

ALBERTA
ENVIRONMENTAL APPEALS BOARD

DECISION

Date of Decision – September 20, 2011

IN THE MATTER OF sections 91, 92, and 95 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, and section 115 of the *Water Act*, R.S.A. 2000, c. W-3;

-and-

IN THE MATTER OF appeals filed by Laura Peaire with respect to *Water Act* Approval No. 00254609-00-00 and *Water Act* Amending Approval No. 00204375-00-01 issued to BURNCO Rock Products Ltd. by the Director, Central Region, Operations Division, Alberta Environment.

Cite as: Preliminary Motion: *Peaire v. Director, Central Region, Operations Division, Alberta Environment*, re: *BURNCO Rock Products Ltd.* (20 September 2011), Appeal Nos. 11-017-018-ID1 (A.E.A.B.).

BEFORE:

Justice Delmar W. Perras (ret.), Chair.

WRITTEN SUBMISSIONS:

Appellant:

Ms. Laura Peaire.

Approval Holder:

BURNCO Rock Products, represented by Mr. Kim Titus, Vice President, Aggregate Division.

Director:

Mr. Neil Hollands, Director, Central Region, Operations Division, Alberta Environment, represented by Ms. Aurelia J. Nicholls, Alberta Justice.

EXECUTIVE SUMMARY

Alberta Environment issued a Licence, Approval, and Amending Approval under the *Water Act* to BURNCO Rock Products Ltd. for its sand and gravel operations in Parkland County. The Licence authorizes the operation of works and the diversion of water for commercial purposes, the Approval authorizes the drainage of water from the pit recharge pond to the Bellhouse Drainage Management Project, and the Amending Approval authorizes the construction and maintenance of an end pit water body for multiple uses as a result of reclamation for the sand and gravel extraction operation.

The Board received Notices of Appeal from Ms. Laura Peaire appealing the Licence, Approval, and Amending Approval.

As the appeals for the Approval and Amending Approval were filed outside the 7-day timeline provided in the *Water Act*, the Board established a written submission process to determine whether the Appellant's request for an extension of time to appeal should be granted.

Upon review of the written submissions, the Board granted Ms. Peaire's request for an extension of time to appeal and accepted the appeals were filed in time, because Ms. Peaire relied on the information provided in the Alberta Environment's letter, stating she had 30 days to file an appeal.

TABLE OF CONTENTS

I. BACKGROUND	1
II. ANALYSIS.....	3
III. CONCLUSION.....	5

I. BACKGROUND

[1] On June 1, 2011, the Director, Central Region, Operations Division, Alberta Environment (the “Director”) issued *Water Act* Licence No. 00253967-00-00 (the “Licence”), *Water Act* Approval No. 00254609-00-00 (the “Approval”), and *Water Act* Amending Approval No. 00204375-00-01 (the “Amending Approval”) under the *Water Act*, R.S.A. 2000, c. W-3, to BURNCO Rock Products Ltd., (the “Approval Holder”), for its sand and gravel operations in Parkland County, Alberta. The Licence authorizes the operation of works and the diversion of water up to a maximum of 80,750 cubic metres annually from surface water runoff on SE 16-53-3-W5M and an aquifer as accessed by pits on the N½ 22-53-3-W5M for commercial purposes. The Approval authorizes the drainage of up to 250,000 cubic metres of water annually from the pit recharge pond to the Bellhouse Drainage Management Project for drainage purposes. The Amending Approval authorizes the construction and maintenance of an end pit water body for multiple uses as a result of reclamation for the sand and gravel extraction operation.

[2] On July 20, 2011, the Environmental Appeals Board (the “Board”) received Notices of Appeal dated July 18, 2011, from Ms. Laura Peaire (the “Appellant”) appealing the Licence (Appeal No. 11-016), Approval, and Amending Approval.¹

[3] On July 22, 2011, the Board wrote to the Appellant, the Approval Holder, and the Director (collectively the “Participants”) acknowledging receipt of the Notices of Appeal and notifying the Approval Holder and the Director of the appeals. The Board requested the Director provide the Board with a copy of the records (the “Record”) relating to these appeals.

