

ALBERTA
ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – October 28, 2014

IN THE MATTER OF sections 91, 92, 93, 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 an appeal filed by George Olineck with respect to *Water Act* Approval No. 00333766-00-00 issued to the Hutterian Brethren Church of Vegreville by the Director, Red Deer-North Saskatchewan Region, Operations Division, Alberta Environment and Sustainable Resource Development.

Cite as: *Olineck v. Director, Red Deer-North Saskatchewan Region, Operations Division, Alberta Environment and Sustainable Resource Development, re: Hutterian Brethren Church of Vegreville* (28 October 2014), Appeal No. 14-012-D (A.E.A.B).

BEFORE:

Justice D.W. Perras, (Ret.) Board Chair.

SUBMISSIONS BY:

Appellant: Mr. George Olineck, represented by Ms. Teresa Meadows, Shores Jardine LLP.

Approval Holder: Hutterian Brethren Church of Vegreville.

Director: Mr. Mohammad Habib, Director, Red Deer-North Saskatchewan Region, Operations Division, Alberta Environment and Sustainable Resource Development, represented by Mr. Gary Crowe, Alberta Justice and Solicitor General.

EXECUTIVE SUMMARY

On July 7, 2014, Alberta Environment and Sustainable Resource Development (AESRD) issued an Approval under the *Water Act* to the Hutterian Brethren Church of Vegreville for the construction of a drainage ditch in the County of Vegreville. The drainage ditch is to be constructed to restore natural slough water levels. Mr. George Olineck appealed the Approval on July 30, 2014.

The appeal of the Approval was filed past the 7-day deadline stipulated in the *Water Act*. The Environmental Appeals Board (the Board) asked Mr. Olineck to provide his reasons for filing his appeal past the prescribed time limit and why the Board should be persuaded to extend the deadline. Mr. Olineck believed the timeline for filing his Notice of Appeal was the same as the date he was required to provide additional information to AESRD regarding enforcement investigations that were being undertaken by AESRD. Enforcement investigations and issuance of an approval are distinct processes and their timelines are not linked.

Only in exceptional circumstances would the Board extend the time to file a Notice of Appeal. After reviewing Mr. Olineck's submission, the Board found there were no exceptional circumstances to warrant extending the appeal period.

The Board dismissed the appeal.

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I. INTRODUCTION

[1] This is the Environmental Appeals Board's decision regarding the appeal filed by Mr. George Olineck (the "Appellant").

[2] Alberta Environment and Sustainable Resource Development ("AESRD") issued Approval No. 00333766-00-00 (the "Approval") under the *Water Act*, R.S.A. 2000, c. W-3, to the Hutterian Brethren of Vegreville (the "Approval Holder") on July 7, 2014, to construct a drainage ditch.

[3] As the appeal of the Approval was filed outside of the 7-day appeal period allowed under the *Water Act*, the Environmental Appeals Board (the "Board") asked the Appellant to provide reasons why the Board should extend the appeal period. On reviewing the reasons provided, the Board found there was sufficient information to consider extending the appeal period. The Board received and considered response submissions from the Approval Holder and AESRD.

[4] On reviewing the submissions, the Board found there were no extenuating circumstances that warranted the extension of the time period to file the appeal. The Board dismissed the appeal of the Approval.

II. BACKGROUND

[5] On July 7, 2014, the Director, Red Deer-North Saskatchewan Region, Operations Division, Alberta Environment and Sustainable Resource Development (the "Director"), issued the Approval to the Approval Holder to construct and maintain a drainage ditch at SW 06-51-13-W4M in the County of Vegreville, Alberta, for the purpose of restoring the natural slough water level.

[6] On July 30, 2014, the Board received a Notice of Appeal from Mr. George Olineck appealing the Approval.

[7] On August 7, 2014, the Board acknowledged the appeal and notified the Approval Holder and Director of the appeal. In this letter the Board noted the Notice of Appeal was filed

after the 7-day appeal period for approvals issued under the *Water Act*.¹ The Board asked the Appellant to explain why the appeal was filed after the time limit and to provide reasons why an extension should be granted.

