
ALBERTA ENVIRONMENTAL APPEAL BOARD

Decision

Date of Decision – March 1, 2001

IN THE MATTER OF Sections 84, 85, and 87 of the *Environmental Protection and Enhancement Act*, S.A. 1992, c. E-13.3;

-and-

IN THE MATTER OF an appeal, filed by Mr. Jurgen Preugschas on May 26, 2000, with respect to Water Licences No. 00082554-00-00 and 000825613-00-00 issued under the *Water Act*, to Pigs R Us Inc., by the Director, Northern East Slopes Region, Alberta Environment.

Cite as: *Pigs R Us Inc. v. Director, Northern East Slopes Region, Alberta Environment.*

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BACKGROUND

[1] On May 1, 2000, the Director, Northern East Slopes Region, Alberta Environment (the “Director”) issued Licences 00082554-00-00 and 00082613-00-00 (the “Licences”) under the *Water Act*, S.A. 1996, c. W-3.5, to Pigs R Us Inc. (the “Appellant”), for the diversion of water subject to certain conditions.

[2] On May 26, 2000, the Board received a Notice of Appeal from the Appellant, appealing the conditions contained within the Licences. The Appellant indicated that some of the conditions “appear quite onerous and very difficult to achieve.” He also indicated that he had contacted the Director, in an attempt to resolve his concerns without having to proceed to a hearing.

[3] On June 19, 2000, the Board acknowledged receipt of the Notice of Appeal and requested additional information to supplement the appeal. The Board attached a Notice of Appeal form and requested that the completed form be returned to the Board by June 27, 2000. The Appellant requested additional time to complete the form and was requested to respond by July 11, 2000.

[4] On August 11, 2000, a further letter was sent to the Appellant by the Board requesting that the Appellant advise whether or not he intended to file the Notice of Appeal form as requested in the Board’s June 19, 2000 letter. The Board noted that an agreement was being pursued by the Appellant with the Director and asked for an update regarding the discussions. The Board set a deadline of August 21, 2000 for submission of the Notice of Appeal and indicated that if a response was not received, that “your notice of appeal will be considered incomplete and may be dismissed by the Board.”

[5] The Board left a telephone message for the Appellant on September 5, 2000 and sent a further letter on September 7, 2000 requesting again a completed Notice of Appeal form. A further deadline of September 11, 2000 was set for the receipt of the completed Notice of Appeal form. On September 8, 2000, a second Notice of Appeal form was faxed to the Appellant at his request. A brochure entitled "Filing an Appeal" was also faxed to the Appellant.

[6] On September 8, 2000, the Board received the completed Notice of Appeal form from the Appellant. The appeal was acknowledged and a copy was sent to the Director on September 14, 2000. On the same day, the Board wrote to the Appellant and asked him to confirm his intention to request that the appeal be held in abeyance based on telephone conversation he had with Board staff. The Appellant was asked to respond by September 15, 2000.

[7] A response was received by the Appellant on September 15, 2000 in which he requested that the appeal be held in abeyance until October 31, 2000 pending further discussions with the Director. The Board granted the request on September 15, 2000.

[8] The Director wrote to the Board on October 31, 2000 indicating that a meeting had been arranged between the Director and the Appellant for November 9 or 10, 2000 and requested that the appeal be placed in abeyance. The Board stated that it would "advise further once Mr. Preugschas' status report, due on October 31, 2000, has been received." The Board contacted the Appellant by telephone on November 6, 2000 and confirmed that the appeal would be placed in abeyance until November 14, 2000.

[9] The Director indicated to the Board in writing on November 9, 2000 that the meeting had been rescheduled to November 16, 2000 and that a status report would be provided on November 21, 2000.

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[10] On November 18, 2000, the Board received a fax from Mr. Roger Clissold of Hydrogeological Consultants Ltd. on behalf of the Appellant. In his fax, Mr. Clissold indicated he attended a meeting between the Appellant, and Department of Environment (the "Department") to resolve issues related to the Licences. Mr. Clissold indicated that he "... hoped that all of the issues can be addressed before 15 Dec 2000." The Director confirmed the meeting in a letter dated November 21, 2000 and requested that the appeal be placed in abeyance until December 1, 2000. The Board granted this request.

