

ALBERTA ENVIRONMENTAL APPEALS BOARD

DECISION

Date of Decision – March 31, 2016

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 appeals filed by Matt Walls and Viviane Desrochers, Jessica and Marty Hughes, and Douglas Lindskog with respect to *Water Act* Licence No. 00349862-00-00 and *Water Act* Approval No. 0034685-00-00 issued to Aurora Cannabis Enterprises Inc. by the Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks.

Cite as: *Walls et al. v. Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks, re: Aurora Cannabis Enterprises Inc.* (31 March 2016), Appeal Nos. 15-022-026-ID1 (A.E.A.B.).

BEFORE:

Mr. Alex MacWilliam, Board Chair.

PARTICIPANTS:

Appellants:

Mr. Matt Walls and Ms. Viviane Desrochers, Ms. Jessica and Mr. Marty Hughes, and Mr. Douglas Lindskog.

Approval Holder:

Aurora Cannabis Enterprises Inc.

Director:

Mr. Todd Aasen, Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks, represented by Ms. Jodi Hierlmeier, Alberta Justice and Solicitor General.

EXECUTIVE SUMMARY

Alberta Environment and Parks (AEP) issued a *Water Act* Approval and a *Water Act* Licence to Aurora Cannabis Enterprises Inc. (Aurora) on August 26, 2015.

Mr. Matt Walls' and Ms. Viviane Desrochers' appeals of the Licence and Approval were received by the Board on September 17, 2015. Ms. Jessica and Mr. Marty Hughes' appeals of the Approval and Licence and Mr. Douglas Lindskog's appeal of the Approval were received on September 25, 2015.

As the appeals of the Approval were filed outside the seven-day time limit provided in the *Water Act*, the Board requested the appellants provide reasons why the appeals were filed past the time limit and why an extension of time to appeal should be granted. The Board provided AEP and Aurora the opportunity to submit comments.

Upon review of the written submissions provided by the appellants, AEP, and Aurora, the Board denied the appellants' requests to file their appeals of the Approval after the legislated time limit. The appellants did not demonstrate that extenuating circumstances existed that prevented them from filing their Notices of Appeal in time and warranted an extension of the appeal period.

The Board dismissed the appeals of the *Water Act* Approval. The appeals of the *Water Act* Licence by Mr. Walls and Ms. Desrochers and Mr. and Ms. Hughes were filed within the 30-day time limit, and the Board will continue processing the appeals of the *Water Act* Licence.

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I. INTRODUCTION

[1] On August 26, 2015, the Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks (the “Director”) issued Licence No. 00349862-00-00 (the “Licence”) and Approval No. 0034685-00-00 (the “Approval”) under the *Water Act*, R.S.A. 2000, c. W-3, to Aurora Cannabis Enterprises Inc., (the “Approval Holder”).

[2] On September 17 and 25, 2015, respectively, the Environmental Appeals Board (the “Board”) received Notices of Appeal from Mr. Matt Walls and Ms. Viviane Desrochers and Ms. Jessica and Mr. Marty Hughes appealing the issuance of the Approval and Licence. Mr. Douglas Lindskog filed an appeal of the Approval on September 25, 2015.

[3] Under section 116(1)(ii) and 116(2) of the *Water Act*, a Notice of Appeal of an approval must be submitted to the Board not later than seven 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. The Board may extend this time period if it is of the opinion that there are sufficient grounds to do so. The appeals of the Approval filed by Mr. Matt Walls and Ms. Viviane Desrochers, Ms. Jessica and Mr. Marty Hughes, and Mr. Douglas Lindskog (collectively, the “Appellants”) were all filed past the legislated timeframe. The Board asked the Appellants to provide reasons why the appeals were filed late and why the Board should consider extending the appeal period. The Director and Approval Holder were also provided the opportunity to submit comments.

[4] The Board found there were no extenuating circumstances that warranted the extension of the appeal period. The Board dismissed all the appeals of the Approval. The appeals of the Licence by Mr. Walls and Ms. Desrochers and Mr. and Ms. Hughes were filed in time and will be considered by the Board.

II. BACKGROUND

[5] On August 26, 2015, the Director issued the Licence and Approval to the Approval Holder to operate a works and divert up to 285.0 cubic metres of water annually for industrial (office use) and to modify and construct a dugout with a capacity of more than 2500

cubic metres. The site is located in NE 20-30-04-W5M, near Cremona in Mountain View County.

