

ALBERTA
ENVIRONMENTAL APPEAL BOARD

DECISION

Date of Decision: October 7, 1998

IN THE MATTER OF Section 84, 85 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 Mr. Donald Jordan with respect to Approval No. 1104-01-00 issued by the Regional Director, Parkland Region, Alberta Environmental Protection on May 12, 1998, to the Mayor of the Town of Rimbey.

Cite as: Jordan v. Regional Director of Parkland Region, Alberta Environmental Protection
re: Town of Rimbey.

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BACKGROUND

[1] This appeal concerns Approval 1104-01-00, issued to the Mayor of the Town of Rimbey (Approval Holder) for the operation of two Class I wastewater treatment plants (wastewater stabilization ponds and aerated stabilization ponds), a Class II wastewater collection system and a storm drainage system for the Town of Rimbey (Approval). The Approval was issued on May 12, 1998, by the Regional Director of Parkland Region, Alberta Environmental Protection (Director).

[2] On September 2, 1998, the Board advertised a mediation/hearing involving the same approval but a different appellant (Mr. Grumbach). That matter has subsequently been resolved.¹

[3] On September 24, 1998, roughly four months after the Director issued the Approval and three months after the close of the thirty-day period for filing appeals to this Board,² Mr. Pat Sinclair, Manager, Red Deer Division, Torchinsky Engineering Ltd. on behalf of Mr. Donald Jordan (Appellant) filed a Notice of Appeal with the Environmental Appeal Board (Board) of the Approval.

[4] Although the appeal was filed months after the 30-day filing deadline for appeals of this type in the *Environmental Protection and Enhancement Act* (the Act) the Notice of Appeal did not formally request that the Board exercise its discretion under section 84(5) of the Act to extend that deadline for the appeal.³

[5] On September 28, 1998, the Board wrote the Appellant a letter acknowledging its receipt of the appeal. Given that the Appellant did not formally request an extension of the filing deadline, the Board's letter asked the Appellant to provide comments as to why the Board should

¹ Mr. Grumbach filed an appeal dated June 11, 1998 (EAB appeal no. 98-235). A mediation meeting was held on September 30, 1998. The parties for this meeting were the Appellant, Mr. Edward W. Grumbach, the Department of Environmental Protection and the Town of Rimbey. A resolution of the appeal was reached and signed by all parties at the meeting. The Board issued its Report and Recommendations on October 1, 1998 and these recommendations were subsequently approved by the Minister of Environmental Protection on October 5, 1998.

² See section 84(4) of the *Alberta Environmental Protection and Enhancement Act* [the Act], Chap. E-13.3, as amended.

³ As relevant here, section 84(5) of the Act provides that the Board "may, on application made . . . after the expiry of the period referred to in subsection (4), extend that period, where the Board is of the opinion that there are sufficient grounds to do so."

proceed further based on the appeal being filed several months after the statutory time period. In other words, the Board wanted the Appellant to explain the late filing of the appeal.

[6] On September 30, 1998, the Board received a letter dated September 29, 1998, from Mr. Pat Sinclair on behalf of the Appellant, requesting that the Board proceed with the appeal. The letter also provided the following information:

“Mr. Jordan did not take the opportunity to review the local paper for the posted notification of the approval. Mr. Jordan, during the period of advertisement, was involved in mixed livestock and farming operations, that require a major time commitment on his behalf.

Prior to the completion of the lagoon Mr. Jordan has been involved in negotiations with the Town of Rimbey Administration, Mayor and Council regarding the encroachment of the berm on his private property, the placement of contaminated materials that exceeds the Alberta Tier I Criteria for Contaminated Soil Assessment and Remediation for both Sodium Absorption Ratio and Mineral Oil and Grease.

The berm as constructed will allow for erosion of undesirable materials onto Mr. Jordan’s cultivated land.

The contamination and berm have substantially reduced the real property value of Mr. Jordan’s land.

Should the Town of Rimbey and Mr. Jordan not be able to negotiate a settlement for encroachment and clean-up of the contamination, Mr. Jordan will request that all materials be removed from his property which would result in the reconstruction of a portion of the lagoon reducing the capacity and possibly the overall suitability of the system.

The Town of Rimbey, being fully aware of Mr. Jordan’s concerns regarding the encroachment and contamination issues should have notified Mr. Jordan directly prior to applying to operate the system.”

ISSUE TO BE CONSIDERED

[7] The issue to be considered in this appeal, as stated in section 84(4) of the Act, is whether Mr. Jordan has provided “sufficient grounds” to the Board to extend the normal 30 day filing period for appeals.

THE BOARD'S ANALYSIS

[8] Mr. Jordan’s appeal is late because he failed to read the notice in the local paper. The Board is reluctant to waive the deadline in the Act for the filing of this appeal based on that evidence. Significantly, Mr. Sinclair’s September 29, 1998 letter indicates that Mr. Jordan was aware of the project through his negotiations with the Town of Rimbey, the Mayor and Town Council. Given these negotiations, Mr. Jordan should have been fully aware of the relevant timelines and, indeed, was involved with the Town and the Mayor prior to the completion of the lagoon.

[9] If the Board ignored the filing deadline in this case due to Mr. Jordan’s inability to review the local paper, and for other reasons noted in Mr. Sinclair’s September 29, 1998 letter, the Board would have to ignore the deadline for many appeals in rural Alberta due to similar arguments. Yet, section 84(5) of the Act cannot reasonably be interpreted to suggest that the Legislature intended the section 84(4) appeal deadline to be ignored because people are busy. This is particularly true where the Appellant, who did not read the paper, was involved in discussions with the Approval Holder; Mr. Jordan only had to ask one of the parties with whom he was involved (e.g. the Mayor or Town officials) how to challenge the Approval if he had any doubts about it.

[10] And finally, it is important to note that the Board’s appeal procedure initiated by another Appellant, on the same Approval, has concluded.

[11] The Board does not mean to suggest that it will never grant extensions of the deadline for filing appeals, or even that it will extend the deadline in only “rare” or “unusual” circumstances. However, there must be “sufficient” reasons for an extension in a given case, and the Appellant has

failed to provide those reasons in this instance.

THE BOARD'S DECISION

[12] For the reasons stated above, the appeal is dismissed.

Dated on October 7, 1998, at Edmonton, Alberta

Dr. William A. Tilleman