

ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – February 1, 2012

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 the Confederacy of Treaty Six First Nations with respect to *Environmental Protection and Enhancement Act* Approval No. 236328-00-00 issued to Waste Management of Canada Corporation by the Director, Northern Region, Operations Division, Alberta Environment and Water.

Cite as: *Confederacy of Treaty Six First Nations v. Director, Northern Region, Operations Division, Alberta Environment and Water, re: Waste Management of Canada Corporation* (01 February 2012), Appeal No. 11-024-D (A.E.A.B.).

BEFORE:

Justice Delmar W. Perras, (ret.), Board Chair.

PARTICIPANTS:

Appellant: Confederacy of Treaty Six First Nations.

Approval Holder: Waste Management of Canada Corporation.

Director: Mr. Patrick Marriott, Director, Northern Region, Operations Division, Alberta Environment and Water, represented by Ms. Michelle Williamson, Alberta Justice.

EXECUTIVE SUMMARY

Alberta Environment and Water issued an approval to Waste Management of Canada Corporation (WMCC) for the construction, operation, and reclamation of a Class II landfill (the Landfill) near Thorhild, Alberta, that receives more than 10,000 tonnes per year of non-hazardous waste.

The Board received a Notice of Appeal from the Confederacy of Treaty Six First Nations (the Confederacy) appealing the Approval.

The Board wrote to the Confederacy on October 4, 2011, asking for additional information outlining the environmental impacts of the Landfill that concern the Confederacy. The Board noted the concerns raised in the Notice of Appeal were the “duty to consult” and obligations under the *Historical Resources Act*. The Board warned the Appellant that if no additional information was provided, the Board may dismiss the appeal.

On October 21, 2011, the Board wrote to the Appellant again, asking for the additional information and noting that failure to respond in a timely manner may result in the dismissal of the appeal.

The Board dismissed the appeal since the concerns expressed in the Notice of Appeal were not within the Board’s jurisdiction and the Confederacy failed to respond to the Board’s request for further information.

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I. BACKGROUND

[1] On September 22, 2011, the Director, Northern Region, Operations Division, Alberta Environment and Water (the “Director”), issued Approval No. 236328-00-00 (the “Approval”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”) to the Waste Management of Canada Corporation (“WMCC” or the “Approval Holder”). The Approval was issued for the construction, operation, and reclamation of a Class II Landfill (the “Landfill”) near Thorhild, Alberta, that receives more than 10,000 tonnes per year of non-hazardous waste.

[2] On September 29, 2011, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from the Confederacy of Treaty Six First Nations (the “Appellant”) appealing the Approval.

[3] On October 4, 2011, the Board wrote to the Appellant, Approval Holder, and the Director (collectively the “Participants”) acknowledging receipt of the Notice of Appeal and notifying the Approval Holder and Director of the appeal. The Board noted the concerns raised in the Notice of Appeal were the “duty to consult” and obligations under the *Historical Resources Act*, R.S.A. 2000, c. H-9. The Board explained it does not have jurisdiction to deal with either of these concerns. The Board asked the Appellant to provide, by October 19, 2011, a more detailed Notice of Appeal outlining the environmental impacts of the Landfill that concern the Appellant. The Board warned the Appellant that if no additional information was provided by that date, the Board may dismiss the appeal. The Board noted:

“Please be advised that the Environmental Appeals Board has strict timelines. Failure to respond to the Board in a timely manner may result in the dismissal of the appeal pursuant to section 95(5)(a)(iv) of the *Environmental Protection and Enhancement Act*.”

[4] On October 21, 2011, the Board wrote to the Appellant, noting the Board did not receive a detailed Notice of Appeal as previously requested. The Board asked the Appellant to provide the information to the Board by October 28, 2011, and reminded the Appellant that failure to respond in a timely manner may result in the dismissal of the appeal.

[5] The Board notified the Participants on November 8, 2011, that the appeal was dismissed with reasons to follow. These are the Board's reasons.

II. ANALYSIS

[6] Under section 95(5)(a)(iv) of EPEA,¹ the Board has the authority to dismiss an appeal if an appellant fails to provide information requested by the Board. In this case, the Board requested the Appellant provide additional information regarding the appeal on two separate occasions, and the Appellant was notified on both occasions that failing to respond to the Board may result in the dismissal of the appeal. The Appellant failed to provide a response. Therefore, the Board dismisses the appeal.

[7] The Board asked for the additional information to allow the Appellant to provide an explanation as to how the Approval would directly affect the Appellant from an environmental perspective. Based on the information provided in the Notice of Appeal, it appeared the concerns raised were outside of the Board's jurisdiction.

[8] In the Notice of Appeal, the Appellant asked the Board to determine whether the legal duty to consult with the Appellant was satisfied regarding the Landfill project. An administrative tribunal has the authority to deal with constitutional issues, such as the duty to consult, unless there is legislation in place that prevents it from dealing with these issues. The *Administrative Procedures and Jurisdiction Act*, R.S.A. 2000, c. A-3, and the *Designation of Constitutional Decision Makers Regulation*, Alta. Reg. 69/2006, prohibit the Board from dealing with constitutional issues. Therefore, the Board does not have jurisdiction to consider the issues

¹ Section 95(5):

"The Board

(a) may dismiss a notice of appeal if

(iv) the person who submitted the notice of appeal fails to comply with a written notice under section 92...."

Section 92 provides:

"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."

related to the duty to consult. The Board's understanding is that the only place to address concerns about the duty to consult would be before the Court of Queen's Bench.

[9] In addition, the Notice of Appeal raised concerns regarding the Historical Resources Review completed by Alberta Culture and Community Spirit's Historical Resources Management Branch. A decision of the Historical Resources Branch is not within the Board's jurisdiction. The Board can only hear appeals made of certain decision made by the Director under EPEA, the *Water Act*, R.S.A. 2000, c. W-3, *Government Organization Act*, R.S.A. 2000, c. G-10, and *Climate Change and Emissions Management Act*, R.S.A. 2003, c. C-16.7. It has no authority under the *Historical Resources Act* and, therefore, the Board has no jurisdiction to hear issues regarding the Historical Resources Review.

[10] Therefore, the concerns raised in the Appellant's Notice of Appeal are not within the Board's jurisdiction and cannot be considered valid concerns for an appeal before the Board.

III. CONCLUSION

[11] The Board dismisses the appeal of the Confederacy of Treaty Six First Nations since the concerns expressed in the Notice of Appeal are not within the Board's jurisdiction and for failing to respond to the Board's request for further information.

Dated on February 1, 2012, at Edmonton, Alberta.

“original signed by”

D. W. Perras
Board Chair