



ALBERTA
ENVIRONMENTAL APPEALS BOARD

2020 ABEAB 29

November 25, 2020

Via E-Mail

Ms. Lindsey Cybulskie and Mr. Milt Scott
Thorlakson Nature's Call Inc.
P.O. Box 10040
Airdrie, AB T4A 0H4
(*Appellant*)

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(*Representing Appellant*)

Ms. Jodie Hierlmeier
Alberta Justice and Solicitor General
Environmental Law Section
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(*Representing the Director, AEP*)

Dear Ladies and Gentlemen:

**Re: Decision Letter* – Thorlakson Nature's Call Inc./Administrative Penalty
 No. EPEA-19/10-AP-SSR-20/01/Our File No.: EAB 19-102**

This is the Environmental Appeals Board's (the "Board") decision respecting the request by Mr. Dennis Gieck to intervene in the above-noted appeal by Thorlakson Nature's Call. This decision was made by Ms. Meg Barker, Acting Chair.

Decision

The Board denies the intervenor application from Mr. Gieck.

Legislation

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:

* Cite as: Intervenor Decision: *Thorlakson Nature's Call Inc. v. Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks* (25 November 2020), Appeal No. 19-102-DL1 (A.E.A.B.), 2020 ABEAB 29.

“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 test for determining intervenor status is found in the Board’s Rules of Practice. 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.”

Background

Thorlakson Nature’s Call Inc. (the “Appellant”) operates a compost facility (the “Facility”) located near the City of Airdrie, in Rocky View County. On February 12, 2020, the Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks (the

“Director”), issued Administrative Penalty No. EPEA-19/10-AP-SSR-20/01 (the “Administrative Penalty”) to the Appellant. The Administrative Penalty consisted of a base penalty in the amount of \$17,000.00 and an economic benefits assessment of \$1,469,861.49, for a total of \$1,486,861.49.

On March 11, 2020, the Board received a Notice of Appeal from the Appellant appealing the assessment of the economic benefits. The Appellant requested that the economic benefits portion be reassessed to \$0.00 (zero). The Board wrote to the Appellant and the Director (the “Parties”) acknowledging the appeal and providing the Director with the appeal.

On September 21, 2020, the Board scheduled a hearing of the appeal for November 4, 2020. On September 23, 2020, the Board placed a Notice of Hearing of the appeal in the Airdrie Echo. The Notice of Hearing included information on interventions and explained that a person could apply by the deadline to make representations to the Board regarding the appeal. On September 25, 2020, the Board received an intervenor application from Mr. Gieck, who requested to make a presentation to the Board at the hearing. The hearing was subsequently rescheduled to November 25, 2020.

On October 1, 2020, the Board confirmed it would hear the following issues at the hearing:

1. Was the Administrative Penalty properly issued?
2. Are the conditions in the Administrative Penalty reasonable?

On October 6, 2020, the Board asked the Parties for their comments on whether the Board should permit Mr. Gieck to intervene in the hearing, and if so, the manner in which he should be permitted to participate.

On October 8, 2020, the Appellant stated it opposed Mr. Gieck’s intervention request. On the same date, Mr. Gieck responded to the Appellant’s letter. The Board did not request comments from Mr. Gieck. On October 9, 2020, the Director advised the Board he had no comments regarding the intervention request.

Intervenor Application

Mr. Gieck’s intervenor application stated the following:

“I plan to make the presentation personally and there will be no agent or legal counsel involved. My presentation to the Board would provide a representation of the neighbors and community surrounding the subject compost facility. This is a mixed agricultural district with a combination of acreage owners, farmers and cow-calf operators. As a group they have a vested interest in this facility as it effects their everyday life and future lifestyle. They have knowledge of this facility and its operations with respect to the environment throughout its entire existence and have invested a great deal of time in studying and analyzing the details of the operation as

it has had significant historical negative effects on their lives and continues to pose a real potential danger to the future of the community. We believe we can contribute useful and meaningful information to the Board in making their decision and would also be willing to have a small group of community members available at our end to answer any questions that the Board may have.”¹

Submissions

The Appellant submitted that Mr. Gieck did not meet the test to be granted standing. His participation in the appeal would not assist the Board, particularly given the appeal issues. The Appellant noted the appeal involves the question of economic benefit that the Appellant is alleged to have obtained from receiving an excess tonnage of waste in 2018. No other issues are before the Board.