[11] The Board contacted the parties by telephone on December 5, 2000 and requested status reports by December 13, 2000. A letter was sent to the parties on December 11, 2000 confirming this request. On December 13, 2000, both the Appellant and the Director responded by indicating that discussions were continuing. In a letter dated December 19, 2000, the Board therefore requested parties to provide a status report on or before January 8, 2001.

[12] The Director responded to the Board on January 8, 2001 by stating that draft amendments were prepared and sent to the Appellant with a response deadline of January 22, 2001 and requested that the appeal be placed in abeyance until January 26, 2001. The request was granted by the Board.

[13] On January 26, 2001, the Director wrote to the Board confirming that the Appellant had faxed a letter "... confirming that he is satisfied with the amendments. It is anticipated that this

appeal may shortly be resolved.” A further abeyance until February 9, 2001 was requested by the Director and granted by the Board.

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[14] The Director responded on February 9, 2001 by indicating that further amendments to the monitoring requirements within the Licences were being forwarded to the Appellant for approval and that the appeal be placed in abeyance until February 20, 2001. The Board granted the request in a letter dated February 14, 2001.

[15] The Board received a letter dated February 20, 2001 from the Director indicating that several unsuccessful attempts were made by the Department to reach the Appellant regarding his review of the amendments to the Licences. The Board also attempted unsuccessfully to contact the Appellant by telephone on February 21 and 23, 2001. Messages on voice mail were left in both cases.

[16] A letter was sent to the Appellant on February 26, 2001 from the Board requesting a status report by close of business on February 26, 2001 and advising that his appeal could be dismissed for failure to respond to a written notice. The Board placed final telephone calls to the Appellant on February 26, 2001 indicating that a response to the letter must be received by the close of business. By the close of business on February 26, 2001 and following a telephone conversation with Board staff, the Appellant faxed a letter asking for a further delay because the documents from Mr. Ed George [presumably Mr. Rob George of the Department], “... did not arrive I went on vacation...”

DECISION

[17] The letter from the Appellant dated February 26, 2001 is factually inconsistent with the Director's letter of February 20, 2001. The Appellant indicated to Board staff that he was leaving on vacation on February 26, 2001 and yet the Director's letter stated that Department staff attempted to contact him unsuccessfully by telephone on February 20, 2001. In a telephone

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conversation with Board staff on February 26, 2001, the Appellant did indicate that he attempted to call the Board and alleged he was given a wrong phone number. Yet, in a further telephone conversation with Board staff, the Appellant indicated that he had received the telephone messages from the Board and that he intended to return the calls. This statement does not adequately explain why the Appellant did not return any of the Board's calls made on February 21 and 23, 2001 and the morning of February 26, 2001 and any of the calls made by Department staff.¹

[18] Section 85 of the *Environmental Protection and Enhancement Act* (the Act²) states:

- (85) Where the Board receives a notice of appeal it may by written notice given to the person who submitted the notice of appeal require the submission of additional information specified in the written notice by the time specified in the written notice.

[19] Section 87(5)(a) of the Act states:

- 87(5) The Board
- (a) may dismiss a notice of appeal if
- (i) it considers the notice of appeal to be frivolous or vexatious or without merit,
- (i.1) in the case of a notice of appeal submitted under section 84(1)(a)(iv) or (v), (g)(ii) or (j), the Board is of the opinion that the person submitting the notice of appeal is not directly affected by the decision or designation,

¹ If an incorrect number was given, it appears that the Appellant did not take steps to obtain the number through the government RITE Operator or directory assistance. The Board also cannot presume that an alleged wrong number was given on each of these occasions.

- (i.2) for any other reason the Board considers that the notice of appeal is not properly before it,
- (ii) the person who submitted the notice of appeal fails to comply with a written notice under section 85, or
- (iii) the person who submitted the notice of appeal fails to provide security in accordance with an order under section 89(3)(b),

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[20] The Board hereby exercises its discretion under section 87(5)(a) of the Act and dismisses the Notice of Appeal filed by Mr. Jurgen Preugschas of Pigs R Us Inc.

Dated March 1, 2001, Edmonton, Alberta

Dr. William A. Tilleman, Chair