[6] On September 17, 2015, the Board received a Notice of Appeal dated September 9, 2105, from Mr. Matt Walls and Ms. Viviane Desrochers, appealing the issuance of the Approval and Licence.

[7] On September 22, 2015, the Board wrote to Mr. Matt Walls and Ms. Viviane Desrochers, the Approval Holder, and the Director acknowledging receipt of the Notice of Appeal, and notifying the Approval Holder and the Director of the appeal.

[8] On September 25, 2015, the Board received a Notice of Appeal dated September 18, 2015, from Ms. Jessica and Mr. Marty Hughes appealing the issuance of the Approval and Licence. On the same date, the Board also received a Notice of Appeal dated September 18, 2015, from Mr. Douglas Lindskog appealing only the issuance of the Approval.

[9] On September 29, 2015, the Board wrote to Ms. Jessica and Mr. Marty Hughes, the Approval Holder, and the Director acknowledging receipt of the Notice of Appeal and notifying the Approval Holder and the Director of the appeal.

[10] On October 7, 2015, the Board acknowledged Mr. Douglas Lindskog's appeal. The Board asked Mr. Lindskog for additional information and to return a completed Notice of Appeal to the Board by October 16, 2015.

[11] The Approval was issued on August 26, 2015. Therefore, the Notices of Appeal in relation to the Approvals were filed outside of the seven-day time limit for filing a Notice of Appeal for an approval as prescribed in the *Water Act*. In accordance with its standard practice, the Board asked the Appellants to provide the Board with reasons why they should be allowed an extension of time to appeal the Approval and to explain why their appeals were filed outside the seven-day time limit.

[12] On October 12, 2015, Mr. Hughes provided an explanation as to why his appeal of the Approval was filed outside the seven-day time limit. The Board did not receive any additional information from Mr. Walls and Ms. Desrochers or Mr. Lindskog.

[13] On October 13, 2015, Mr. Lindskog provided the Board with his completed Notice of Appeal form respecting the Approval.

[14] On November 16, 2015, the Board notified the Appellants, Director, and Approval Holder (collectively, the “Participants”) that, after reviewing the Appellants’ comments with respect to the timing of the filing of their Notices of Appeal of the Approval, it would like to receive submissions from the Director. On November 17, 2015, the Board asked the Approval Holder to provide its submissions.

[15] On November 26, 2015, the Board received the Director’s response submission. The Approval Holder provided its response submission on December 1, 2015. The Board did not receive rebuttal submissions from the Appellants.

[16] On January 11, 2016, the Board notified the Participants that the appeals of the Approval were dismissed as they were not filed in time and that reasons would be provided at a later date. These are the Board’s reasons.

III. SUBMISSIONS

A. Appellants

[17] Mr. Walls and Ms. Desrochers commented the appeal period of seven days was unreasonably short.

[18] Mr. and Ms. Hughes explained they live in a rural area and must travel to Cremona to pick up their mail. They stated the Director’s decision letter would have arrived at their post office at the start of the September long weekend, and they were away at that time. They said the timing of the Director's letter did not allow them enough time to respond within the seven day appeal period. The Hughes questioned why a decision like this, involving large volumes of domestic water, would not warrant a registered letter, which would have resulted in a record as to who signed for it and when it was picked up.

[19] In his Notice of Appeal, Mr. Lindskog stated he travels frequently for business and personal reasons and was unable to check his mail every day or week. He noted the timing for filing a Notice of Appeal was unreasonably short.

B. Director

[20] The Director argued the appeals of the Approval should be dismissed because they were filed outside of the legislated timeframe, and the Appellants did not show extenuating circumstances that prevented them from filing within the legislated timeframe.

[21] The Director explained he notified the Appellants with a Notice of Decision letter dated August 26, 2015, and mailed on August 27, 2015. The Director stated the appeal period should run from the date the letters were received or were deemed received under the *Interpretation Act*.¹

[22] The Director noted that, even though Mr. Hughes suggested the Notice of Decision should have been sent via registered mail, section 13 of the *Water (Ministerial) Regulation*, Alta. Reg. 205/1998, gives the Director discretion to provide notice in any form he considers appropriate, including providing notice by regular mail.