The Appellant stated the appeal is limited to economic benefit and whether the penalty is reasonable. The Appellant noted the issue is one of mixed fact and law and the facts involve confidential financial information related to the Appellant’s business. The Appellant stated that the legal issue refers to the interpretation of the Administrative Penalty sections of EPEA.

The Appellant submitted that Mr. Gieck was “an activist who resides in Airdrie and who has instigated a vexatious campaign against the [Thorlakson Nature’s Call] compost business for a number of years.”² The Appellant noted Mr. Gieck advised the Board he lived in Airdrie, over ten kilometres from the Facility. The Appellant said Mr. Gieck had no knowledge of the Appellant’s business finances, is not a lawyer, and is not qualified to speak to the legal issues.

The Appellant noted the Facility is permanently closed. The Appellant stated the Board’s decision on the appeal will have no effect on Mr. Gieck. The Appellant said participation in the appeal by Mr. Gieck and his community group would delay the hearing process and be prejudicial to the Appellant.

Mr. Gieck responded to the Appellant’s letter, although not solicited by the Board, saying that although he is not currently living close to the Facility, he lived within a few kilometres of the Facility at the time of the Appellant’s contravention.

Mr. Gieck denied instigating a campaign against the Appellant. Mr. Gieck stated his actions were in response to the Appellant’s plan to legalize their operation, which he said: “contravened their land-use and operating license regulations.” Mr. Gieck submitted his actions could not be described as vexatious in any manner.

¹ Mr. Gieck’s Email, September 25, 2020.

² Appellant’s Letter, October 8, 2020, at page 2.

Mr. Gieck submitted the Facility was responsible for the following actions which the surrounding community had to endure:

- putrid stench odour;
- E.coli and SRB contaminated surface water releases;
- excessive truck traffic and noise;
- plastic and garbage blowing from the property to surrounding lands; and
- the high possibility of contamination of the entire community groundwater supply.

Mr. Gieck stated he should be allowed to speak to any issues, legal or otherwise. Mr. Gieck submitted the neighbours around the facility:

“... have opinions and observations that are every bit as valid as any lawyer on this particular issue as we are the only ones that suffered the consequences of the mismanagement of this facility that was not licensed or designed to handle much of the feedstock it was processing which it now appears was further compromised by overproduction.”³

Mr. Gieck stated he had substantial information he wished to share with the Board, and he believed it would be beneficial to the Board to hear the opinions of the neighbours to the Facility. Mr. Gieck said the Facility neighbors have “intimate knowledge, in fact the only real knowledge of the repercussions and effects”⁴ the Facility has had on the community. Mr. Gieck submitted the impact on the community should be considered in the Board’s decision.

Analysis

As stated, the Board has denied Mr. Gieck’s intervenor application. The Board’s reasons are outlined below.

The Board notes that the issues for the hearing are limited to the Administrative Penalty issued by the Director to the Appellant. The Administrative Penalty deals exclusively with the penalty and alleged economic benefits the Appellant obtained from the contravention. Issues relating to the impact of the Facility on the community around it are not matters that can be heard by the Board in this appeal.

The Board applied the tests in Rule 14 of its Rules of Practice as follows:

³ Mr. Gieck’s Email, October 8, 2020, at page 2.

⁴ Mr. Gieck’s Email, October 8, 2020, at page 2.

- (a) the Board found Mr. Gieck's participation would not materially assist the Board in deciding the appeal as his complaints are out of scope with the issues the Board will hear in this appeal;
- (b) although Mr. Gieck's letters to the Board did not specifically state whether he supported or opposed the appeal, it is clear from the letters Mr. Gieck is opposed to the appeal;
- (c) there have been over 300 public complaints regarding odour, and any evidence from Mr. Gieck regarding the smells emanating from the Facility would be unnecessary duplication; and
- (d) as the intervenor application was filed within the legislated time frame, the Board does not have to consider this part of the test.

The Board notes the Facility is closing and many of Mr. Gieck's concerns will be moot.

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 780-427-4179 for Gilbert Van Nes, General Counsel and Settlement Officer, 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 gilbert.vannes@gov.ab.ca, valerie.myrmo@gov.ab.ca and denise.black@gov.ab.ca.

Yours truly,



Gilbert Van Nes
General Counsel and
Settlement Officer

cc: Mr. Dennis Gieck

The information collected by the Board is necessary to allow the Environmental Appeals Board to perform its function. The information is collected under the authority of the *Freedom of Information and Protection of Privacy Act*, section 33(c). Section 33(c) provides that personal information may only be collected if that information relates directly to and is necessary for the processing of these appeals. The information you provide will be considered a public record.

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