

ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – May 13, 2016

IN THE MATTER OF sections 91, 92, 94, 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 Roxanne Walsh with respect to the decision of the Director, South Saskatchewan Region, Operations Division, Alberta Environment and Sustainable Resource Development, to issue Amending Approval No. 1242-02-05 under the *Environmental Protection and Enhancement Act*.

Cite as: Preliminary Motion: *Walsh v. Director, South Saskatchewan Region, Operations Division, Alberta Environment and Sustainable Resource Development*, re: *Town of Turner Valley* (13 May 2016), Appeal No. 14-018-ID3 (A.E.A.B.).

BEFORE:

Mr. Alex MacWilliam, Board Chair.

PARTIES:

Appellant: Ms. Roxanne Walsh.

Approval Holder: Town of Turner Valley, represented by Mr. Ron Kruhlak and Ms. Jessica Proudfoot, McLennan Ross LLP.

Director: Mr. Brock Rush, Director, South Saskatchewan Region, Operations Division, Alberta Environment and Sustainable Resource Development,* represented by Ms. Alison Altmiks, Ms. Wendy Thiessen, and Ms. Nicole Hartman, Alberta Justice and Solicitor General.

* Alberta Environment and Sustainable Resource Development is now called Alberta Environment and Parks. However, all relevant events occurred regarding this appeal while the Department was called AESRD.

EXECUTIVE SUMMARY

Alberta Environment and Sustainable Resource Development (AESRD)* issued three Amending Approvals under the *Environmental Protection and Enhancement Act* and an Approval under the *Water Act* to the Town of Turner Valley (the Town) to construct, operate, and reclaim a waterworks system for the Town and to construct an infiltration gallery below the bank of the Sheep River. At issue in this appeal is Amending Approval No. 1242-02-05 (the Amending Approval).

Ms. Roxanne Walsh appealed the decision to issue the Amending Approval. In her Notice of Appeal, Ms. Walsh stated she disagreed with the decision in its entirety and reserved the right to review the AESRD record before completing her Notice of Appeal.

AESRD filed a motion to dismiss the appeal because Ms. Walsh did not provide the information in her Notice of Appeal that is required under the legislation. The Board denied the motion to dismiss. The Board allowed Ms. Walsh to receive and review AESRD's record prior to perfecting her Notice of Appeal.

Although in this case the Board allowed the appellant to review AESRD's record before completing her Notice of Appeal, the Board noted the Notice of Appeal should have been completed within the 30-day legislated time limit or within a reasonable period of time thereafter as allowed by the Board. A review of the Amending Approval and referenced documents within the Amending Approval should have been all that was required to complete the Notice of Appeal. In most cases, a review of AESRD's complete record would be required only when the Board is determining the issues to be dealt with at the hearing.

* AESRD is now called Alberta Environment and Parks. However, all relevant events occurred regarding this appeal while the Department was called AESRD.

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I. INTRODUCTION

[1] These are the Environmental Appeals Board's reasons for denying the application to dismiss the appeal of Amending Approval No. 1242-02-05 (the "Amending Approval") issued under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 ("EPEA"). The Amending Approval was issued to the Town of Turner Valley (the "Approval Holder" or the "Town") by Alberta Environment and Sustainable Resource Development ("AESRD").¹ It was one of the amending approvals issued for the purposes of constructing, operating, and reclaiming a water works system for the Town, and for the construction of an infiltration gallery below the bank of the Sheep River at NW 6-20-2 W5M.² Ms. Roxanne Walsh (the "Appellant") appealed the decision to issue the Amending Approval.

[2] AESRD filed a motion to dismiss the appeal because the Appellant did not provide the information in her Notice of Appeal that is required under the legislation. The Environmental Appeals Board (the "Board") denied the motion to dismiss. The Board allowed Ms. Walsh to receive and review AESRD's record prior to perfecting her Notice of Appeal.