[8] The Appellant provided his response on August 8, 2014.

[9] On August 13, 2014, the Board notified the Appellant, Approval Holder, and Director (the “Participants”) that the Appellant had provided sufficient information to consider extending the appeal period. The Board asked the Approval Holder and Director to provide comments.

[10] The Board received responses from the Approval Holder and the Director on August 21, 2014 and August 25, 2014, respectively. The Appellant’s final comments were received on September 2, 2014.

[11] On September 19, 2014, the Board notified the Participants that the appeal was dismissed. These are the Board’s reasons.

III. SUBMISSIONS

A. Appellant

[12] The Appellant explained he did not receive notice the Approval had been granted until July 14, 2014. He stated he was surprised any approval affecting drainage in the area had been granted.

[13] The Appellant explained he had been in contact with AESRD on an on-going basis about the overall drainage issues in the area, including the lands identified in the Approval, since the spring of 2013. The Appellant believed that, until the overall drainage issues in the

¹ Section 116(1) of the *Water Act* provides:

“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....”

area had been dealt with, including completing investigations of drainage activities in the area and conducting meetings with landowners, the County, and the local MLA, the Director would not exacerbate the situation by issuing approvals to authorize additional drainage in the area.

[14] The Appellant stated he was focused on preparing a comprehensive response to AESRD regarding various drainage activities on neighbouring properties that was due on July 30, 2014. It was the Appellant's understanding that all of the drainage issues in the area are interrelated and indivisible, and a comprehensive response was warranted. The Appellant said that when the notice of the issuance of the Approval was received, he believed filing the Notice of Appeal in conjunction with the comprehensive reply by the deadline provided by AESRD was what was required to preserve his appeal rights.

[15] The Appellant noted that, even though the notice of the Approval referenced a strict timeline for filing a Notice of Appeal, there was no effort to indicate clearly the applicable time limit to appeal this type of approval was seven days. The Appellant explained it was his previous experience that AESRD typically allowed 30 days to file a response or the deadline for a response would be specifically stated. The Appellant argued that failing to draw his attention to the unusually short filing timeline did not help him appreciate the filing deadline that he was expected to meet.

[16] The Appellant acknowledged the AESRD timeline for a response set out in its June letter did not affect the statutory timeline for filing the Notice of Appeal. The Appellant stated that, given the interrelated and overlapping of the issues in AESRD's requested reply and the Notice of Appeal, and given his expectation that regulatory actions such as issuing an approval would not take place while AESRD was waiting for the Appellant to provide information regarding site conditions and drainage issues on his lands, he concluded the timeline for responding to AESRD's request and to preserve his right to appeal were the same.

[17] The Appellant stated he was led to understand his right to file a Notice of Appeal had not lapsed prior to submitting his comprehensive reply to AESRD. He noted the Director's July 24, 2014 letter provided details on the basis for issuing the Approval, and the letter was sent after the Appellant visited his MLA's office in an attempt to have all drainage issues, including the issuance of the Approval, addressed in a comprehensive manner. The Appellant said the

letter from the Director indicated that, as of July 24, 2014, the Appellant continued to have the right to appeal the Director's decision.

[18] The Appellant believed that providing a comprehensive reply to AESRD's direct request regarding drainage issues in the area by the July 30, 2014 deadline would enable AESRD to be in a better position to understand and assess, in an integrated manner, the cumulative effects on his lands from current and future authorized and unauthorized activities. The Appellant said he had no reason to expect the Director would grant an approval in the interim that would have to be appealed prior to him providing his substantive reply.

[19] The Appellant stated that, throughout this process in response to calls, correspondence, and notice from AESRD staff, he made it clear to all parties, including the Director and the Approval Holder, that he intended to preserve his rights to have all drainage activities in the area be considered in a way that protects the environment and his rights as the owner of "receiving" lands, including the filing of a Notice of Appeal.

