

ALBERTA
ENVIRONMENTAL APPEALS BOARD

DECISION

Date of Decision – June 21, 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 an appeal filed by Rely-On Ltd. with respect to *Water Act* Enforcement Order No. WA-EO-2015/08-LAR issued to Rely-On Ltd. by the Director, Lower Athabasca Region, Alberta Environment and Parks.

Cite as: *Rely-On Ltd v. Director, Lower Athabasca Region, Alberta Environment and Parks* (21 June 2016), Appeal No. 15-039-D (A.E.A.B.).

BEFORE:

Mr. Alex MacWilliam, Board Chair.

PARTICIPANTS:

Appellant:

Rely-On Ltd. represented by Mr. Ken Yadlowsky.

Director:

Mr. Neil Brad, Director, Lower Athabasca Region, Alberta Environment and Parks, represented by Mr. Darin Stepaniuk, Alberta Justice and Solicitor General.

EXECUTIVE SUMMARY

Alberta Environment and Parks (AEP) issued an Enforcement Order under the *Water Act* to Rely-On Ltd. on November 24, 2015, for allegedly conducting work in an un-named creek without an approval.

Rely-On Ltd.'s appeal of the Enforcement Order was received by the Board on February 3, 2016.

As the appeal of the Enforcement Order was filed outside the seven-day time limit provided in the *Water Act*, the Board requested Rely-On Ltd. provide reasons why the appeal was filed late and why an extension of time to appeal should be granted.

Following review of the written submission provided by Rely-On Ltd., the Board denied the request to file the appeal after the legislated time limit had expired. Rely-On Ltd. did not demonstrate that extenuating circumstances existed that prevented it from filing its Notice of Appeal in time or that warranted an extension of the appeal period.

The Board dismissed the appeal.

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I. INTRODUCTION

[1] On November 25, 2015, the Director, Lower Athabasca Region, Alberta Environment and Parks (the “Director”) issued Enforcement Order No. WA-EO-2015/08-LAR (the “Order”) under the *Water Act*, R.S.A. 2000, c. W-3, to Rely-On Ltd. (the “Appellant”). The Director issued the Order to the Appellant for allegedly conducting work in an un-named creek without an approval. The site is located in NE 20-30-04-W5M, near Lac La Biche in Lac La Biche County.

[2] On February 3, 2016, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from the Appellant appealing the issuance of the Order.

[3] Under section 116(1)(i) and 116(2) of the *Water Act*, a Notice of Appeal of an enforcement order 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 being appealed. The Board may extend this time period if it is of the opinion there are sufficient grounds to do so. The appeal of the Order was filed past the legislated timeframe. On February 5, 2016, the Board wrote to the Appellant asking it to provide reasons why the appeal was filed late and why the Board should consider extending the appeal period.

[4] On February 25, 2016, the Appellant provided additional information to explain why its appeal of the Order was filed outside the seven-day time limit.

[5] The Board found the Appellant did not demonstrate there were extenuating circumstances that warranted the extension of the appeal period.

[6] On March 10, 2016, the Board notified the Appellant and Director that the appeal was dismissed as it was not filed on time and that reasons would be provided at a later date. These are the Board’s reasons.

II. APPELLANT’S SUBMISSION

[7] The Appellant stated it received the Order on November 24, 2015, at a meeting with the Director. The Appellant said it was told there was a six-day limit to appeal, and the

Director was asked for an extension, but it was refused. The Appellant explained Mr. Yadlowsky, owner of Rely-On Ltd., left for El Salvador within two days of receiving the Order and did not have time to seek legal counsel or appeal the decision.

[8] The Appellant said it understood the Order to be a “working document,” not a legal enforcement order. The Appellant said it asked the Director’s staff questions and should have been provided with helpful answers. The Appellant said it did not intend to avoid rules and regulations and did not know it had stepped out of bounds.

[9] The Appellant stated that if clear directions had been provided at the beginning, it would have allowed it to finish clean-up of the site quickly and without incident. The Appellant said there were significant costs associated with fees for retaining consultants and interfering with development plans.

[10] The Appellant stated its willingness to attempt restoration near the lakeshore was met with opposition from the Director, and what was initially an issue of lack of permission became a more serious *Water Act* issue. The Appellant questioned why a non-compliance letter escalated to an enforcement order.

[11] The Appellant said it was initially told one thing by the Director’s staff, but that information later changed with no explanation provided. The Appellant stated that, at the first meeting with the Director’s staff, it was told there were no *Water Act* issues, yet the Director issued the Order under the *Water Act*. The Appellant said it was told the Director was going to explain everything at a meeting, but instead it was handed the Order.

