

ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision - May 20, 2022

IN THE MATTER OF sections 91, 92, and 95 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, and section 115 of the *Water Act*, R.S.A. 2000, c. W-3;

-and-

IN THE MATTER OF appeals filed by Jeffrey Buck, with respect to the decision of the Director, Compliance, Boreal North Region, Alberta Environment and Parks, and the Director, Regulatory Assurance Division, North Region, Alberta Environment and Parks, to issue Environmental Protection Orders Amendment No. 1 to EO-WA-35659-01, Amendment No. 1 to EPO-EPEA-35659-01, Amendment No. 1 to EPO-EPEA-35659-07, Amendment No. 1 to EPO-EPEA-35659-08, Amendment No. 1 to EPO-EPEA-35659-02, Amendment No. 1 to EPO-EPEA-35659-03, Amendment No. 1 to EPO-EPEA-35659-04, Amendment No. 1 to EPO-EPEA-35659-05, and Amendment No. 1 to EPO-EPEA-35659-06.

Cite as: *Buck v. Director, Compliance, Boreal North Region, Alberta Environment and Parks, et al.* (20 May 2022), Appeal Nos. 20-066-068 and 21-002-007-D (A.E.A.B.), 2022 ABEAB 20.

**WRITTEN PRELIMINARY MOTIONS
HEARING BEFORE:**

Dr. Chidinma Thompson, Board Chair.

PARTIES:

Appellant: Mr. Jeffrey Buck, represented by Mr. Rehan Qureshi and Mr. Imran Qureshi, Ogilvie LLP.**

Directors: Ms. Heather Dent, Compliance Manager, Regulatory Assurance Division, North Region, Alberta Environment and Parks, and Mr. Maxwell Harrison, Compliance Manager, Regulatory Assurance Division, North Region, Alberta Environment and Parks, represented by Ms. Vivienne Ball, Alberta Justice and Solicitor General.

** The Appellant was initially represented by Ms. Keely Cameron of Bennett Jones LLP, who provided the Appellant's written submissions to the Board.

EXECUTIVE SUMMARY

Alberta Environment and Parks Directors (AEP) issued several environmental protection orders under the *Environmental Protection and Enhancement Act* (EPEA) and an enforcement order under the *Water Act* to JMB Crushing Systems Inc. and 2161889 Alberta Ltd. (JMB), JMB's current and former corporate directors, including Mr. Jeffrey Buck (the Appellant) in his capacity as a former corporate director, and other involved individuals and corporations. The environmental protection orders and enforcement order were related to sand and gravel operations at various locations in Alberta. AEP subsequently issued amendments to nine of the orders (the Amendment Orders). The Appellant filed twenty Notices of Appeal with the Environmental Appeals Board (the Board) appealing the orders with nine of the Notices of Appeal appealing the Amendment Orders. This decision deals only with the Appellant's nine Notices of Appeal of the Amendment Orders.

The Board advised the Appellant and AEP that amendments to environmental protection orders and enforcement orders are generally not appealable. The Board requested and received written submissions from the parties on whether the nine Notices of Appeal of the Amendment Orders are valid appeals. Based on the written submissions of the parties and the information before the Board, the Board found that the Appellant's Notices of Appeal of the Amendment Orders do not raise or challenge the subject matter of the Amendment Orders. The Board determined that the nine Notices of Appeal of the Amendment Orders are not properly before the Board and therefore are not valid appeals.

The Board dismissed Notice of Appeal EAB 20-066 (Amendment No. 1 to EO-WA-35659-01) under the *Water Act*, and Notices of Appeal EAB 20-067 to 068 and EAB 21-002 to 007 (Amendment Nos. 1 to EPO-EPEA-35659-01 to EPO-EPEA-35659-08), under EPEA.

TABLE OF CONTENTS

| | | |
|-------|---|----|
| I. | INTRODUCTION | 1 |
| II. | BACKGROUND | 2 |
| III. | ISSUES | 2 |
| IV. | APPLICABLE LAW | 3 |
| A. | EPEA | 3 |
| B. | <i>Water Act</i> | 4 |
| C. | Amendment Orders..... | 5 |
| V. | ANALYSIS..... | 6 |
| A. | Whether there is a right to appeal an amendment to environmental protection order or enforcement order? | 6 |
| (i) | Appellant’s Submissions | 6 |
| (ii) | Directors’ Submissions..... | 7 |
| (iii) | Board’s Analysis and Findings..... | 8 |
| B. | Whether the Board has jurisdiction to hear an appeal of an amendment to an environmental protection order or an enforcement order? If yes, whether the Board should hear the Appellant’s Notices of Appeal of the Amendment Orders? | 12 |
| (i) | Appellant’s Submissions | 12 |
| (ii) | Directors’s Submissions | 14 |
| (iii) | Board’s Analysis and Findings..... | 15 |
| C. | Whether there was a breach of procedural fairness owed to the Appellant, or prejudice was suffered by any of the parties? | 22 |
| (i) | Appellant’s Submissions | 22 |
| (ii) | Directors’ Submissions..... | 23 |
| (iii) | Board’s Analysis and Findings..... | 23 |
| VI. | DECISION..... | 24 |
| | APPENDIX A..... | 26 |
| | APPENDIX B..... | 29 |

