

ALBERTA ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

Date of Discontinuance - September 24, 1996

IN THE MATTER OF Sections 84, 85, 86 and 87 of the
Environmental Protection and Enhancement Act, (S.A. 1992, ch. E-
13.3 as amended);

-and-

IN THE MATTER OF an appeal filed by Nick Zon with respect to
Approval No.'s 18528-00-00 and 9830-01-00 issued by the Director
of Air and Water Approvals, Alberta Environmental Protection to
TransAlta Utilities Ltd. and the letter of September 24, 1996 from the
Board hereby discontinuing its proceedings in this matter and closing
its file pursuant to section 87(7) of the *Environmental Protection and
Enhancement Act*.

Cite as: **Nick Zon v. Director of Air and Water Approvals, Alberta**

Environmental Protection

BACKGROUND

On July 19, 1996, Nick Zon filed a Notice of Appeal to the Environmental Appeal Board with respect to Approval No.'s 18528-00-00 and 9830-01-00 issued by the Director of Air and Water Approvals to TransAlta Utilities Ltd. Approval 18528-00-00 is for the construction and operation of a Class III potable water treatment plant constructed on the Sundance power plant site at the NW 1/4 Sec 20-52-4-W5M for the purpose of off-setting TransAlta's impact on water levels in Wabamun Lake and providing potable water. Approval 9830-01-00 is for the Sundance thermal electric power plant.

On July 8, 1996, the Board had requested, in relation to EAB file 96-018, the Alberta Energy and Utilities Board (AEUB) and the Natural Resources Conservation Board (NRCB) both advise whether the matter was the subject of a public hearing or review under either of their Boards. As indicated on July 22, 1996, the AEUB and on July 17, 1996, the NRCB both advised that this appeal did not deal with a matter that had been the subject of any hearing or review under their Boards.

On July 19, 1996, the Board wrote to the Department of Environmental Protection requesting all related correspondence, documents and materials. In response to the Board's letter of July 19, 1996, William McDonald, solicitor for the Department of Environmental Protection, stated in a letter dated July 19, 1996:

“Mr. Zon did submit a Statement of Concern with respect to the above noted two approvals and was advised of the Director's decision by letters dated May 31 of the approval for the generating plant, being application 002-9830, and June 3, 1996 of the approval for the treatment plant, being application 001-18528. Notwithstanding the date of May 31, 1996, it is possible that this letter was in fact posted on June 3, 1996.”

Mr. McDonald went on to state:

“Section 22.1 of the *Interpretation Act* indicates that a document is presumed to have been served 7 days from the date of mailing. This means that the time period referred to in s.84(4)(c) would have expired on July 9, 1996. As it appears that this Notice of Objection is filed out of time, it is our submission that it should be dismissed.”

On August 12, 1996, the Board requested comments from Nick Zon on the following matters:

1. Explain how you are “directly affected” by the decision issued by the Director in the above noted approval.
2. Explain in more detail the environmental concerns you have with the decision issued by the Director in the above noted approval.
3. Please advise of your location in conjunction with that of the treatment plant. If you are able to provide a map highlighting your location, this would be appreciated.

In addition, the Board asked the solicitor for the Department of Environmental Protection and Nick Zon if it decides to proceed with this appeal, do they wish to have a pre-hearing meeting and if so, what would they contemplate to be the agenda for that meeting.

On August 19, 1996, the Board received a response from Richard Secord, counsel for Nick Zon, and on August 15th from Ray Bodnarek, counsel for the Department of Environmental Protection, responding to the Board’s questions in the letter of August 12, 1996. Mr. Bodnarek reiterated William McDonald’s comments on the fact that the appeal had been filed beyond the statutory 30 day time limit and asking the Board to consider whether there are sufficient grounds to extend the time period with respect to Mr. Zon’s appeal.

