
ALBERTA
ENVIRONMENTAL APPEAL BOARD
DECISION

Date of Decision - March 12, 1999

IN THE MATTER OF sections 84, 85 and 87 of the *Environmental Protection and Enhancement Act*, (S.A. 1992, ch. E-13.3 as amended);

-and-

IN THE MATTER OF an appeal filed by Mr. Terry O'Neill with respect to Amending Approval No. 1037-01-01 issued to the Town of Olds by Mr. David Lloyd, Regional Director, Parkland Region, Alberta Environmental Protection.

Cite as: O'Neill v. Regional Director, Parkland Region, Alberta Environmental Protection, *re: Town of Olds*.

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BACKGROUND

[1] This appeal concerns Amending Approval No. 1037-01-01 issued on November 5, 1998, by Mr. David Lloyd, the Regional Director, Parkland Region, Alberta Environmental Protection.¹ The Director issued the Amending Approval to the Mayor of the Town of Olds. The cover page of the Approval states that it authorizes the “construction of improvements to and operation of a Class II wastewater treatment plant, a Class II wastewater collection system, a storm drainage system and a snow storage facility for the Town of Olds.” The Director issued the Amending Approval pursuant to Division 2 of Part 2 of the *Environmental Protection and Enhancement Act* (Act).²

[2] On December 10, 1998, the Environmental Appeal Board (Board) received a Notice of Appeal from Mr. Terry O’Neill (Appellant) dated November 30, 1998. The Appellant specifically objected to “lack of public input” and “blue prints and plans were not available to the general public”.³ Mr. O’Neill further stated that his grounds for appeal were “...that protection of an environmental sensitive area was not considered (sic) as while (sic) as the stakeholders were not asked for input IE. Property owners, Trout Unlimited.”⁴

[3] The Board wrote to Mr. O’Neill on December 14, 1999 requesting that he provide further details regarding the Approval, and a detailed written statement on how he is “directly affected,” among other things. The Board asked the Director and the Town of Olds to comment on the issues raised by Mr. O’Neill.

¹ Hereinafter, Mr. Lloyd and Alberta Environmental Protection will be referred to as “the Director” and “AEP,” respectively.

² S.A. 1992, ch. E-13.3 (as amended).

³ November 30, 1998 Notice of Appeal, p. 2, section III.

⁴ November 30, 1998 Notice of Appeal, p. 2., section IV.

[4] On December 21, 1998 the Board received a letter from the Director advising that they were unable to locate application number 0041637, the one referenced on Mr. O'Neill's Notice of Appeal. The Director further stated that they could "...not ... identify any statement of concern filed by Mr. O'Neill for any EPEA application..."

[5] While the Board awaited Mr. O'Neill's reply, the Director forwarded a letter to the Board on January 18, 1999 with the following significant observations and objections:

"Mr. O'Neill has not filed a Statement of Concern in accordance with s.70 of the Act. Notice of the application was published in the Olds Gazette on 23 and 30 September, 1998. Mr. O'Neill recently provided the EAB with a copy of the advertisement. Without having filed a Statement of Concern, Mr. O'Neill is ineligible to file an appeal with the EAB: s.84(1)(a)(iv).

For [failure to file the statement of concern and several other] reasons, the Director respectfully submits this appeal should be dismissed."

[6] On January 19, 1999 the Board forwarded Mr. Sprague's (the Director's) letter to the Appellant for his comments. On January 28, 1999, Mr. O'Neill provided a response, but still did *not* respond to the statement of concern issue. Yet, Mr. O'Neill stated:

"I have mailed a statement of concern on Oct. 26/98. Because I was not sure of its arrival on time, I also E-mailed a copy of this letter to ensure that I was covered in case it did not arrive on time."

[7] On February 2, 1999, the Board received a letter from the Director confirming again that he had no record of either: (1) an electronic, or (2) a hard copy statement of concern from Mr. O'Neill.

[8] Accordingly, on February 3, 1999, the Board wrote to the Appellant and asked him, among other things, to:

“Please respond to Grant Sprague’s letter of January 18, 1999 in which he states that no Statement of Concern was filed. [The Board probed Mr. O’Neill further for a copy of the statement of concern by asking:] Do you have a copy of the Statement of Concern you indicated you filed in your letter received by fax on January 28, 1999?”