[3] Although in this case the Board allowed the Appellant to review AESRD's record before completing her Notice of Appeal, the Board noted the Notice of Appeal should have been completed within the 30-day legislated time limit or within a reasonable period of time thereafter as allowed by the Board. A review of the Amending Approval and referenced documents within the Amending Approval should have been all that was required to complete the Notice of Appeal. In most cases, a review of AESRD's complete record would be required only when the Board is determining the issues to be dealt with at the hearing.

II. BACKGROUND

[4] On October 29, 2014, the Director, South Saskatchewan Region, Operations Division, Alberta Environment and Sustainable Resource Development (the "Director"), issued

¹ AESRD is now called Alberta Environment and Parks. However, all relevant events occurred regarding these appeals while the Department was called AESRD.

² Ms. Walsh also appealed the issuance of EPEA Amending Approval Nos. 1242-02-02 and 1242-02-04 and Approval No. 00334295-00-00 issued under the *Water Act*, R.S.A. 2000, c. W-3.

the Amending Approval to the Town. The Amending Approval made changes to monitoring requirements, including the monitoring for the raw water reservoir.

[5] On November 4, 2014, the Appellant filed a Notice of Appeal of the Amending Approval. The Board notified the Approval Holder and Director of the appeal on November 7, 2014. The Board noted the Appellant had not fully completed her Notice of Appeal and reserved her right to review the Director's record before completing her Notice of Appeal. The Director was asked to provide the Board with copies of all documents upon which the Director based his decision to issue the Amending Approval (the "Record").

[6] On November 13, 2014, the Director made a motion to dismiss the Appellant's appeal of the Amending Approval on the basis it was incomplete or, alternatively, to have the Appellant complete the Notice of Appeal in a timely fashion. The Director advised the Record regarding the Amending Approval would not be available until January 16, 2015.

[7] On January 16, 2015, the Board received a copy of the Record regarding the Amending Approval.

[8] On January 21, 2015, the Board provided copies of the Record regarding the Amending Approval to the Appellant and Approval Holder. The Board notified the Parties that it was dismissing the Director's motion to dismiss the appeal of the Amending Approval since the Notice of Appeal as originally filed, in the circumstance of this case, was sufficiently complete. The Board gave the Appellant until February 6, 2015, to complete her Notice of Appeal.

III. SUBMISSIONS

A. Appellant

[9] The Appellant stated it was not her intent to hold up the hearing process. The Appellant explained she wanted the opportunity to review the file in order to validate the information the Director supplied regarding his decision. The Appellant said she was at a

disadvantage because she had no material except for the bit of information AESRD supplied on the file. The Appellant noted AESRD and the Approval Holder were familiar with the material.

[10] The Appellant asked the Board to consider allowing her the opportunity to review the file before completing her Notice of Appeal.

[11] The Appellant stated that, unless the Director intended to continue to issue approvals that she was not expecting so late in the process, she did not anticipate her “trend” of wanting to review the file to more accurately articulate her Notice of Appeal to continue.

[12] In response to the Approval Holder’s comments (see paragraph 15 below), the Appellant questioned whether public health and safety are frivolous and asking questions is vexatious.

B. Approval Holder

[13] The Approval Holder supported the rejection of the Notice of Appeal of the Amending Approval.

[14] The Approval Holder stated that, if the Appellant decided to supplement her Notice of Appeal with the required information, it reserved its right to advance a further motion to declare the appeal frivolous and vexatious.

C. Director

[15] The Director requested the Board reject the Appellant’s Notice of Appeal of the Amending Approval on the basis it was incomplete.

[16] The Director argued the Notice of Appeal was deficient on its face given it did not include the grounds of appeal, reasons why the Appellant objected to the decision, or a description of the relief requested.

[17] The Director stated that, if the Board accepted the Appellant’s incomplete Notice of Appeal, the other Parties were faced with no target, or a shifting target, to consider. The

Director said it would be better if the Appellant's issues and preferred remedies were clearly stated given that certainty is required for all participants to an appeal.

