matter this Board can consider. If the Appellant wants the rental rates to be changed, he can approach the landowner to negotiate any changes or the Appellant can make an application to the Surface Rights Board. The requirement

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<sup>3</sup> Appellant’s submission, dated May 22, 2007.

to make rental payments is certainly not grounds to grant an extension of time to file a Notice of Appeal. The requirement to pay the rent should have signalled to the Appellant that the reclamation certificate had not been issued and the Appellant could have pursued the matter with its consultant earlier.

[26] The Appellant has not provided the Board with the evidence of the special circumstances required to grant an extension of time to file the appeal, and the appeal must, therefore, be dismissed. If the Appellant believes the site warrants a reclamation certificate, it can submit a new application to the Director with the required information and application fee.

#### **IV. DECISION**

[27] The Board finds that 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*, the Board dismisses the appeal.

Dated on July 20, 2007, at Edmonton, Alberta.

“original signed by”

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Steve E. Hrudey, FRSC, PEng  
Chair