[9] On February 12, 1999 the Board received a letter from Mr. O’Neill providing the following comments relevant to the “missing” statement of concern. He said:

“That I have checked my records and that I can not find a copy of my letter that I sent your department. However, I am willing to summarize a similar letter if requested.”

[10] Out of an abundance of caution, the Board gave Mr. O’Neill yet *another* chance to produce evidence of his statement of concern. The Board’s final request came on February 18, 1999. We said:

“Before the Board makes its final decision as to whether or not to proceed with your appeal, it requests a more detailed reply from you, in response to Mr. Sprague’s letter of February 11, 1999.

It seems clear from the record established thus far that there has been no statement of concern filed with either the Department or anyone else. In Mr. Sprague’s letter of February 11, 1999 he conceded that you may have been aware of the application. However, that fact alone does not meet the requirements of the Act, namely, that a statement of concern must be filed with the Director as per section 70.

Once again, can you please respond to any of the comments contained in correspondence from Mr. Sprague. Specifically, please confirm, with proof, whether or not a statement of concern was prepared by you and sent to the Director.”⁵

⁵ We also told Mr. O’Neill the following:

“You should be aware that the Board has the ability to dismiss your appeal if you do not provide all of the information which we need and have repeatedly asked for. Accordingly, please respond and provide proof of your statement of concern. Failure to

[11] On March 4, 1999 the Board received a reply from Mr. O’Neill, stating:

“As to the request that I provide documentation that I have sent a letter or E-mailed Your (sic) department, I cannot...”

THE BOARD’S ANALYSIS

[12] *As relevant here, section 84(1)(a)(iv) of the Act provides that an appeal may be filed by a person “who previously submitted a statement of concern in accordance with section 70” of the Act. Section 70(1), in turn, authorizes citizens to file “written statement[s] of concern setting out . . . [their] concerns with respect to” a proposed project, before the Director decides whether to approve the project. Section 70 states:*

70(1) Where notice is provided under section 69(1) or (2), any person who is directly affected by the application or the proposed amendment, addition, deletion or change, including the approval holder in a case referred to in section 69(2), may submit to the Director a written statement of concern setting out that person’s concerns with respect to the application or the proposed amendment, addition, deletion or change.

(2) A statement of concern must be submitted within 30 days after the last providing of the notice or within any longer period specified by the Director in the notice.

Section 84(1)(a)(iv) confirms that an appeal may be filed:

respond to this request may result in the Board’s dismissal of your appeal.”

by the approval holder or by any person who previously submitted a statement of concern in accordance with section 70 and is directly affected by the Director's decision... (Emphasis added)

[13] The Board responds to each Notice of Appeal filed under section 84 in a serious manner, and requests further information from individuals to either clarify the appeal or assist the Board in determining whether or not the Board has jurisdiction to proceed. In this case, despite the Board's repeated requests to Mr. O'Neill for more specific information, he has consistently failed to provide the Board with answers to questions pursuant to section 85 of the Act.

DECISION

[14] Statements of concern are a legislated part of the appeal process. Though it is seldom seen, circumstances could arise where it may be possible for the Board to process an appeal where a statement of concern was filed *late*.⁶ Or perhaps an appeal could be processed even when a statement of concern has *not* been filed--due to an extremely unusual case (e.g. a directly affected party being hospitalized) where a person's intent to file is otherwise established in advance. But those circumstances are highly fact-specific, exceptionally rare, and they do not apply to the present case. Indeed we cannot imagine a case proceeding to the next step where the appellant, like Mr. O'Neill, refuses to answer Board questions and provide at least *some* evidence of the requisite statement of concern and its proper filing.⁷ His appeal cannot proceed.

[15] Mr. O'Neill's Notice of Appeal is dismissed pursuant to sections 85 and 87 of the Act.

Dated on March 12, 1999 at Edmonton, Alberta.

Dr. William A. Tilleman

⁶ *Bildson v. Acting Director of North Eastern Slopes Region #2, Alberta Environmental Protection re: Smoky River Coal Limited*, EAB No. 97-230 (December 8, 1998).

⁷ Contrary to Mr. O'Neill's assertion, the onus of proof is not on the Director to disprove the appellant's statement of concern. Practically, if a statement of concern had been filed by email and regular mail, as Mr. O'Neill asserts he did, then somebody, somewhere, would be able to find a copy of something. But nobody could.