

January 15, 2020

Via E-Mail

Mr. Barry Weintraub
Ruetters LLP

Tollestrup Construction (2005) Inc.
Honey Holdings Ltd.

Ms. Vivienne Ball
Alberta Justice and Solicitor General
Environmental Law Section
8th Floor, Oxbridge Place
9820 – 106 Street
Edmonton, AB T5K 2J6

Dear Ms. Ball and Mr. Weintraub:

**Re: Decision Letter¹ - Tollestrup Construction (2005) Inc. & Honey Holdings Ltd.
Water Act Enforcement Order No. WA-EO-2017/05-SSR
Our File Nos.: EAB 17-052 & EAB 17-053**

These are the Board's reasons for its October 24, 2019 decision denying the application of Mr. Larry Boychuk and Mr. Gary Boychuk to intervene in the hearing of the above noted matter.

Background

On August 16, 2017, Tollestrup Construction (2005) Inc. and Honey Holdings Ltd. (collectively the "Appellants") appealed *Water Act* Enforcement Order No. WA-EO-2017/05-SSR, issued by the Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks (the "Director"). The Board scheduled an oral hearing for November 19, 2019 to hear the appeals.

Pursuant to section 7(1) and (2) of the *Environmental Appeal Board Regulation, Alta. Reg. 114/93*, the Board published a Notice of Hearing in the Lethbridge Herald on September 26, 2019 and provided the Notice to the City of Lethbridge to post on their public bulletin board or website. A News Release was forwarded to the Public Affairs Bureau for distribution to media throughout the Province and the news release was posted on the Board's website. The Notice of Hearing provided an opportunity for persons who wanted to make representations before the Board to apply to intervene by October 11, 2019. The Notice stated the application should contain a summary of the nature of the person's interest in the appeal, and also indicated applications would only be considered if the information would assist the Board in making its decision and not duplicate

¹ Tollestrup Construction (2005) Inc. et al. v. Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks (15 January 2020), Appeal Nos. 17-052-053-DL1 (AEAB), 2020 ABEAB 1.

the information provided by the parties.

On October 5, 2019, the Board received an application from Mr. Larry Boychuk and Mr. Gary Boychuk (the "Boychuks") to intervene in the hearing. The Boychuks provided a handwritten note stating they were representing Mrs. Pauline Boychuk, their mother, who is the owner of lands legally described as SE 11-9-22-W4M, SW 12-9-22-W4M, SW 13-9-22-W4M, and NW 12-9-22-W4M. These lands are near the Appellants' lands. The Boychuks stated they would like to make representations at the hearing. They indicated they were going to provide pictures and videos, but no additional information was provided.

Submissions

Upon receiving the Boychuks' application to intervene, the Board invited comments from the Appellants and the Director on whether the Board should permit the Boychuks' to participate in the hearing.

On October 18, 2019, the Director advised he did not oppose the Boychuks participation at the hearing.

On October 21, 2019, the Appellants advised they were opposed to the Boychuks' participating in the hearing. The Appellants submitted the lands owned by Mrs. Boychuk were not in the flood plain and were unaffected by the berm, which is the subject of the appeal. The Appellants stated the Boychuks failed to provide any information that was useful or helpful to the Board in making its determinations. The Appellants said the application from the Boychuks did not provide sufficient information to indicate what their interest was and they were not able to demonstrate they had a tangible interest in the subject matter of the appeal. The Appellants submitted the Boychuks did not meet any of the tests for intervenor status and requested the Board refuse the Boychuks' request.

Analysis

Under section 95 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 ("EPEA"), the Board has the authority to determine who can make representations before it. Section 95(6) of EPEA provides:

"Subject to subsection (4) and (5), the Board shall, consistent with the principles of natural justice, give the opportunity to make representations on the matters before the Board to any person the Board considers should be allowed to make representations."

Section 9 of the *Environmental Appeal Board Regulation*, Alta. Reg. 114/93 (the "Regulation"), requires the Board to determine whether a person submitting a request to make representations should be allowed to do so at the hearing of an appeal. Sections 9(2) and (3) of the Regulation provide:

"(2) Where the Board receives a request in writing in accordance with section 7(2)(c) and subsection (1), the Board shall determine whether the person submitting the request should be allowed to make representations in respect

of the subject matter of the notice of appeal and shall give the person written notice of that decision.

- (3) In a notice under subsection (2) the Board shall specify whether the person submitting the request may make the representations orally or by means of a written submission.”

The Board’s Rules of Practice, Rule 14, details the test for determining intervenor status. Rule 14 states:

“As a general rule, those persons or groups wishing to intervene must meet the following tests:

- their participation will materially assist the Board in deciding the appeal by providing testimony, cross-examining witnesses, or offering argument or other evidence directly relevant to the appeal; the intervenor has a tangible interest in the subject matter of the appeal; the intervention will not unnecessarily delay the appeal;
- the intervenor in the appeal is substantially supporting or opposing the appeal so that the Board may know the designation of the intervenor as a proposed appellant or respondent;
- the intervention will not repeat or duplicate evidence presented by other parties; and
- if the intervention request is late, there are documented and sound reasons why the intervenor did not earlier file for such status.”

The Board found the application lacked sufficient information to support granting intervenor status. The Boychuks did not offer any indication of the evidence they proposed to provide at the hearing, beyond stating they would present pictures and video. The Board found the Boychuks did not provide any evidence their participation would materially assist the Board in deciding the appeal and the issues to be addressed at the hearing.

The Notice of Hearing outlined requirements for persons applying to intervene, which included the requirement that an application contain a summary of the nature of the person’s interests in the appeal. The Board determined the Boychuks did not provide a summary of the nature of their interest and failed to demonstrate they had a tangible interest in the appeal. In their application, the Boychuks referred to the lands owned by Mrs. Boychuk, located in the area of the Appellants’ lands, but provided no explanation of how the appeal would impact Mrs. Boychuk’s lands or interests.

As the Boychuks’ application contained little information, the Board found there was a strong possibility the Boychuks’ would need to rely on the Director’s evidence if they were to participate in the hearing. Such participation in the hearing would likely result in a repeat or duplication of the evidence provided by the Director, causing an unnecessary delay in the hearing.

The Board found the Boychuks did not meet the test for granting intervenor status. Therefore, the Board denied the application.

The Director may call the Boychuks as witnesses if he wishes.

Please do not hesitate to contact the Board if you have any questions. We can be reached toll-free by first dialing 310-0000 followed by 780-427-6569 for Valerie Myrmo, Registrar of Appeals, and 780-427-7002 for Denise Black, Board Secretary. We can also be contacted via e-mail at valerie.myrmo@gov.ab.ca or denise.black@gov.ab.ca.

Yours truly,

Gilbert Van Nes
General Counsel
and Settlement Officer