[20] The Appellant requested the Board extend the time for filing his Notice of Appeal. He stated the Director and Approval Holder should not be surprised or prejudiced by the Appellant's request to extend the filing period by nine days, and the circumstances support his application.

B. Approval Holder

[21] The Approval Holder requested the Board not extend the time period to file the appeal.

[22] The Approval Holder stated that to complete a comprehensive study of the drainage activities in the area would probably take years. The Approval Holder explained AESRD recommended the application for the Approval be made to re-direct water flow away from the county ditch to the natural waterway.

[23] The Approval Holder argued that, if the Appellant's concern was as significant as he stated, meeting the appeal deadline should have been his top priority.

[24] The Approval Holder stated the Director understands the drainage situation, and the Director's decision to issue the Approval shows willingness to help correct a long-term issue.

[25] The Approval Holder stated that many of the statements made by the Appellant were false or inaccurate. The Approval Holder explained that aerial photographs from as far back as 1950 show a natural watercourse through three quarter sections of the Appellant's lands, demonstrating the watercourse always existed and was not just formed in 1990. The Approval Holder stated the historic photographs indicate there is no water accumulation on the SW quarter of section 12 or on section 11. The Approval Holder noted the channel depths are as deep as four feet.

[26] The Approval Holder stated the Appellant's lands are not the lowest elevation in the area since there is no ponded water. The Approval Holder said the Appellant's lands are in the middle of a 20,000 acre drainage basin, with approximately 9,000 acres upstream.

[27] The Approval Holder explained they have attempted to call the Appellant, but he did not reply, and the Appellant indicated he would not meet with the other landowners and AESRD.

[28] The Approval Holder stated the Appellant has removed grass, willows, and trees from the watercourse, causing the erosion referred to by the Appellant. The Approval Holder said the work completed by the Appellant in the north half of 12-51 was to drain a large area to the west.

[29] The Approval Holder argued there is no proof the Appellant suffered any significant or ongoing damage.

[30] The Approval Holder noted that all activities in sections 6 and 36 that were reported to the compliance area of AESRD were reviewed by AESRD and corrected by the landowners. Minor scraping in section 35 was inspected by AESRD and did not warrant further action.

[31] The Approval Holder stated the application for the Approval proves the proposed work is not additional drainage but is a restoration of long term water flows. The Approval Holder argued the application provided more detailed information than what the Appellant could provide.

[32] The Approval Holder explained AESRD reviewed the complaints filed and, on April 28, 2014, they observed a natural flowing creek that was full but with no excessive

flooding. The Approval Holder stated the AESRD report completed at that time noted illegal drainage on the Appellant's property that compounded the perceived problems. The Approval Holder said there was no proof provided to support the Appellant's claims of "unauthorized activities."

[33] The Approval Holder noted the Appellant had an opportunity to provide his concerns when notice of the application was published. The Approval Holder said the Appellant was the only one who complained out of 14 farmers downstream. The Approval Holder stated the Appellant's concerns were reviewed by the Director and were addressed by the Approval Holder as required.

[34] The Approval Holder questioned why the Appellant states he is concerned about cumulative effects but yet he contributes to the problem with unauthorized drainage.

[35] The Approval Holder noted the Appellant's property is not a flood plain or even capable of being flooded since it only receives water in a concentrated channel and the water exits through the channel.

[36] The Approval Holder argued the Appellant cannot accurately judge water flow increases because he just recently bought the property, and he has no historical records. The Approval Holder stated AESRD has detailed information on water volumes and drainage basins involved and the restrictors put in place.

C. Director

[37] The Director submitted an extension of time should not be allowed, and the appeal should be dismissed.

[38] The Director explained the Appellant filed a Statement of Concern regarding the construction of the drainage ditch. The Director noted the letter sent to the Appellant on July 7, 2014, notifying the Appellant the Approval was issued, indicated a statement of concern filer who is directly affected by the Approval may submit a notice of appeal. The letter included the Board's contact information and stated: "Please note there are strict timelines for filing a notice of appeal."

