

**1994 ABEAB 10**

**Appeal No. 94-005**

December 8, 1994

Mr. Darryl Sawatzky  
Box 1476  
Lac La Biche, Alberta  
T0A 2C0

Dear Mr. Sawatzky:

**Re: Universal Beverage Container Depot  
Lac La Biche, Alberta  
Application No. BC 94-0021**

**Our File No. EAB 94-005**

On October 27, 1994, we wrote to Mr. William McDonald of Alberta Justice and provided a copy to you. In that letter the Board requested notification from you within thirty days to continue your appeal of the refusal of your application to operate a beverage container depot in Lac La Biche.

In view of the fact that the Board has had no response of any kind from you, we have dismissed your appeal and closed this file.

Yours truly,

W. A. Tilleman  
Chair

cc: Mr. William McDonald  
Environmental Law Section  
Alberta Justice

October 27, 1994

Mr. William McDonald  
Environmental Law Section  
Alberta Justice  
7th Floor, Oxbridge Place  
9820 - 106 Street  
Edmonton, Alberta T5K 2J6

Dear Mr. McDonald:

**Re: Universal Beverage Container Depot  
Lac La Biche, Alberta  
Application No. BC 94-0021**

**Our File No. EAB 94-005**

The Board acknowledges receipt of the Director's decision dated October 13, 1994 and Approval No. 94-BCD-028 with the completed Consent to Transfer of Approval form that was sent to Mr. James Young.

By copying this letter to Mr. Sawatzky, the Board is notifying him that he has 30 days from the receipt of this letter to continue his appeal regarding any objections he may have to the amended Deschambeau approval and/or the transfer of the amended Deschambeau approval to Mr. Young.

If Mr. Sawatzky does not respond within 30 days after receiving this letter, the Board will dismiss his appeal and close its file.

In order that the Board can properly diarize the limitation period for an appeal by any person who may be directly affected by the Director's decisions, please provide the Board with the dates that the Director gave public notice of his decision to amend the Deschambeau approval and of his decision to transfer the amended Deschambeau approval to Mr. Young. If no appeals are received within that time period, the Board will close its file regarding Application No. BC 94-0021.

If either you or Mr. Sawatzky require further information or clarification, please feel free to call me at 427-6207. Mr. Sawatzky may call toll-free dialing 310-0000.

Sincerely,

A. W. Anderson  
Executive Director

cc: Mr. Darryl Sawatzky

September 20, 1994

Dr. Bruce W. Taylor, Director  
Action on Waste Division  
Alberta Environmental Protection  
c/o Mr. William McDonald  
Environmental Law Section  
Alberta Justice  
14th Floor, 9820 - 106 Street  
Edmonton, Alberta  
T5K 2J6

Mr. Darryl Sawatzky  
Box 1476  
Lac La Biche, Alberta  
T0A 2C0

**Re: Appeal No. EAB 94-005**

**ADJOURNMENT OF APPEAL**

Introduction

Mr. Darryl Sawatzky (the “appellant”) appeals to this Board against a letter of rejection issued by Dr. Bruce W. Taylor (the “Director”) from the Action on Waste Division, Alberta Environmental Protection. The director’s letter of rejection followed an unsuccessful application submitted in April of 1994 by the appellant to operate a beverage container depot in Lac La Biche, Alberta. On July 5, 1994, the appellant appealed the Directors’ refusal of his application to this Board.

There appears to be no dispute as to the surrounding facts underlying the appellant’s application. Originally, on October 2, 1975, Ms. Alvina Deschambeau submitted an application, and received approval from D. J. Russell (then Minister of Environment) to operate a depot in Lac La Biche. In Mr. Russell’s approval letter, dated November 3, 1975, he stated, among other things, that the approval “[was] not transferable as to owner or location, and any changes as such require a new application to this Department”. This approval granted by Minister Russell had no expiry date. However, when the *Environmental Protection and Enhancement Act* (the “Act”) came into effect on September 1, 1993, s. 243(6) of the Act (transitional provisions) automatically deemed the expiry date to be August 31, 1998. According to the Department, Ms. Deschambeau (the “approval holder”) continues to hold the approval to operate a beverage container depot in Lac La Biche.

