
ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – August 24, 2011

IN THE MATTER OF sections 91, 92, and 95 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12;

-and-

IN THE MATTER OF an appeal filed by Shell Canada Ltd. with respect to the cancellation of Reclamation Certificate No. 233785-00-00 issued under the *Environmental Protection and Enhancement Act* by the Director, Northern Region, Environmental Management, Alberta Environment.

Cite as: *Shell Canada Ltd. v. Director, Northern Region, Environmental Management, Alberta Environment* (24 August 2011), Appeal No. 11-007-D (A.E.A.B.).

BEFORE:

Delmar W. Perras, Chair.

SUBMISSION FROM:

Appellant:

Shell Canada Ltd.

EXECUTIVE SUMMARY

On August 3, 2010, Alberta Environment cancelled a reclamation certificate that had been issued to Shell Canada Ltd. for a well site located in the County of Grande Prairie.

On May 31, 2011, Shell Canada Ltd. (Shell) appealed the decision. The Board noted the appeal was filed significantly past the legislated deadline (approximately 8 months) and asked Shell to provide an explanation as to why the appeal was filed outside of the 30 day time limit.

After reviewing Shell's explanation, the Board did not grant an extension for filing the Notice of Appeal and dismissed the appeal. Shell stated the notification of the cancellation did not reach the appropriate person until October 25, 2010, even though the notification was actually received on August 26, 2010. Shell explained the procedures to follow when a cancellation is received were not understood. It was not until its consultant raised issues with the audit report and questions were raised at an industry meeting that Shell decided to file a Notice of Appeal even though it was approximately 8 months past the legislated time frame.

The explanation provided by Shell for filing the appeal late did not demonstrate the extenuating or special circumstances that warrant accepting an appeal filed well past the legislated timeframe.

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I. BACKGROUND

[1] On August 3, 2010, the Director, Northern Region, Environmental Management, Alberta Environment (the “Director”), cancelled Reclamation Certificate No. 233785-00-00 (the “Certificate”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”), that had been issued to Shell Canada Ltd. for the Shell Sinclair 16-4-72-12 well, remote sump, and borrow pit located at 16-4-72-12 W6M in the County of Grande Prairie, Alberta.

[2] On May 30, 2011, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Shell Canada Ltd. (the “Appellant”).

[3] On May 31, 2011, the Board wrote to the Appellant and Director (collectively the “Participants”) acknowledging receipt of the Notice of Appeal and notifying the Director of the appeal. The Board noted the appeal was filed past the legislated deadline (approximately 8 months) and asked the Appellant to provide an explanation as to why the appeal was filed late. The Board also advised the granting of the extension of time is at the discretion of the Board and is not routinely granted, and if the Appellant provided sufficient information to consider extending the appeal period, it would give the Director an opportunity to provide comments before making a decision. The Appellant provided the information on June 3, 2011.

[4] The Board advised the Participants on June 13, 2011, that the appeal was dismissed with reasons to follow. The Board did not seek comments from the Director, as the Appellant did not provide reasons that would warrant comments from the Director. The Board’s reasons are provided below.

II. SUBMISSION

[5] The Appellant stated it received notification from the Director the Certificate was cancelled on August 26, 2010. The Appellant explained the notification was addressed “to whom it may concern,” and it did not reach the appropriate person until October 25, 2011, already beyond the 30 day appeal period. The Appellant noted this is the first cancellation of a reclamation certificate it received, and the procedures to be followed were not understood.

[6] The Appellant stated the cancellation letter contained limited information and the audit report relied on by the Director was not included. The Appellant explained that, given the information available, it did not anticipate an appeal was warranted. The Appellant stated it retained a consultant to review the available information and determine the nature of any further investigation. The Appellant explained the consultant obtained and reviewed the audit report and identified a number of concerns regarding the sampling procedures and findings of the audit report. The Appellant sought clarification from the Director, and the consultant's concerns were confirmed. The Appellant stated this was the time it considered an appeal might be warranted, and as the appeal period had expired, it sent a letter to the Director on March 29, 2011, to request a meeting to discuss the issues.

[7] The Appellant stated that, on May 25, 2011, two of its employees attended an upstream oil and gas reclamation meeting to discuss issues raised by the Canadian Association of Petroleum Producers with representatives from Alberta Environment and the Energy Resources Conservation Board. The Appellant stated the cancellation of reclamation certificates and the appeal process were discussed at the meeting, leading the Appellant to believe an appeal should be submitted directly to the Board without waiting for comments from the Director. The Notice of Appeal was submitted to the Board on May 30, 2011.

III. DISCUSSION

[8] Section 91(4) of EPEA provides:

“A notice of appeal must be submitted to the Board

- (a) not later than 7 days after receipt of a copy of the enforcement order or the environmental protection order, in a case referred to in subsection (1)(e), (f) or (h),
- (b) not later than one year after receipt of a copy of the reclamation certificate, in a case referred to in subsection (1)(i) relating to the issuing of a reclamation certificate, and
- (c) not later than 30 days after receipt of notice of the decision appealed from or the last provision of notice of the decision appealed from, as the case may be, in any other case.”

Therefore, in this case, the appeal period was 30 days after receipt of the Director's decision to cancel the Certificate.

[9] The Board has the authority to extend the filing time if there are sufficient grounds to do so. Section 93 of EPEA states:

“The Board may, before or after the expiry of the prescribed time, advance or extend the time prescribed in this Part or the regulations for the doing of anything where the Board is of the opinion that there are sufficient grounds for doing so.”

[10] 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. To allow an extension of time, the appellant must be able to show that extenuating or special circumstances existed that prevented it from filing within the legislated timeframe. The onus is on the appellant to demonstrate there are exceptional circumstances that warrant an extension of time to file an appeal. The Board may consider extending time limits by a few days in certain circumstances, but the appellant must be able to give the Board sufficient reasons to justify the action. In the circumstances of this case as presented by the Appellant, an extension cannot be justified.

[11] In this case, the appeal period ended September 25, 2010, 30 days after the Appellant received the Director's decision. However, the Appellant did not file its Notice of Appeal until May 30, 2011, more than 8 months past the appeal period.

[12] One of the purposes of having deadlines incorporated into legislation, particularly regulatory legislation, is to bring some element of certainty to the regulatory process. In this case, EPEA requires a Notice of Appeal to be filed within 30 days of receiving notification of the Director's decision to cancel the reclamation certificate. The time limits included in the legislation, and the certainty these time limits create, balances the interests of all the participants. When a reclamation certificate is cancelled and the appeal period is expired, the Director will know the certificate holder is accepting responsibility to complete the reclamation work as required and the landowner knows his or her rights return to what existed prior to the issuance of the certificate.

[13] The Appellant stated it did not have a process in place to deal with the cancellation of reclamation certificates. The Appellant was proud it had never had a cancellation before, and the Board commends this record. However, it does not provide the basis to allow for a time extension to file a Notice of Appeal, particularly 8 months after the appeal period expired. Miscommunication within a business structure does not demonstrate that extenuating or special circumstances existed that prevented it from filing within the legislated timeframe.

[14] Therefore, the Board dismisses the appeal.

IV. DECISION

[15] The Board finds that 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 EPEA, the Board dismisses the appeal.

Dated on August 24, 2011, at Edmonton, Alberta.

“original signed by”

Delmar W. Perras
Chair