[39] The Director said AESRD sent a letter to the Appellant on July 24, 2014, after the Appellant visited his MLA, explaining the Approval requires the Approval Holder to install a restrictor plate in the culvert to limit the amount of drainage from the Approval Holder's property. The Director noted the letter also referred to the Appellant's right to appeal and referred to the notification letter sent on July 7, 2014, for the Board's contact information.

[40] The Director submitted the Appellant filed his Notice of Appeal nine days after the appeal period had expired, and the Appellant did not establish sufficient grounds to extend the period for filing the Notice of Appeal.

[41] The Director noted the Appellant described how AESRD responded to the Appellant's incident report alleging unauthorized drainage activities on neighbouring properties. The Director stated AESRD notified the Appellant on April 9, 2014, that AESRD conducted inspections in the area on May 7, 2013, and October 23, 2013, resulting in one incident report being closed and two others opened on properties not owned by the Approval Holder.

[42] The Director said AESRD sent a letter to the Appellant on June 11, 2014, in which another inspection conducted on April 26, 2014, was referenced. AESRD indicated that, in order for it to proceed, it needed a signed Statement of Concern by July 31, 2014, with evidence of non-compliance by the relevant landowners.

[43] The Director argued the Appellant's expectation that no approval would be granted while he was preparing a detailed statement of concern was not well founded. The Director noted his July 7, 2014 letter advised the Appellant that the Approval had been issued and there are strict timelines for filing a Notice of Appeal.

[44] The Director explained AESRD's compliance activities are independent of the application review and decision process, and the Appellant should have been aware the processes are distinct. The Director stated that responding to a report of non-compliance does not stop an application for an approval from being reviewed and decided.

[45] The Director stated the Appellant's Statement of Concerns was considered when the application for the Approval was reviewed as required under the legislation. The Director said AESRD has a separate duty to respond to incidents alleging non-compliance.

[46] The Director stated the Appellant confirmed he received the July 7, 2014 letter that advised the Appellant of the Approval and he had a right to appeal but there were strict timelines in the *Water Act* for appealing. The Director submitted this information would allow the Appellant to contact the Board or review the *Water Act* to determine the filing deadline. The Director submitted the Appellant is deemed to know the law, and it was not his role to explain the law to the Appellant.

[47] The Director acknowledged the July 24, 2014 letter referred to the Appellant's right to appeal and did not state the time limit for filing an appeal. The Director stated the July 24, 2014 letter did not waive or extend the seven day appeal period. The Director said the July 24, 2014 letter was a courtesy letter to explain the Approval responded to the Appellant's concerns by including a condition to limit drainage from the Approval Holder's property. The Director noted the letter was sent after the appeal period had ended, so the July 24, 2014 letter did not interfere with the timely filing of the appeal.

[48] The Director argued that, if the Board extends the time limit for this appeal, it would negate the finality and certainty of the Approval to which the Approval Holder is entitled.

D. Appellant's Rebuttal Submission

[49] The Appellant argued the Approval Holder's submission focused on the merits of the appeal, disputed facts, and personal attacks on the Appellant and his legal counsel, which are not relevant to the issue before the Board on whether to grant an extension to file the Notice of Appeal.

[50] The Appellant noted the Approval Holder:

1. was aware of the connection between the drainage issues on the Appellant's lands, the Approval Holder's lands, and the activities of other adjacent landowners;
2. was aware of the discussions taking place between the Appellant, other adjacent landowners, and AESRD;
3. indicated the drainage situation in the area is very complex and landowners in the area are trying to address on-going problems; and
4. knew the Appellant had a filed a Statement of Concern with respect to these issues, including cumulative effects, as it applied to the Approval.

[51] The Appellant noted that, even though he takes issue with many of the disputed facts in the Approval Holder's submission, the Approval Holder supported the Appellant's view that the drainage situation is complex and interconnected with other activities, including investigations of other landowners and requests for authorizations.