I. INTRODUCTION

[1] This is the Environmental Appeal Board's (the "Board") decision regarding nine Notices of Appeal filed by Mr. Jeffrey Buck (the "Appellant") in respect of amendments to various environmental protection orders and an enforcement order issued by two Directors (the "Directors") of Alberta Environment and Parks ("AEP").

[2] The Directors originally issued several environmental protection orders under the *Environmental Protection and Enhancement Act* ("EPEA")¹ and an enforcement order under the *Water Act*² (the "Original Orders") in respect of certain sand and gravel operations at various locations in Alberta. The Original Orders were issued to JMB Crushing Systems Inc. and 2161889 Alberta Ltd. ("JMB"), JMB's former and current corporate directors, including the Appellant in his capacity as a former corporate director, and other individuals and corporations involved in JMB's operations. The Directors subsequently issued amendments to nine of the environmental protection orders and the enforcement order (the "Amendment Orders") to the same parties named in the underlying Original Orders. A list of the Original Orders and Amendment Orders are included in Appendix A. The Appellant filed twenty Notices of Appeal with the Board in relation to the Original Orders and Amendment Orders. Nine of the twenty Notices of Appeal appealed the Amendment Orders.

[3] The Board has determined that the Appellant's nine Notices of Appeal of the Amendment Orders are not properly before the Board and thus are not valid appeals, as they do not address the subject matter of the Amendment Orders. The Board, therefore, has dismissed the Appellant's Notices of Appeal registered as EAB 20-066, 20-067, 20-068, 21-002, 21-003, 21-004, 21-005, 21-006, and 21-007.

¹ R.S.A. 2000, c. E-12.

² R.S.A. 2000, c. W-3.

II. BACKGROUND

[4] JMB was a gravel operator with multiple pits located on public lands in Alberta. The Appellant was a corporate director of JMB, but ceased that role as of June 23, 2020. The Directors issued the Original Orders and the Amendment Orders, between March 2 and May 3, 2021, for contraventions of the *Water Act* and EPEA.

[5] The Appellant filed twenty Notices of Appeal with the Board appealing the Original Orders and the Amendment Orders. The Appellant filed the Notices of Appeal for the Amendment Orders between March 31, 2021, and May 5, 2021.

[6] On May 4, 2021, the Board advised the Appellant and the Director (the “Parties”) that amendments to environmental protection orders and enforcement orders are generally not appealable under section 91 of EPEA and section 115 of the *Water Act*.³ The Board established a written submission process to determine whether the Appellant’s Notices of Appeal of the Amendment Orders, were valid appeals. The Appellant was to provide an initial written submission by May 10, 2021. The Directors were to respond with a written submission by May 17, 2021, and the Appellant was to provide a rebuttal written submission by May 25, 2021.

[7] On May 7, 2021, the Board notified the Parties that all of the Appellant’s Notices of Appeal of the Amendment Orders would follow the existing submission schedule. The Board received written submissions from the Appellant and the Directors between May 10 and 20, 2021.

III. ISSUES

[8] The Board considered the following issues for the preliminary matters related to the Amendment Orders:

- A. Whether there is a right to appeal an amendment to an environmental protection order or enforcement order?

³ See full text in Appendix B.

- B. Whether the Board has jurisdiction to hear an appeal of an amendment to an environmental protection order or enforcement order? If yes, whether the Board should hear the Appellant's Notices of Appeal of the Amendment Orders?
- C. Whether there was a breach of procedural fairness owed to the Appellant, or prejudice was suffered by any of the Parties?

IV. APPLICABLE LAW

[9] The applicable legislation in these appeals is EPEA and the *Water Act*. The Amendment Orders included a paragraph regarding a right of appeal to the Board. They are as follows.

A. EPEA

[10] The relevant sections of EPEA are sections 91(1), 91(4), 212 and 243.⁴ Section 212(1) permits a Director⁵ to amend, add or delete a term or condition from an enforcement order, cancel an enforcement order, or amend a clerical error in an enforcement order. Section 212(4) requires the Director to serve a copy of the order on the same person to whom the original order was directed. Section 212(2) permits a Director to amend an enforcement order by adding to the list of persons to whom the order is directed. Section 212(5) requires the Director to serve a copy of the order on any person whose name was added, and on the same person to whom the original order was directed.