[18] The Director noted the Appellant had knowledge about the subject matter of the application and the Director's decision, and she filed a Statement of Concern in relation to the application, which the Director accepted. The Director said the Appellant was provided a copy of the Amending Approval, and he offered the Appellant access to AESRD's electronic documents.

[19] The Director requested the Board reject the Notice of Appeal as incomplete. The Director noted the Appellant had more than two weeks remaining in the appeal period to file a complete Notice of Appeal that satisfied the legislation and the Board's Rules of Practice. The Director suggested that, in the alternative, the Board use its powers under section 92 of EPEA³ and give notice to the Appellant to require the submission of additional information.

[20] The Director said the Appellant knew about the application, the notice of decision, and the details of the Amending Approval, all of which should have allowed her to articulate her objections to the decision made and the relief she was seeking.

[21] The Director explained the Director's Record for the Amending Approval would not be available until January 16, 2015.

D. Analysis

[22] Under section 92, the Board may ask a person to provide additional information and specify the date the information must be provided. If a person files a Notice of Appeal without the required information or if it is unclear what the person is requesting, the Board will ask the person to provide the additional information. The response to such a request need not be filed before the deadline for filing the Notice of Appeal. However, the Board would require the response be filed within a reasonable time after the request for more information is made.

³ See: Section 92 of EPEA provides:

"Where the Board receives a notice of appeal, it may by written notice given to the person who submitted the notice of appeal require the submission of additional information specified in the written notice by the time specified in the written notice."

[23] Under Section 5 of the *Environmental Appeal Board Regulation*, Alta. Reg. 114/93 (the "Regulation"), a Notice of Appeal must contain specific information.⁴

[24] In her Notice of Appeal, the Appellant disagreed with the Amending Approval in its entirety and reserved her right to review the file before completing her Notice of Appeal. The Appellant also stated she was filing the Notice of Appeal under section 91 of EPEA, included the Director's name, signed the document, and provided an address for service. Essentially, all of the requirements of the Regulation had been included, although the description of the relief requested was not clearly stated. It can be easily inferred by her general statement that she opposed the Amending Approval in its entirety and that her desired remedy was to have the Board recommend the Amending Approval be reversed.

[25] Although the Board prefers more information, the detail in the Notice of Appeal was sufficient to consider it to be valid. As is its normal practice when it receives a Notice of Appeal with limited information, the Board would request the appellant to provide more specific information as to what they do not like in the Director's decision, how the decision impacts them personally, and the relief requested.

[26] The Board recognizes that when an unrepresented appellant files a Notice of Appeal, the information provided may not be as thorough as what the Board or the other parties may want. However, if the information is sufficient to determine the general concerns and the decision being appealed, the Board will accept it as a Notice of Appeal and then ask for further details if necessary. At the time the Appellant filed this Notice of Appeal, she was unrepresented.

[27] The Board denies the Director's motion to dismiss the Appellant's Notice of Appeal with respect to Amending Approval No. 1242-02-05.

⁴ Section 5(1) of the Regulation states:

"A notice of appeal submitted pursuant to section 91 of the Act shall contain the following:

- (a) the provision of the Act under which the notice of appeal is submitted;
- (b) the name and title of the person whose decision is the subject of the notice of appeal and the details of the decision being appealed;
- (c) a description of the relief requested by the person appealing;
- (d) the signature of the person appealing, or the person's lawyer or other agent;
- (e) an address for service for the person appealing."

[28] The Director anticipated the Record would be provided by January 16, 2015. Therefore, pursuant to section 92 of EPEA, the Board directed the Appellant to provide a more complete Notice of Appeal by noon on February 6, 2015.

IV. Conclusion

[29] The Board denied the Director's request to dismiss the appeal of Amending Approval No. 1242-02-05. The Appellant was granted until February 6, 2015, to provide the additional information in her Notice of Appeal.

Dated on May 13, 2016, at Edmonton, Alberta

"original signed by"
Alex MacWilliam
Board Chair