[23] The Director noted Mr. Walls and Ms. Desrochers and Mr. and Ms. Hughes did not say when they received the decision letter. The Director explained that, under the *Interpretation Act*, R.S.A. 2000, c. I-8, if the document was mailed, it is assumed the document is delivered within seven days, which would be September 3, 2015. The Director said that, based on this, the latest the Board could accept an appeal would be September 10, 2015.

[24] The Director noted the Board received Mr. Walls' and Ms. Desrochers' Notice of Appeal on September 15, 2015, which was outside the legislative timeframe. The Director noted Mr. Walls and Ms. Desrochers did not provide any reasons to extend the appeal period and explain why their appeal was filed late. The Director stated they did not meet their onus of showing special or extenuating circumstances and, therefore, their appeal should be dismissed.

¹ Section 23(1)(a) of the *Interpretation Act* provides:

“If an enactment authorizes or requires a document to be sent, given or served by mail and the document is properly addressed and sent by prepaid mail other than double registered or certified mail, unless the contrary is proved the service shall be presumed to be effected

(a) 7 days from the date of mailing if the document is mailed in Alberta to an address in Alberta...”

[25] The Director noted Mr. and Ms. Hughes indicated they were away the September long weekend and did not pick up their mail. The Director said that, if the Hughes picked up their mail after the long weekend, on September 8, 2015, then the latest the Board could accept their appeal was September 15, 2015. The Director noted the Board received their appeal on September 23, 2015, which was outside the legislated timeframe.

[26] The Director stated the Appellants have a responsibility to respond promptly to ensure they maintain their appeal rights. The Director noted the decision letter clearly stated the appeal period for the *Water Act* Approval was seven days. The Director submitted the Hughes did not show special or extenuating circumstances which prevented them from filing their appeal within the legislated timeframe.

[27] The Director noted Mr. Lindskog received the decision letter on September 16, 2015, so the latest the Board could accept his appeal was September 23, 2015. The Director stated the Board received Mr. Lindskog's appeal on September 25, 2015, which was outside the legislative timeframe.

[28] The Director noted Mr. Lindskog travels for business and personal reasons and was unable to check his mail every day or week. The Director submitted Mr. Lindskog did not show special or extenuating circumstances which prevented him from filing his appeal within the legislated timeframe.

C. Approval Holder

[29] The Approval Holder agreed with the Director's submission.

IV. ANALYSIS

[30] In considering the Appellants' 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 time limits for filing a Notice of Appeal with the Board, are dealt with. Sections 116(1) and 116(2) of the *Water Act* state:

“(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.”

[31] The issues before the Board are to determine whether the appeals of the Approval were filed late and, if so, whether there are sufficient grounds to cause the Board to exercise its discretion under section 116(2) to extend the seven-day period for the Notices of Appeal filed with respect to the Approval.

[32] As stated in previous decisions,² the Board considers certainty as a cornerstone to the appeal process. By having set time limits in which to file a Notice of Appeal, the participants involved will know when the process is complete. The time limits included in the legislation, and the certainty they create, balance the interests of all participants in the regulatory process. If no time limits were placed on the filing of an appeal, the recipient of 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 variations to, or the reversal of, the approval. Although the approval holder can proceed with its project when the approval is issued, it is when the appeal period has expired that the approval holder is then assured the terms and conditions in the approval will not change as a result of an appeal.

[33] Therefore, the Board is generally reluctant to allow extensions to file a Notice of Appeal except under exceptional circumstances. Unless an appellant can demonstrate there were exceptional circumstances that resulted in its notice of appeal being filed late, the Board will generally not exercise its discretion to extend the time limit.

² See: *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.); *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.); and *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.).

[34] As in the *Biggart* case, where the appellant did not provide sufficient reasons to justify allowing an extension of the appeal period, the Board commonly dismisses late-filed appeals, because allowing an extension of time to appeal without extenuating circumstances would promote uncertainty.

[35] Mr. Walls and Ms. Desrochers did not specify the date they received notice of the Director's decision. Based on the *Interpretation Act*, it is assumed they would have received the notice seven days after it was mailed, being September 2, 2015. The appeal period would thus have expired on September 9, 2015. The Board did not receive Mr. Walls' and Ms. Desrochers' Notice of Appeal until September 17, 2015, eight days after the appeal period expired. The Board asked the Appellants to explain why their appeal was filed late and why the appeal period should be extended. They did not provide a response. Without an explanation that demonstrated extenuating circumstances, the Board will not extend the appeal period. Therefore, the Board dismisses the appeal of the Approval filed by Mr. Walls and Ms. Desrochers.