[11] Similarly, section 243(1) of EPEA permits a Director to amend, add or delete a term or condition from an environmental protection order, cancel an environmental protection order, or correct a clerical error in an environmental protection order. Section 243(4) requires the Director to serve a copy of the amended order on the same person to whom the original order

⁴ See full text in Appendix B.

⁵ Section 1(r) of EPEA defines "Director" as "... a person designated as a Director for the purposes of this Act by the Minister." Section 1(1)(k) of the *Water Act* defines "Director" as "an individual designated as a Director for the purposes of all or part of this Act by the Minister under Part 13..."

was directed. Section 243(2) permits a Director to amend an environmental protection order by adding to the list of persons to whom the order is directed. Section 243(5) requires the Director to serve a copy of the amended order on any person whose name was added, and on the same person to whom the original order was directed.

[12] Subsections 91(1) sets out the circumstances and persons that may file a Notice of Appeal to the Board. While subsections 91(1)(a) and (b) expressly refer to an appeal of an amendment to an approval, and subsections 91(1)(i) and (l) expressly refer to amendments to a reclamation certificate and a remediation certificate, EPEA is silent on appeal of an amendment to an enforcement order and an environmental protection order.

[13] Subsections 91(1)(e), (f), (g) and (h), respectively, provide for an appeal of an enforcement order issued under section 210, an environmental protection order issued under section 140 or 141, an environmental protection order issued under section 129, and environmental protection orders issued generally, but none of these sections refer to appealing an amendment to such orders.

[14] Section 91(4) provides the deadlines for when a Notice of Appeal must be submitted to the Board. Subsection 91(4)(a) provides that for an appeal of an enforcement order or an environmental protection order referred to in subsection 91(1)(e), (f) or (h), not later than seven days after receipt of a copy of the order. Again, there is no reference to an amendment to such orders.

B. *Water Act*

[15] The relevant sections of the *Water Act* are 115, 116 and 137.⁶ Section 137(1) permits a Director to amend a term or condition of an enforcement order, cancel an enforcement order, or amend a clerical error in an enforcement order. Section 137(2) requires the Director to serve a copy of the amendment to the same person to whom the original order was directed.

⁶ See full text in Appendix B.

[16] Section 115(1) sets out the circumstances and persons that may file a Notice of Appeal to the Board. While subsections 115(1)(a), (b), (c), (f), (m), and (n), respectively, refer to an appeal of an amendment to an approval, a preliminary certificate, a licence, and a water management order, the *Water Act* is silent on appeal of an amendment to an enforcement order.

[17] Subsection 115(1)(p) permits the person to whom an enforcement order is directed to submit a Notice of Appeal in the specific circumstances listed therein. Those circumstances do not include an amendment of an enforcement order.

[18] Notwithstanding the rights of appeal set out in section 115(1), the *Water Act* in subsections 115(2)(c) and (d) prohibit the filing of a Notice of Appeal with respect to the following specific amendments: (i) to correct a clerical error; (ii) of a monitoring, reporting or inspection requirement in an approval, preliminary certificate or licence; (iii) to extend the expiry date of an approval, preliminary certificate or licence; and (iv) to reflect a disposition of land or an undertaking to which an approval, preliminary certificate, licence or registration is appurtenant.

[19] Section 116(1) provides the deadlines for submitting a Notice of Appeal to the Board. Subsection 116(1)(a) states that a Notice of Appeal of an enforcement order must be filed with the Board no later than seven days after receipt of a copy of the order. Again, there is no reference to an amendment to an enforcement order.

C. Amendment Orders

[20] The Amendment Orders issued to the Appellant under EPEA included a paragraph that stated:

“Section 91 of the *Environmental Protection and Enhancement Act* may provide a right of appeal against this decision to the Alberta Environmental Appeals Board. There may be a strict time limit for filing such an appeal. A copy of section 91 is enclosed. For further information, please contact the Board Secretary at #306 Peace Hills Trust Tower, 10011 – 109 Street, Edmonton, Alberta, T5J 3S8; telephone (780) 427-6207; fax (780) 427-4693.”

[21] The amendment order issued to the Appellant under the *Water Act* included a paragraph that stated:

“Section 115 of the *Water Act* may provide a right of appeal against this decision to the Alberta Environmental Appeals Board. There may be a strict time limit for filing such an appeal. A copy of section 115 is enclosed. For further information, please contact the Board Secretary at #306 Peace Hills Trust Tower 10011 – 109 Street Edmonton, Alberta, T5J 3S8 Telephone (780) 427-6207 Fax (780) 427-4693.”

[22] The Board considered the relevant provisions in each legislation and in the Amendment Orders and the submissions of the Parties on these provisions.