[12] The Appellant explained that, at the meeting at which the Order was delivered, it told the Director it did not agree with some of the statements in the Order. The Appellant said it was told the Order was not a legal document and that the Director was trying to move ahead with resolving the issues. The Appellant said when it suggested it should consult a lawyer, the Director assured it the Order was not a legal document and the Order was just part of Alberta Environment and Park’s process. The Appellant said it objected to the timelines included in the Order because Mr. Yadlowsky was leaving for El Salvador in two days, a trip that was planned months prior. The Appellant said the Director told it the dates could be changed.

[13] The Appellant said when Mr. Yadlowsky returned from El Salvador, he contacted the consultant. The Appellant explained the consultant contacted the Director's staff and was advised they wanted a meeting before Christmas, but that was not possible.

[14] The Appellant said it finally met with the Director's staff on January 12, 2016, at which time the Director's staff stated the Order **was** a legally binding document, which came as a surprise to the Appellant. The Appellant said, had it been told this during the November 24, 2015 meeting, it would have terminated the meeting, sought legal advice, and immediately filed an appeal because there was something wrong in the way the issue was being handled.

[15] The Appellant explained it never intended to disrupt, disturb, or destroy any environmentally sensitive areas, and it was just cleaning up a mess and that it has complied with and continues to comply with the Director's instructions.

III. ANALYSIS

[16] In considering the Appellant's request for an extension of time to file its Notice of Appeal, the Board refers to sections 116(1)(i) and 116(2) of the *Water Act*. These sections provide that:

- “(1) A notice of appeal must be submitted to the Environmental Appeals Board
 - (a) not later than 7 days after
 - (i) receipt of a copy of a water management order or enforcement order...
- (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.”

[17] The issue before the Board is whether there are sufficient grounds to cause it to exercise its discretion under section 116(2) to extend the seven-day period for the Notice of Appeal filed with respect to the Order.

[18] 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.

[19] As in the previous Board decision in the *Biggart* case,¹ where the appellant did not provide sufficient reasons to justify allowing an extension of the appeal period, the Board commonly dismisses late-filed appeals.

[20] Enforcement orders are issued to ensure steps are taken to prevent or mitigate environmental impacts from occurring or continuing to occur from unauthorized activities.

[21] The *Water Act* requires a Notice of Appeal with respect to an enforcement order be filed no later than seven days after receipt of notice of the decision being appealed or the last provision of notice of the decision. Based on the evidence, the Appellant received notice of the decision, directly from the Director, on November 24, 2015. The appeal period expired on December 1, 2015. The Notice of Appeal was not filed until February 3, 2016, two months after the appeal period ended.

[22] The Director, at the November 24, 2015 meeting, told the Appellant there was a six-day appeal period. The Board notes it is actually a seven-day appeal period. Nonetheless, the Appellant was made aware of the short appeal period. Although the Appellant apparently asked the Director for an extension of the appeal period, the legislation dictates the appeal period. The legislation does, however, provide the Board with the ability to extend the appeal period. If a reasonable request providing suitable grounds is submitted to the Board, and providing it does not negatively impact the other parties or the environment, the Board has the jurisdiction under the legislation to extend the appeal period to file a Notice of Appeal.

[23] The Appellant should have notified the Board as soon as it received the Order if it intended to appeal. The Notice of Appeal could have been filed within the statutory time limit and, if the Board required additional information, it could have been provided when Mr. Yadlowsky returned from El Salvador.

[24] It is unclear from the Appellant's submission when Mr. Yadlowsky returned from El Salvador. It is stated Mr. Yadlowsky contacted the consultants after his return. It is also stated in the Appellant's submission the consultant contacted the Director's staff, who wanted to meet with the consultant prior to Christmas. This suggests Mr. Yadlowsky must have been back from El Salvador in December. The Notice of Appeal was not filed with the Board until

¹ See: *Biggart v. Director, Central Region, Regional Services, Alberta Environment re: Town of Innisfail* (24

February, and no reasons were provided at that time as to why it was being filed so long after the Order had been received.

[25] The Board acknowledges the Appellant's concerns as to how the issue was dealt with and the resulting confusion it had about the Order and whether it was a legal document. In the Board's opinion, this does not constitute exceptional circumstances that prevented the timely filing of the Notice of Appeal. The fact remains that, according to the Appellant, it was advised on the date it received the Order that, if it wished to appeal the Order, it had to do so within a matter of days.

[26] Based on the information before the Board, the Appellant did not provide a satisfactory explanation for failing to file the Notice of Appeal in time, and there was no indication that extenuating circumstances existed to provide sufficient grounds for the Board to extend the period for filing the Notice of Appeal. Therefore, the appeal is dismissed.

IV. CONCLUSION

[27] Upon review of the legislation and the written submission from the Appellant, the Board is of the opinion there are not sufficient grounds to warrant an extension of the statutory appeal period. Accordingly, the Appellant's Notice of Appeal is not valid and the appeal is dismissed.

Dated on June 21, 2016, at Edmonton, Alberta

"original signed by" _____
Alex MacWilliam
Board Chair