[36] Turning to the Notice of Appeal filed by Mr. and Ms. Hughes, these Appellants stated they received the notice of the decision after the long weekend in September 2015 (Labour Day fell on September 7, 2015). If the Board assumes Mr. and Ms. Hughes picked up the notice on September 8, 2015, then the appeal period ended on September 15, 2015. Mr. and Ms. Hughes did not indicate the notice was received any later than September 8, 2015. Their Notice of Appeal was received by the Board on September 25, 2015, 10 days after the appeal period expired. They did not provide any information that indicated extenuating circumstances prevented them from filing their Notice of Appeal within the legislated timeframe. Therefore, the Board dismisses the appeal of the Approval filed by Mr. and Ms. Hughes.

[37] Mr. Lindskog stated he received notice of the Director's decision on September 16, 2015. The legislation states the appeal period starts at the time the person receives notice of the decision that is appealed from or the last provision of notice of the decision that is appealed from. Although the postmark indicates Mr. Lindskog sent his Notice of Appeal on September 21, 2015, the legislation requires the Notice of Appeal must be submitted to the Board by the legislated timeframe, not just mailed. The Board received Mr. Lindskog's Notice of Appeal on September 25, 2015. Although it was only two days late, the Board needed some indication of extenuating circumstances to warrant the extension. Mr. Lindskog did not provide an

explanation or reason to justify an extension of time to file his Notice of Appeal. Therefore, the Board dismisses Mr. Lindskog's appeal.

[38] The Board understands the Approval and Licence relate to the same project, but this does not alter the fact the legislation prescribes differing time limits for filing appeals under the *Water Act*.

[39] The Board notes the concerns expressed by the Appellants as to the very short timeframe prescribed by the Legislature in which to file a Notice of Appeal of a *Water Act* approval. The Board acknowledges the seven-day appeal period in section 116(1)(a) of the *Water Act* provides a short time within which a directly affected person must file a Notice of Appeal. However, in this case, the Director clearly stated in his Notice of Decision letter that the appeal period for an approval under the *Water Act* is seven days.³ The Appellants, therefore, were aware of the short appeal period. The Board commends the Director for clearly indicating this in the decision letter to eliminate any uncertainty for potential appellants regarding the appeal period.

[40] The onus is on the Appellants to demonstrate extenuating or special reasons for extending the appeal timeframe. Simply stating the legislated appeal period is too short is not sufficient.

[41] In summary, the *Water Act* requires a Notice of Appeal with respect to an approval to be filed no later than seven days after receipt of notice of the decision being appealed. Based on the evidence and the *Interpretation Act*, the Board determines that Mr. Walls and Ms. Desrochers, Mr. Hughes, and Mr. Lindskog received notice of the decision on September 2, September 8, and September 16, 2015, respectively. The respective appeal periods expired on September 9, September 15, and September 23, 2015. None of the Appellants submitted their Notice of Appeal to the Board within the required timeframe.

³ In the Director's Notice of Decision letter, he states:

"Please note, a notice of appeal for Licence 00349862-00-00 must be filed within 30 days and notice of appeal for Approval 00346855-00-00 must be filed within 7 days of receipt of the notice of decision."

See: Director's submission, dated November 23, 2015, Notice of Decision.

[42] The Board is of the view the Appellants did not provide any evidence or arguments of extenuating circumstances to provide sufficient grounds for the Board to extend the appeal period for the Approval. Therefore, the appeals of the Approval are dismissed.

V. CONCLUSION

[43] Upon review of the legislation and the written submissions from the Participants, the Board is of the opinion that the Appellants have not made a case to allow the Board to conclude there are sufficient grounds to warrant an extension of the statutory appeal period. Accordingly, the Appellants' Notices of Appeal are not valid and their appeals of the *Water Act* Approval (Appeal Nos. 15-023, 025, and 026) are dismissed.

[44] The appeals of the Licence (Appeal Nos. 15-022 and 024) issued under the *Water Act* were filed within the legislated timeframe, and the Board will continue processing these appeals.

Dated on March 31, 2016, at Edmonton, Alberta

"original signed by"

Alex MacWilliam
Board Chair