[52] The Appellant stated the Approval Holder was aware of the Appellant's concerns with respect to these issues and was not surprised by the appeal. The Appellant argued the Approval Holder would not be prejudiced by a nine day extension of the appeal period.

[53] The Appellant argued the need for certainty and finality in the regulatory process must be viewed in the specific factual context surrounding the Director's decision to issue an approval. The Appellant acknowledged the interests of certainty and finality are significant when the gap between the appeal period and filing the Notice of Appeal are significant, and in some cases, the actions of the parties in the intervening period can render the appeal moot.

[54] The Appellant stated the appeal arises from a larger issue which the Appellant is seeking, on an on-going basis, that AESRD consider the drainage issues and the drainage basin as a whole. The Appellant argued there are extenuating circumstances in this case given there are several interconnected AESRD activities including, investigations, authorizations, statements of concern, and requests for information taking place at the same time. The Appellant believed the Director recognized the interconnectedness of the situation and would be adopting a more integrated and comprehensive approach to managing the activities affecting drainage throughout the drainage basin, which would be consistent with the intent of the *Water Act*.

[55] The Appellant stated that, although he preferred the Approval not be issued until the drainage issues had been considered by AESRD in a fulsome manner, the on-going consideration of activities affecting drainage in the area may be affected by, or may affect the Approval. The Appellant argued it is difficult to see how certainty and finality for a single Approval should dominate over the Director's obligation to consider cumulative effects and adopting an integrated, comprehensive, and responsive approach.

[56] The Appellant argued AESRD's conduct leading up to and after the Approval was issued created special circumstances as it led him to believe the timeline for filing a Notice of Appeal had not expired on July 21, 2014.

[57] The Appellant stated that, if the Director intended his July 24, 2014 letter to be nothing more than a courtesy letter, there was no reason for the Director to refer to any right to appeal the Approval as the appeal period would have lapsed. The Appellant noted the July 24, 2014 letter referred to the Appellant's right to appeal in the present tense by stating "you do have the right to appeal our decision."

[58] The Appellant did not agree with the Director's belief this inconsistency is inconsequential. The Appellant noted the July 24, 2014 letter did not expressly state what the appeal period contemplated would be, and the letter, when combined with AESRD's conduct, suggested that, at the least, the appeal period existed on July 24, 2014. The Appellant stated the correspondence gave him no reason to suspect the appeal period and the timeline to provide the information requested by AESRD in respect of related drainage issues were not the same.

[59] The Appellant said the statements made by the Director regarding having an active right to appeal, even if mistaken, are significant to recipients who assume the Director is aware of the applicable appeal period. The Appellant stated appellants should not be deprived the right to appeal when they meet the deadline for the incorrect appeal period.

[60] The Appellant submitted that, in this specific case, the conduct of AESRD and the larger context surrounding the issuance of the Approval are sufficient to demonstrate circumstances warrant a short, nine day extension of time to file the Notice of Appeal. The Appellant noted the Approval Holder and Director did not indicate they were surprised or prejudiced by the request to extend the time to file the appeal or that the delay rendered the appeal moot.

IV. ANALYSIS

[61] Section 116 of the *Water Act* sets the time lines for filing a Notice of Appeal.² The appeal period for an approval issued under the *Water Act* is seven days. The appeal period starts upon receipt of notice of the decision.

² Section 116(1) of the *Water Act* states:

"A notice of appeal must be submitted to the Environmental Appeals Board

[62] Section 116(2) of the *Water Act* allows the Board to extend the appeal period if there are sufficient grounds to do so.³

[63] The onus is on the Appellant to provide 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 them from filing within the legislated timeframe.

[64] The Appellant was asked to provide reasons why an extension of time should be allowed for him to file a Notice of Appeal. The Appellant relied on the request by the compliance area of AESRD to have the Appellant submit detailed information to AESRD by July 31, 2014, and a letter sent by the Director on July 24, 2014.

