

ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – August 15, 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 EOG Resources
Canada Inc. with respect to the decision of the Director, Central
Region, Regional Services, Alberta Environment to cancel
Reclamation Certificate No. 00210568-00-00 issued to EOG
Resources Canada Inc.

Cite as: *EOG Resources Canada Inc. v. Director, Central Region, Regional Services,
Alberta Environment* (15 August 2007), Appeal No. 07-002-D (A.E.A.B.).

BEFORE:

Dr. Steve E. Hrudehy, Chair.

SUBMISSIONS FROM:

Appellant: EOG Resources Canada Inc., represented by Mr. Herbert Plain, Renu-L-Tech Environmental.

Director: Mr. Jim Steele, Director, Central Region, Regional Services, Alberta Environment, represented by Mr. Howard Samoil, Alberta Justice.

EXECUTIVE SUMMARY

On September 26, 2006, Alberta Environment cancelled Reclamation Certificate No. 00210568-00-00 previously issued to EOG Resources Canada Inc. for the 16-20-50-4-W5M wellsite near Duffield, Alberta.

On May 8, 2007, the Environmental Appeals Board received a Notice of Appeal from EOG Resources Canada Inc. appealing Alberta Environment's decision.

The Board noted the appeal was filed significantly past the legislated deadline and asked EOG Resources Canada Inc. to provide additional information as to why the appeal was filed late.

After reviewing the submissions from EOG Resources Canada Inc. and Alberta Environment, the Board did not grant an extension for filing the Notice of Appeal and dismissed the appeal. EOG Resources Canada Inc. failed to show there were extenuating or special circumstances that warranted accepting an appeal filed more than six months past the legislated timeframe. Weather conditions limiting access to the site for a re-evaluation of the lease did not demonstrate special circumstances in this case. EOG Resources Canada Inc. was aware of the timelines but failed to file a Notice of Appeal on time to preserve its appeal rights.

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I. BACKGROUND

[1] On September 26, 2006, the Director, Central Region, Regional Services, Alberta Environment (the “Director”), cancelled Reclamation Certificate No. 00210568-00-00 (the “Reclamation Certificate”) previously issued pursuant to the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-13 (“EPEA”) to EOG Resources Canada Inc. for the 16-20-50-4 W5M wellsite near Duffield, Alberta.

[2] On May 8, 2007, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from EOG Resources Canada Inc. (the “Appellant”) appealing the decision of the Director.

[3] On May 8, 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 22, 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 Director and a rebuttal submission from the Appellant. Submissions were received from the Director and the Appellant on June 1 and 20, 2007, respectively.

II. SUBMISSIONS

A. Appellant

[5] The Appellant explained it received notification that the Reclamation Certificate was cancelled on September 26, 2006, and the appeal period was 30 days. The Appellant stated that, due to snow and frozen soil conditions, it was unable to conduct a proper site assessment for compaction and vegetation until April 2007. The Appellant stated the appeal was based on data acquired on April 27, 2007.

[6] The Appellant explained it felt it was necessary to have a senior member conduct the inspection of the site after the Reclamation Certificate was cancelled. It stated it did not want to file an appeal without first inspecting the site, so its consultants suggested that a visual inspection be done in spring of 2007.

[7] The Appellant recognized the time lines for filing an appeal and stated it is usually prompt in getting inspections done on cancellations to identify if an appeal is warranted.

[8] The Appellant explained the site was overgrazed, so six to eight inches of snow would completely cover the vegetation on the lease and made it impossible to examine the lease site with snow cover. The Appellant explained its "...manager of environmental reclamation insists that unnecessary demands are not made on government agencies such as making an appeal without an inspection and a report to back up the inspection."¹

[9] The Appellant admitted that it did not meet the timelines set in the legislation, but it felt undue weather conditions played an important part in the delay. The Appellant asked to be allowed to present its appeal to the Board.

B. Director

[10] The Director argued that the Appellant did not reveal extenuating or special circumstances that would have prevented the Appellant from filing the Notice of Appeal within the legislated timeframe, and therefore the Director requested the Board deny the request for a time extension and dismiss the appeal.

[11] The Director explained the Appellant was advised on September 26, 2006, that the Reclamation Certificate was cancelled, and the Appellant was informed that it had a right of appeal but there were strict time limits for filing the appeal.

[12] The Director explained the Reclamation Certificate was cancelled because the surface audit and subsequent investigation revealed deficiencies.

[13] The Director argued the Appellant was well aware of the time frame for appealing the Director's decision, but the Appellant's decision "...to wait six months until the spring of

¹ Appellant's submission, received June 20, 2007.

2007 to conduct sampling and then to appeal the Director's decision, is evidence of a conscious decision to file the appeal outside of the statutory timeframe and not evidence of extenuating or special circumstances that prevented them from filing their appeal within the statutory appeal period."²

III. ANALYSIS

[14] 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 to cancel the Reclamation Certificate.

[15] 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.”

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

[17] 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, the landowner, and the regulator, know when the process is complete. The time lines included in the

² Director's submission dated June 1, 2007.

legislation, and the certainty that they create, balance the interests of all those with an interest in the site. 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.

[18] 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.

[19] 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 for failing to file an appeal on time to reserve the right to appeal. The Appellant only stated that weather conditions prevented it from reassessing the site.

[20] The Board appreciates the consideration of the Appellant to examine the site first to determine if an appeal is warranted, but this consideration was misplaced in this case. The legislation clearly states that the appeal period is 30 days from the time the person is notified of the Director's decision to cancel a reclamation certificate. It does not allow additional time for weather conditions that may prevent a reassessment of a site.

[21] The Appellant should have filed its appeal upon receiving notification of the Director's decision. It could then ask the Board to hold the appeal in abeyance until such time that an assessment of the site could be completed. With adequate reasons, the Board will usually grant an abeyance for a reasonable period of time. After the assessment was completed, the Appellant could have notified the Board whether it intended to proceed with the appeal or whether it decided to withdraw the appeal. Filing the Notice of Appeal within the requisite time frame would have preserved the Appellant's right to continue with the appeal.

[22] Unfortunately, snow covering the lease site is not a valid basis on which to grant an extension of the appeal period. The Appellant was fully aware of the time frame but chose to postpone filing the Notice of Appeal until more than six months after the deadline.

[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] As the Appellant has not provided extenuating or special reasons for filing a late appeal, the Board cannot grant a time extension 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

[25] 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 EPEA, the Board dismisses the appeal.

Dated on August 15, 2007, at Edmonton, Alberta.

“original signed by”

Dr. Steve E. Hruday, FRSC, PEng
Chair