[4] As the Approvals were issued on June 1, 2011, and the Appellant’s Notices of Appeal were received on July 20, 2011, outside of the seven day time limit prescribed in the *Water Act* for the Approvals, the Appellant was requested to provide the Board with reasons why it should allow an extension of time to appeal and to explain why the appeal was filed outside the seven day time limit.

¹ The Approval and Amending Approval will be referred to, collectively, as the “Approvals.” As the appeal period for the Licence is 30 days, the timing of the appeal is not an issue in this decision since the Notice of Appeal was filed in time.

[5] The Board received a letter from the Appellant on August 5, 2011, regarding her late-filed appeal. The Appellant explained she was unaware of the seven day time limit since the Director's letter accompanying the Approvals stated: "The Water Act provides a right to appeal these decisions. Notice of appeal must be submitted no later than 30 days after receipt of this notice...."

The Appellant stated she was not aware of any other time limit for filing an appeal. The Appellant noted the Approvals were emailed on June 20, 2011, and she submitted the Notices of Appeal on July 20, 2011, which was within the 30 days as stated in the Director's letter. The Appellant stated that, based on the information provided to her by the Director, her Notices of Appeal are valid and were filed within the specified time frame. The Appellant requested the Board accept the Notices of Appeal as being filed within the time frame or grant an extension to file the appeals.

[6] The Board wrote to the Participants on August 9, 2011, requesting written submissions from the Approval Holder and the Director in response to the Appellant's comments regarding the late filed appeals.

[7] On August 23, 2011, the Board received a letter from the Approval Holder in which the Approval Holder questioned whether the Appellant's letter of July 18, 2011, was a valid Notice of Appeal since the letter was submitted late, did not include grounds for appeal, and did not describe any relief.

[8] On August 26, 2011, the Board received a copy of the Record. The Director also provided his response submission. The Director acknowledged the Appellant submitted a Statement of Concern on July 19, 2009, in response to a public notice of the applications for the Approvals. The Director stated he notified the Appellant on August 26, 2010, that the Approval Holder had revised its application, and public notice of the amendment application was published on November 19, 2010. The Director explained he sent correspondence to the Appellant on June 3, 2011, indicating he had made a decision to issue the Approvals. The Director stated the correspondence indicated the Appellant had 30 days to appeal his decisions. The Director acknowledged the Appellant was advised of an incorrect time period for submitting a Notice of Appeal to the Board with respect to the Approvals. The Director noted the Board has statutory authority to exercise its discretion to extend an appeal period in the appropriate circumstances.

The Director made no further representations on whether the Board should exercise its discretion to extend the appeal period.

[9] The Board received the Appellant's rebuttal submission on September 6, 2011. She stated that, even though the Director's cover letter was dated June 3, 2011, it was not emailed to her until June 20, 2011. The Appellant noted hardcopies were post marked June 30, 2011, and received in July. The Appellant explained she submitted her Notices of Appeal on July 20, 2011, which did not exceed the 30 day appeal period stated in the Director's letter. The Appellant stated the Approval Holder failed to provide adequate consultation, because it did not attempt to contact the Appellant other than what was minimally required to answer a Statement of Concern. The Appellant argued referring Statement of Concern filers to the Approval Holder's website does not engage Statement of Concern filers as it does not provide opportunities for discussions. The Appellant noted the Director confirmed he advised her of an incorrect period for submitting a Notice of Appeal.

II. ANALYSIS

[10] In considering the Appellant's request for an extension of time to appeal, the Board refers to sections 116(1)(ii) and 116(2) of the *Water Act*, in which the timelines for filing a Notice of Appeal with the Board, with respect to approvals issued under the *Water Act*, are dealt with. Sections 116(1) and 116(2) of the *Water Act* state:

- “116(1) A notice of appeal must be submitted to the Environmental Appeals Board
- (a) not later than 7 days after ...
 - (ii) in the case of an approval, receipt of notice of the decision that is appealed from or the last provision of notice of the decision that is appealed from.
 - (b) in any other case, not later than 30 days after receipt of notice of the decision that is appealed from or the last provision of notice of the decision that is appealed from.
- (2) The Environmental Appeals Board may, on application made before or after the expiry of the period referred to in subsection (1) extend that period, if the Board is of the opinion that there are sufficient grounds to do so.”