[65] After reviewing the submissions from the Participants, the Board understands there might have been some confusion on the part of the Appellant regarding the actions being taken by the Director and AESRD. The Board recognizes there are separate entities within AESRD that issue approvals and those who deal with enforcement. Although there might be some separation between the two sections, it appears both sections were aware of the Appellant's issues regarding drainage in the area. However, decisions made by the separate entities are not dependent on each other and do not impact each other's decisions. Time lines set by the enforcement side do not apply to the approval side. When an approval is issued, the time line for filing an appeal is set by the legislation.

[66] The July 24, 2014 letter sent from the Director to the Appellant included the statement: "You do have the right to appeal my decision." This letter was sent after the appeal period had ended. Although this presents some confusion as to when the appeal period was over, it does not alter the fact the appeal period for an approval under the *Water Act* is seven days after

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- (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...."

³ Section 116(2) of the *Water Act* states:

"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."

receipt of the notice the approval. The July 24, 2014 letter was sent after the appeal period had ended, so the Appellant could not have relied on the July 24, 2014 letter as the basis for filing his appeal late. The appeal period had already ended, and there is no indication the Appellant made any attempt to comply with the legislated time limit.

[67] The Board must comply with the legislation and will use its authority to extend an appeal period only in extenuating circumstances.⁴ The time limits for filing an appeal were included in the legislation in order to provide a level of certainty into the appeal process and to balance the interests of the parties. The Board cannot extend the appeal period without a valid reason for doing so.⁵

⁴ See: *Black Diamond Land & Cattle Company Ltd. v. Director, South Saskatchewan Region, Alberta Environment and Sustainable Resource Development*, re: *Beglinger* (18 August 2014), Appeal No. 14-002-D (A.E.A.B.); *Wray v. Director, Central Region, Operations Division, Alberta Environment and Sustainable Resource Development*, re: *Clearwater County* (25 July 2013), Appeal Nos. 12-044 and 12-045-D (A.E.A.B.); *Blimke v. Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development*, re: *Blimke and Citizens Power & Gas Ltd.* (7 June 2013), Appeal No. 12-047-D (A.E.A.B.); *Borgel v. Director, Central Region, Operations Division, Alberta Environment and Sustainable Resource Development*, re: *Prairie Mines and Royalty Ltd.* (11 October 2012), Appeal No. 12-013-ID1 (A.E.A.B.); *Shell Canada Ltd. v. Director, Northern Region, Environmental Management, Alberta Environment* (24 August 2011), Appeal No. 11-007-D (A.E.A.B.); *Visscher v. Director, Northern Region, Environmental Management, Alberta Environment*, re: *Provident Energy Ltd.* (07 February 2011), Appeal Nos. 10-011-012-ID1 (A.E.A.B.); Preliminary Motion: *McDonald v. Inspector, Northern Region, Regional Services, Alberta Environment*, re: *Husky Oil Operations Limited* (27 August 2007), Appeal No. 07-003-ID1 (A.E.A.B.); *EOG Resources Canada Inc. v. Director, Central Region, Regional Services, Alberta Environment* (15 August 2007), Appeal No. 07-002-D (A.E.A.B.); *Topeka Energy Inc. v. Director, Southern Region, Regional Services, Alberta Environment* (20 July 2007), Appeal No. 07-001-D (A.E.A.B.); *Covey and Barlem v. Director, Central Region, Regional Services, Alberta Environment* re: *Town of Innisfail* (13 January 2006), Appeal Nos. 05-022 and 023-D (A.E.A.B.); *Smulski v. Director, Northern Region, Regional Services, Alberta Environment* re: *Agrium Products Inc.* (18 March 2005), Appeal No. 04-073-D (A.E.A.B.); *Town of Valleyview v. Director, Northern Region, Regional Services, Alberta Environment* (1 August 2003), Appeal No. 03-009-D (A.E.A.B.); 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.).