Commencing in 1992, several complaints were filed against the current approval holder. These complaints related essentially to the closure of the depot, due either to medical reasons (of the approval holder) or insufficient funds. Because of these complaints, the Department informed the approval holder of the need to comply with the terms of the legislation governing the approval. More significantly, the Department recently commenced enforcement action against the approval holder. Indeed, due to closure of the depot in the spring of 1994 for approximately 7 weeks, the Department immediately convened an investigation but will not release the contents of that investigation.<sup>1</sup>

The approval holder advertised the business for sale which resulted in the filing of applications by interested third parties. Eight applications were received by the Director in April and May of this year (including one from the appellant) to operate a beverage container depot in Lac La Biche. Additionally, a request to transfer the current approval and an 'Offer for Sale' is currently in the hands of the Director. Yet, the Director is holding approval of the transfer<sup>2</sup> in abeyance until our Board decides this current appeal by Mr. Sawatzky.

Evidence provided to the Board supports the appellant's claims (a) that the existing facility has problems, (b) that it was closed for a period of time, (c) that the approval holder tried to sell the business this spring, and (d) that Mr. James Young either purchased the business or had it transferred to him in some way. All of this happened notwithstanding (1) that the Act prohibits anyone from transferring, or otherwise disposing of an approval without permission<sup>3</sup>, (2) that the regulations also prohibit such a transfer without the *prior written consent* of the Director<sup>4</sup>, which did not happen, or (3) that special terms can be imposed by the Director regarding the transfer or disposition of any current approval<sup>5</sup>, which, again, did not happen.<sup>6</sup>

## Jurisdiction and Findings

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<sup>1</sup>The Board makes no comment at this time regarding: (1) the effect of the *Public Inquiries Act* (RSA 1980 c. p-29) which gives the Board the general investigative powers of a commissioner which, subject only to the certification of the Attorney General, overrides the statutory exemption relied upon by the Director, (2) the board wording of s. 33(9) which not only ties the Minister's hands in releasing certain public information (s. 33(3)) but also makes redundant certain sections of the Act (eg. ss. 33(1)(b)(viii)(ix), or (3) the Department's assumption that the Board is a member of the "public" to whom information cannot be released under s. 33(9). Certainly, there may sometimes be valid policy reasons for withholding investigation material, but the existence and effect of such a broad exemption during appeal proceedings (where the investigation is in issue) leaves questions in the mind of the Board.

<sup>2</sup> On April 24, 1994, the Director received an application from James Young (now operating as Big Jim's Bottle Depot). According to his application, the official date of his *assuming* ownership was June 15, 1994.

<sup>3</sup> Section 72(1).

<sup>4</sup> Section II of the Approvals Procedure Regulation, Alta. Reg. 113/93.

<sup>5</sup> Section 72(2)

<sup>6</sup> Indeed, as recently as August 3, 1994, the Director told Mr. James Young that his transfer proposal is still *incomplete*.

This Board has jurisdiction to consider the appeal pursuant to s. 84(1)(b) of the Act:

84(1) A notice of objection may be submitted to the Board by the following persons in the following circumstances: ...

- (b) *where the Director refuses to issue an approval or to make an amendment, addition or deletion pursuant to an application under section 67(1)(a), the applicant may submit a notice of objection. [emphasis added]*

Based on the evidence filed with the Board at this time, the Board finds the Director refused to accept Mr. Sawatzky's application, but he did so without resolving other issues that were important to his legal jurisdiction.

The Board believes that the Director's decision is based on patent error. He refused Mr. Sawatzky's application on the grounds that there was an existing facility within 24 km. However, from a legal perspective, the approval to run the existing facility was neither clearly in the hands of the original approval holder or the *de facto* transferee. The Director has refused to rule on the transfer application and its legality. This puts into question whether there is an existing approval at all -- so one cannot know whether the Director's reason for refusing Mr. Sawatzky's application is valid in fact.

Therefore, the Board does not know if the refusal of Mr. Sawatzky's application was -- or is -- valid. The Board is adjourning these proceedings until October 24, 1994, as it has legal difficulty with the *status quo* of the existing facility. The Board is now asking the Director, who is the primary decision maker under the Act, to exercise his discretion properly in light of all of the circumstances. The Board reminds the Director of the key responsibilities which the Act places on the Director, and while he does have discretion in this matter, he cannot act piecemeal in making his decisions.

The Board requires the Director to inform it and Mr. Sawatzky about the actions which the Director has taken, within the time limit specified above, to exercise his discretion properly. If the Director does so, then the Board will await any appeal that may or may not come to it in due course. If he has not done so, then the Board will report to the Minister under section 91 of the Act.

This decision is issued on behalf of the unanimous Board on September 20, 1994.

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William A. Tilleman, Chair