

ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – October 27, 2004

IN THE MATTER OF sections 91, 92, 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 Barbara A. Higgins with respect to *Water Act* Approval No. 00205213-00-00 issued to Cardinal River Coals Ltd. by the Director, Central Region, Regional Services, Alberta Environment.

Cite as: *Higgins v. Director, Central Region, Regional Services, Alberta Environment re: Cardinal River Coals Ltd.* (27 October 2004), Appeal No. 04-053-D (A.E.A.B.).

BEFORE:

Dr. Frederick C. Fisher, Q.C., Chair.

SUBMISSIONS:

Appellant: Ms. Barbara A. Higgins.

Approval Holder: Cardinal River Coals Ltd., represented by Mr. Martin Ignasiak, Fraser Milner Casgrain LLP.

Director: Mr. Larry Williams, Central Region, Regional Services, Alberta Environment, represented by Mr. William McDonald, Alberta Justice.

EXECUTIVE SUMMARY

On July 29, 2004, the Director, Central Region, Regional Services, Alberta Environment, issued an Approval under the *Water Act* to Cardinal River Coals Ltd. for the placement, construction, operation, maintenance, and removal of works within the fenceline of the Cheviot Creek Pit for the purpose of the diversion and management of water, construction of rock drains and sedimentation facilities, and the development of an end-pit lake and fisheries enhancement ponds on a tributary of the McLeod River, near Hinton, Alberta.

On September 13, 2004, the Board received a Notice of Appeal from Ms. Barbara Higgins.

As the appeal was filed past the 7-day legislated time frame, the Board requested Ms. Higgins provide reasons why an extension should be granted.

After reviewing the response, the Board determined no special circumstances existed to warrant an extension to file the appeal. Therefore, the Board dismissed the appeal.

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I. BACKGROUND

[1] On July 29, 2004, the Director, Central Region, Regional Services, Alberta Environment, (the “Director”), issued Approval No. 00205213 (the “Approval”) under the *Water Act*, R.S.A. 2000, c. W-3, to Cardinal River Coals Ltd. (the “Approval Holder”) for the placement, construction, operation, maintenance, and removal of works within the fenceline of the Cheviot Creek Pit for the purpose of the diversion and management of water, construction of rock drains and sedimentation facilities, and the development of an end-pit lake and fisheries enhancement ponds on a tributary of the McLeod River, near Hinton, Alberta.

[2] On September 3, 2004, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Ms. Barbara A. Higgins (the “Appellant”) appealing the Approval.

[3] On September 8, 2004, the Board wrote to the Appellant, Approval Holder, and Director (collectively the “Parties”) acknowledging receipt of the Notice of Appeal and notifying the Approval Holder and Director of the appeal. The Board requested the Appellant advise the Board if she wished to request an extension of time to appeal the Director’s decision, as the normal time limit prescribed in the *Water Act* for filing such an appeal is seven days.

[4] According to standard practice, the Board wrote to the Natural Resources Conservation Board (the “NRCB”) and the Alberta Energy and Utilities Board (the “AEUB”) asking whether this matter had been the subject of a hearing or review under their respective legislation. The NRCB responded in the negative.

[5] The AEUB stated it had not dealt with the specific appeal, but it “...did receive an application for the construction and operation of the Cheviot Coal Mine and Processing Plant from Cardinal River Coals Ltd. The [A]EUB along with the Canadian Environmental Assessment Agency held two joint hearings in 1997 and 2000 into the application.” The AEUB provided a copy of Decision 97-08, Decision 2000-59, and Permit No. C2003-4.

[6] On September 17, 2004, the Appellant wrote to the Board, explaining:

“It was a simple mistake on my part. In my haste to study the decision and compile an appeal, I inadvertently missed the difference in time limit for Water Act appeals.

I ask the Board to please overlook my gaffe and consider my Appeal as submitted.”

[7] On September 22, 2004, the Board notified the Parties that it had decided to dismiss the appeal.

[8] The following are the Board’s reasons.

II. ANALYSIS

[9] The legislation has provided the Board with some flexibility to allow for late filed appeals in certain circumstances, but the Board uses this authority in only limited situations.¹ The onus is on the Appellant to demonstrate to the Board the time limit should be extended to allow the appeal.

[10] Section 116 of the *Water Act* stipulates the timeframe in which a notice of appeal must be filed. It states:

¹ See: 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.); *Rew v. Director, Central Region, Regional Services, Alberta Environment re: Capstone Energy* (30 October 2003), Appeal No. 03-009-D (A.E.A.B.); *Talisman Energy Inc. v. Director, Central Region, Regional Services, Alberta Environment* (23 August 2004), Appeal No. 04-018-D (A.E.A.B.).

“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, or
 - (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,
- or
- (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.”

In this case, section 116(1)(a), the 7-day time limit, is the applicable provision.

[11] The Appellant submitted her Notice of Appeal approximately five weeks after the Director issued the Approval, over a month past the legislated timeframe.

[12] The Board examined whether the Appellant had provided 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 her from filing within the legislated timeframe.

[13] The Board appreciates the honesty of the Appellant, as she acknowledged it was her oversight that resulted in her missing the deadline. Although the Board understands the possibility of confusion resulting from the various timeframes provided for in the *Water Act* and the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, to file an appeal, it is still the responsibility of those wanting to participate in the Board’s process to file their Notice of Appeal within the specified timeframe and to become familiar with the Board’s process.

[14] The Appellant has not provided the Board with evidence of the special circumstances required to grant an extension of time to file an appeal, and the appeal must therefore be dismissed.

III. CONCLUSION

[15] The Board finds the statutory prerequisites for filing a Notice of Appeal have not been met, as the appeal was filed out of time and no special circumstances exist to extend the appeal deadline. Therefore, pursuant to section 95(5) of the *Environmental Protection and Enhancement Act*, and for the foregoing reasons, the Board dismisses the appeal of Ms. Barbara Higgins for not being properly before the Board.

Dated on October 27, 2004, at Edmonton, Alberta.

“original signed by”

Dr. Frederick C. Fisher, Q.C.
Chair