[11] As it is a *Water Act* Approval and Amending Approval that have been appealed, the applicable deadline for filing a Notice of Appeal is seven days.

[12] While section 116 of the *Water Act* provides strict timelines for filing a Notice of Appeal with the Board in relation to a *Water Act* approval or amending approval, it also gives the Board the authority to extend the deadline for filing a Notice of Appeal where there are extenuating circumstances.

[13] The Board does not grant extensions unless it is clear an extension upholds the principles of natural justice and fairness. In its previous decisions related to late-filed appeals, the Board determined that certainty is an important element to take into consideration. In this case, certainty involves the specific deadlines included in the legislation for appealing approvals and amending approvals under the *Water Act*.

[14] In its *Biggart*² decision, the Board stated the time limit specified in the legislation in which an appeal must be filed is stipulated so that all parties – the applicant for the approval, the people who are directly affected, and the regulator – know when the process is complete. If no time limits were placed on the appeal period, the applicant for an approval would never know when it could proceed with its project, as there would always be the possibility of an appeal that could result in changes to the approval. The time lines included in the legislation, and the certainty they create, balance the interests of all parties involved. Once the appeal period has ended, the approval holder can proceed with the project as permitted under the known terms and conditions in the approval.

[15] As in the *Biggart* case, where the appellant did not provide sufficient reasons to justify allowing an extension of time to appeal, the Board commonly dismisses late-filed appeals, because allowing an extension of time to appeal without extenuating circumstances would undoubtedly promote uncertainty. In this case, although the *Water Act* stipulates the timeline for filing an appeal of an approval or amending approval is seven days, the Director stated in his letter to the Appellant the time limit in which to file an appeal is 30 days. It is reasonable to presume the Appellant relied on the Director's letter when it stated she had 30 days to file her appeals.

² *Biggart v. Director, Central Region, Regional Services, Alberta Environment re: Town of Innisfail* (24 November 2003), Appeal No. 03-039-D (A.E.A.B.).

[16] The Director did not object to the Appellant's request for an extension of time to file the Notices of Appeal. The Director acknowledged he mistakenly gave the incorrect time frame for the Appellant to submit a Notice of Appeal. The Approval Holder simply stated the Notice of Appeal was filed late, but it did not address the Director's letter to the Appellant referring to the incorrect time frame to appeal.

[17] Given the above, the Board finds that certainty is not affected or jeopardized by the Board exercising its discretion and allowing an extension for the Appellant to file her appeals.

[18] The Appellant filed her Notices of Appeal 49 days after the Director issued the Approvals. However, the requirement for an approval issued under the *Water Act* is the Notice of Appeal must be filed no later than seven days after *receipt* of notice of the decision that is being appealed. Given the instructions provided by the Director stated not more than 30 days, the Appellant would have to provide her Notice of Appeal within 30 days from the time she received notice of the Director's decision to issue the Approval. The Appellant stated that, even though the Director's cover letter was dated June 3, 2011, she did not receive the email of the Director's decision until June 20, 2011. The Director did not disagree with description of events. Therefore, the Board will consider June 20, 2011, as the date the Appellant received notice of the Director's decision to issue the Approvals. The Appellant filed her Notice of Appeal on July 20, 2011, 30 days after receiving the email from the Director notifying her the Approvals had been issued.

[19] Based on the above, the Board considers it fair to conclude the appeals were filed within the time line described by the Director.

III. CONCLUSION

[20] Upon review of the legislation and the written submissions from the Participants, the Board concludes the Appellant's Notices of Appeal were filed late due to the information she relied upon from the Director. The Board is satisfied the Appellant acted upon the information she received from the Director, and filed her Notices of Appeal in good faith within the period of time specified in the letter. The Board therefore grants the Appellant's request for an extension

of time to appeal the Approval and Amending Approval, and accepts the Appellant's Notices of Appeal as being filed in time.

Dated on September 20, 2011, at Edmonton, Alberta

"original signed by"

D.W. Perras
Chair