V. ANALYSIS

A. **Whether there is a right to appeal an amendment to an environmental protection order or an enforcement order?**

(i) *Appellant's Submissions*

[23] The Appellant submitted that while both EPEA and the *Water Act* are silent on the positive right to appeal an amendment of to environmental protection order or enforcement order, case law supports the appeal of an amendment under EPEA.⁷ Further, the *Water Act* assumes such a right, with only limited prohibited exceptions specified in sections 115(2)(c) and (d).⁸ The Appellant stated that none of the prohibited exceptions in sections 115(2)(c) and (d) of the *Water Act* applied to Amendment No. 1 to EO-WA-35659-01. The Appellant noted that the Amendment Orders included the following wording that indicated the Directors' acknowledgment of the right of an appeal:

“Section 91 of the *Environmental Protection and Enhancement Act* may provide a right of appeal against this decision to the Alberta Environmental Appeals Board. There may be a strict time limit for filing such an appeal....”

⁷ *Imperial Oil Limited v. Alberta (Minister of Environment)*, 2003 ABQB 388.

⁸ See full text in Appendix B.

(ii) *Directors' Submissions*

[24] The Directors submitted that an amendment to an environmental protection order and an enforcement order are not appealable because EPEA and the *Water Act* did not provide grounds to appeal amendment to such orders. The Directors noted EPEA and the *Water Act* set out circumstances in which a person may submit a Notice of Appeal to the Board. However, none of those circumstances stated that a person may submit a Notice of Appeal to the Board where a Director has issued an amendment under section 243(1) of EPEA⁹ or under section 137(1) of the *Water Act*.¹⁰

[25] In response to the Appellant's submission that section 115(2) of the *Water Act* provides an assumed right to appeal an amendment to an enforcement order, the Directors submitted that the right of appeal cannot be assumed but must be expressly included in the legislation. The Directors stated that for an appeal to be valid, the grounds of appeal must be listed in section 115(1) and not captured by the exceptions listed in section 115(2). The Directors noted, the Board has held that an amendment to an environmental protection order cannot be appealed, and reached similar conclusions regarding an enforcement order under EPEA. The Directors urged the Board to apply its former interpretation of section 91(1) of EPEA to section 115(1) of the *Water Act*.

[26] Regarding the appeal provisions set out in the Amendment Orders, the Directors submitted that the use of the word "may" was not acknowledging that an appeal was available. The Directors stated it was up to the Appellant to determine if, on the facts, he has a legal right to appeal and to take appropriate steps. The Directors pointed out that each of the Amendment Orders provided the Board's contact information if the Appellant required further information regarding an appeal. The Directors submitted the Directors' general practice is to include this notice in orders and amendment orders as a courtesy as there is no requirement to do so in EPEA

⁹ See full text in Appendix B.

¹⁰ See full text in Appendix B.

or the *Water Act*. The Directors further submitted that a Director could not grant the Board jurisdiction that does not exist in EPEA or the *Water Act*.

(iii) *Board's Analysis and Findings*

[27] In previous appeals, the Board has considered the appeal of an amendment to an environmental protection order and an enforcement order under EPEA.¹¹ The Board found that while EPEA explicitly recognizes the right to appeal an amendment to an approval and reclamation certificate, it is silent on the right to appeal an amendment to an environmental protection order or enforcement order. The Board rejected the argument that the omission of the right to appeal an amendment to an environmental protection order was merely an oversight.¹² Accordingly, where a Director issued an environmental protection order or an enforcement order, and the person to whom the order was issued did not appeal when it was initially issued, there was no subsequent right to appeal in the event an amendment was then issued.¹³

[28] In the Board's view, the appeal provisions in EPEA contemplate a timely hearing of appeals of environmental protection orders, as evidenced by the short seven-day period for submitting a Notice of Appeal. Multiple appeals of the same environmental protection order would not promote such timeliness. Further, the Board's receipt of additional Notices of Appeal may trigger processes under the *Environmental Appeal Board Regulation*,¹⁴ which may be inconsistent with the Board's conduct of a current appeal by the same appellants in respect of the same environmental protection order. Therefore, subsequent Notices of Appeal by the same

¹¹ *Legal Oil and Gas Ltd. v. Director of Land Reclamation Division, Alberta Environmental Protection* (December 22, 1997), EAB Appeal No. 97-024, at paragraph 36; *Cherokee Canada Inc. et al. v Director, Red Deer North Saskatchewan Region, Alberta Environment and Parks* (2 August 2018), Appeal Nos. 16- 055-056, 17-073-084, and 18-005-010-ID2 (A.E.A.B.).

¹² *Imperial Oil Limited v. Director, Enforcement and Monitoring, Bow Region, Regional Services, Alberta Environment*, 2001 ABEAB 75, paragraphs 38; *ConocoPhillips Canada Resources Corp. and Bonavista Energy Corporation v. Director, South Saskatchewan Region, