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# ALBERTA ENVIRONMENTAL APPEALS BOARD

## Decision

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Date of Decision – February 3, 2017

**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-**

**IN THE MATTER OF** an appeal filed by Terry's Lease Maintenance Ltd. with respect to Administrative Penalty No. EPEA-16/02-AP-RDNSR-16/03 issued pursuant to the *Environmental Protection and Enhancement Act* to Terry's Lease Maintenance Ltd. by the Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks.

Cite as: *Terry's Lease Maintenance Ltd. v. Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks*, (03 February 2017), Appeal No. 16-007-D (A.E.A.B).

**BEFORE:**

Mr. Alex MacWilliam, Board Chair.

**SUBMISSIONS BY:**

**Appellant:** Terry's Lease Maintenance Ltd., represented by Mr. Terry Somerville.

**Director:** Ms. Andrea Stenvig, Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks, represented by Ms. Jade Vo, Alberta Justice and Solicitor General.

## **EXECUTIVE SUMMARY**

On June 10, 2016, Alberta Environment and Parks (AEP) issued an Administrative Penalty under the *Environmental Protection and Enhancement Act* (EPEA) to Terry's Lease Maintenance Ltd. (Terry's Lease) for applying pesticides in a concentration exceeding the specified label directions. Terry's Lease appealed the Administrative Penalty on July 12, 2016.

The appeal of the Administrative Penalty was filed past the 30-day deadline stipulated in EPEA. The Environmental Appeals Board (the Board) asked Terry's Lease to provide reasons for filing its appeal past the prescribed time limit and why the Board should exercise its discretion to extend the deadline. Terry's Lease explained the reason for its late filing was that it needed additional time to fill in the Notice of Appeal completely and correctly.

Only in exceptional circumstances will the Board extend the time to file a Notice of Appeal. After reviewing Terry's Lease'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 Terry's Lease Maintenance Ltd. (the "Appellant").

[2] Alberta Environment and Parks ("AEP") issued Administrative Penalty No. EPEA-16/02-RDNSR-16/03 (the "Administrative Penalty") under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 ("EPEA") to the Appellant on June 10, 2016, for applying pesticides in a concentration exceeding the specified label directions.

[3] As the appeal was not filed within the 30-day appeal period required under EPEA, the Environmental Appeals Board (the "Board") asked the Appellant to provide reasons why the Board should exercise its discretion to extend the appeal period. On reviewing the reasons provided by the Appellant, the Board found there were no extenuating circumstances that warranted extending the appeal period.

[4] The Board dismissed the appeal of the Administrative Penalty.

## **II. BACKGROUND**

[5] On June 10, 2016, the Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks (the "Director"), issued the Administrative Penalty to the Appellant.

[6] On July 12, 2016, the Board received a Notice of Appeal from the Appellant.

[7] On July 28, 2016, the Director requested the Board consider whether the Notice of Appeal was submitted outside the 30-day statutory time limit.

[8] On July 27, 2016, the Board set the schedule to receive submissions from the Appellant and Director (the "Parties") on the matter of the filing of the Notice of Appeal. Submissions were received from the Parties between July 29, 2016 and August 31, 2016.

### **III. SUBMISSIONS**

#### **A. Appellant**

[9] The Appellant explained it provided notice to the Board by email on July 11, 2016, that it intended to appeal the Administrative Penalty. The Appellant said it followed up with the appropriate paperwork on July 12, 2016, and it was unaware that it was so in-depth and it did not want to miss any pertinent information.

#### **B. Director**

[10] The Director submitted an extension of time should not be allowed since the Appellant did not show special or extenuating circumstances that prevented him from filing the Notice of Appeal on time.

[11] The Director stated the time limit for filing a Notice of Appeal with respect to an administrative penalty is 30 days. The Director noted the Appellant indicated it received the Director's decision on June 10, 2016 and, based on this, the appeal period would run until July 11, 2016, given the 30-day period ended on Sunday, July 10, 2016. The Director said the Notice of Appeal was submitted on July 12, 2016, which was outside the legislated timeframe.

[12] The Director submitted the Appellant's notification to the Board of its intent to file an appeal did not meet the legislated requirements. The Director stated the July 11, 2016 email did not contain the necessary elements of a Notice of Appeal, such as the Director's decision being appealed, the provision of the legislation the appeal is filed under, and the relief requested.

[13] The Director stated the Appellant's inability to complete the Notice of Appeal within the legislated timeframe is not a special or extenuating circumstance.

[14] The Director submitted the Appellant's Notice of Appeal was submitted outside the legislated timeframe and the appeal period should not be extended.

**C. Appellant's Rebuttal Submission**

[15] The Appellant said the Director explained that it only had to make a phone call to the Board to appeal the Administrative Penalty. The Appellant stated that when it called the Board on July 8, 2016, it was informed there was more that had to be done. The Appellant said it sent an email "notice" to the Board on July 11, 2016, and followed it up with the appropriate paperwork on July 12, 2016. The Appellant said it was unaware of how in-depth the Notice of Appeal had to be and it did not want to miss any pertinent information. The Appellant stated it was also waiting to get final soil sampling data to allow it to determine whether it should proceed with an appeal, and the results of the soil sampling were received on July 11, 2016. The Appellant stated that, because the 30-day period ended on a Sunday, there should be some latitude for late filing.

**IV. ANALYSIS**

[16] Section 91(4) of EPEA prescribes the time periods for filing a Notice of Appeal.<sup>1</sup> The time period for an administrative penalty issued under EPEA is 30 days. The appeal period starts on the day immediately after the day notice of the decision was received.

[17] Section 91(5) of EPEA allows the Board to extend the appeal period if there are sufficient grounds to do so.<sup>2</sup>

[18] The onus is on the Appellant to provide sufficient reasons to allow the Board to conclude that it should extend the appeal period. To allow an extension of time, the Appellant must be able to show that extenuating or special circumstances existed that prevented it from filing within the legislated timeframe.

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<sup>1</sup> Section 91(4) of EPEA states:

"(4) A notice of appeal must be submitted to the Board

(c) not later than 30 days after receipt of notice of the decision appealed from or the last provision of notice of the decision appealed from, as the case may be, in any other case...."

<sup>2</sup> Section 91(5) of EPEA states:

"The Board may, on application made before or after the expiry of the appeal period referred to in subsection (4), extend that period, where the Board is of the opinion that there are sufficient grounds for doing so."

[19] The June 10, 2016 letter sent from the Director to the Appellant included the statement: “You do have the right to appeal my decision” and a copy of section 91 of EPEA was provided to the Appellant. Accordingly, the Appellant knew it had a right to appeal and that its right must be exercised within 30 days.

[20] As it has said in numerous prior decisions, the Board must comply with the legislation and will use its authority to extend an appeal period only in extenuating circumstances.<sup>3</sup> The time limits for filing an appeal were included in the legislation in order to provide a level of certainty in the appeal process and to balance the interests of all the parties. The Board cannot extend the appeal period without a valid reason for doing so.<sup>4</sup>

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<sup>3</sup> 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.); *Vissscher 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.).

<sup>4</sup> 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.);



[21] If, after receiving notice of the Administrative Penalty the Appellant had questions regarding the process involved in filing a Notice of Appeal, it could have contacted the Board for clarification long before the appeal period expired. Although the Appellant contacted the Board just three days before the end of the appeal period, this still would have been adequate time to submit a Notice of Appeal. If, following review of the Notice of Appeal the Board required more information, it would have asked the Appellant to provide this additional information.

[22] The Appellant stated one of the reasons for the delay was that it was waiting for soil sample results. This information could have been relevant to the substantive hearing, but it was not information the Appellant needed to file in Notice of Appeal. If the soil sampling results did not support the issues raised by the Appellant in its Notice of Appeal, the Appellant could have withdrawn its appeal at any time.

[23] One of the purposes of having statutory filing deadlines is to bring certainty to the regulatory process. Although the Director may not have been prejudiced by an appeal commenced one day after the deadline, the statutory requirements require the appeal be filed within 30 days of receipt of the notice of the Director's decision. The Director and the Board clearly advised the Appellant that there were time limits governing the appeal process.

[24] Even if a Notice of Appeal is submitted within a few days after the expiry of the time period, the Board will not exercise its discretion to extend the filing periods on that basis alone.<sup>5</sup> The potential appellant must demonstrate to the Board the existence of extenuating circumstances that prevented it from filing in time. The Appellant in this case took the time to notify the Board of its intent to submit an appeal, but did not actually file the Notice of Appeal until after the appeal period expired.

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*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.); and *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.).

<sup>5</sup> See: *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.), 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.).

[25] The Notice of Appeal was filed outside the time period, and the Appellant did not provide sufficient evidence to demonstrate extenuating circumstances existed that prevented it from filing its appeal on time. Therefore, the Board will not extend the appeal period, and the appeal is dismissed.

**V. DECISION**

[26] The Board finds the Notice of Appeal was not filed within the statutory time period and no extenuating or special circumstances exist that would warrant an extension of the appeal period. Therefore, the Board dismisses the appeal of the Administrative Penalty.

Dated on February 3, 2017, at Edmonton, Alberta

*"original signed by"*

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Alex MacWilliam  
Board Chair