⁵ See: *Blimke v. Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development*, re: *Blimke and Citizens Power & Gas Ltd.* (7 June 2013), Appeal No. 12-047-D (A.E.A.B.);

[68] When the Appellant received notice of the Approval, and if he had concerns about it being issued, the Board would expect he would contact the Director and ask questions about the issuance of the Approval at that time. The Appellant did not appear to make any effort at the time the notice was provided to express his concerns about the Approval being issued when potential resolution to the area drainage issues were being discussed. Although he contacted his MLA, he did not contact the Director or the Board to demonstrate an interest in filing an appeal or to ask questions about the issuance of the Approval or what was required to file an appeal.

[69] Although the Approval Holder and Director may not have been prejudiced with the appeal filed only nine days after the deadline, the appeal process must be fair to all parties involved. When an approval is issued and the time period for filing an appeal has ended, the approval holder should be able to proceed to conduct the work pursuant to the approval. The appeal period cannot continuously change unless there are extenuating circumstances that warrant extending the time period.

[70] One of the purposes of having deadlines incorporated into legislation is to bring some element of certainty to the regulatory process. The application process for an approval provides for a technical and scientific review of the application and a public notice process. Anyone who may be directly affected by the proposed approval may file a statement of concern, which the Appellant did in this case. Once a decision is made to issue the approval, those who are deemed to be directly affected and filed a statement of concern are notified. After the notification is received, there is an appeal period in which the applicant for the approval or anyone who is directly affected and who filed a statement of concern can file an appeal. The time limit in which an appeal must be filed is stipulated in the legislation so that all parties know when the process is complete.

Borgel v. Director, Central Region, Operations Division, Alberta Environment and Sustainable Resource Development, re: Prairie Mines and Royalty Ltd. (11 October 2012), Appeal No. 12-013-ID1 (A.E.A.B.); *EOG Resources Canada Inc. v. Director, Central Region, Regional Services, Alberta Environment* (15 August 2007), Appeal No. 07-002-D (A.E.A.B.); *Topeka Energy Inc. v. Director, Southern Region, Regional Services, Alberta Environment* (20 July 2007), Appeal No. 07-001-D (A.E.A.B.); *Covey and Barlem v. Director, Central Region, Regional Services, Alberta Environment re: Town of Innisfail* (13 January 2006), Appeal Nos. 05-022 and 023-D (A.E.A.B.); *Smulski v. Director, Northern Region, Regional Services, Alberta Environment re: Agrium Products Inc.* (18 March 2005), Appeal No. 04-073-D (A.E.A.B.); *Moses v. Director, Central Region, Regional Services, Alberta Environment re: Ducks Unlimited Canada* (29 November 2004), Appeal No. 04-001-ID1 (A.E.A.B.); *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.).

[71] 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.

[72] The Appellant in this case did not provide evidence of the extenuating circumstances necessary for the Board to extend the appeal period.

[73] The Board acknowledges the time period for filing an appeal is very short. The Director could have provided a copy of the relevant section regarding filing an appeal to the Appellant when he sent the letter notifying the Appellant the Approval had been issued. It would not require additional effort on the part of the Director, and it would provide a potential appellant with clear notice of the appeal period. Given the short time period in which to file an appeal, and given the Director was aware of the Appellant's concern and interest in the issue, it would have been a prudent measure to provide the relevant section of the legislation.

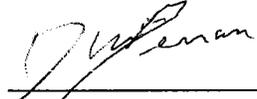
[74] The appeal was filed outside the time period and the Appellant did not provide any evidence to demonstrate extenuating circumstances existed that prevented him from filing his appeal on time. Therefore, the Board will not extend the appeal period, and the appeal is dismissed.

[75] The Participants agree there are drainage issues within the region and some steps are being taken to address the issue, both from the approvals side and the compliance side. The Appellant was making an effort to be involved in developing a solution to the drainage issues in the area. Although the appeal has been dismissed, the Board encourages the Appellant, Director, and landowners in the area, including the Approval Holder, to continue discussions to help resolve these issues.

V. DECISION

[76] The Board denies the request for an extension of the timeline for the Appellant to file his Notice of Appeal of the Approval, and therefore, the Board dismisses the appeal.

Dated on October 28, 2014, at Edmonton, Alberta



D.W. Perras
Board Chair