On August 20, 1996, the Board wrote to Richard Secord requesting details of the date Mr. Zon received the Notice of Decision. On September 6, 1996, Richard Secord responded to this letter advising that:

1. The Paul Band received the Notice of Decision on June 6, 1996 (see EAB File #96-018).
2. In the event that Mr. Zon received the Notice of Decision on June 6, 1996, then his Notice of Objection which was filed on July 18, 1996, would have been out of time by 12 days.
3. In the event that the Notice of Decision was wrongly delivered to 9024-140 Street, then it is possible that Mr. Zon did not receive the Notice of Decision until two weeks later (approximately June 20, 1996), in which case Mr. Zon's Notice of Objection would have been filed in time.
4. Mr. Zon has already expended a great deal of time and expense to respond to the Board's letter of August 12, 1996 dealing with preliminary issues raised by the Board and in the circumstances it would be just and proper to extend the time period for the filing of Mr. Zon's Notice of Objection. This period in question would be at the most 12 days.

The Board responded to Mr. Secord in a letter dated September 11, 1996 advising it is unclear with regards to the comments on the mail, the service, and the effect of this service on Mr. Zon. The Board went on further to advise that without a positive assertion regarding the actual receipt of the Notice of the Decision, the Board is unable to extend the time period.

Mr. Secord stated in a letter dated September 13, 1996 to the Board:

"In a nutshell he does not know when he received the Notice of Decision and it cannot be assumed that he received the Notice of Decision in the ordinary course of mail. As noted in our letter of September 6, 1996, the earliest possible date which we assume he could have received the Notice of Decision was on June 6, 1996."

Mr. Secord went on to state that he believed the Board has grounds to extend the time period for filing the Notice of Appeal as both the Approvals are lengthy, as there is no evidence of the date which Mr. Zon actually received the Notice of Decision, as the Notice of Decision was sent out during the summer holiday period, as stated in Section 2(g) of the Act, and as the issue of the timing of the Notice of Appeal was not raised with Mr. Zon until after the Board solicited and provided extensive submissions.

In a letter dated September 12, 1996, from William McDonald, he advised the Board that in his opinion the concerns that were raised by Mr. Zon almost exclusively relate to the water level of Lake Wabamun. The water level of Lake Wabamun is within the jurisdiction of the *Water Resources Act* of Alberta and not the *Environmental Protection and Enhancement Act*. These concerns are not addressed within the terms of the Approvals that were issued and therefore fall outside the Board's jurisdiction. On a final note, Mr. McDonald requested the Board to not exercise its discretion under section 84(5) of the *Environmental Protection and Enhancement Act* in this case.

On September 13, 1996, Jeff Nish of TransAlta Utilities Corporation, advised that during a telephone conversation with Mr. Zon in early June, he invited Mr. Zon to a June 13, 1996, meeting of the Wabamun Lake Task Group, of which he was a member. At the meeting copies of the approval were made available to everyone in attendance, however, Mr. Zon did not attend the meeting.

The Board requested comments on September 18, 1996, from Richard Secord on the contents of the letters dated September 12, 1996, from William McDonald and September 13, 1996, from Jeff Nish. Mr. Secord responded to this letter and in summary stated:

“The issue here, however, is when Mr. Zon received notice that he had thirty days in which to file a Notice of Objection with respect to Approval No. 18528-00-00 and

Approval No. 9830-01-00.”

After considering all the submissions, the Board issued a letter dated September 24, 1996, to all the parties, stating that the respondents object that the appeal was filed outside the Act’s statutory appeal period, that the presumed date and receipt of the notice is June 10, 1996, and that Mr. Zon requested the Board exercise the power under section 84(5). The Board, in closing, stated:

“Nothing in Mr. Zon’s materials explain why no steps were taken to begin this appeal in a timely manner under the Act. Despite speculation about what might have delayed receipt of the approvals, nothing is offered to explain the inaction once he knew about the approval except that he might have been intermittently on holidays. The Board is not persuaded that there are sufficient grounds for granting the requested extension, particularly in light of the fact that the matter in question appears to reside primarily under the *Water Resources Act*.”

DECISION

The appeal is therefore dismissed.

Dated on September 24, 1996, at Edmonton, Alberta.

William A. Tilleman, Chair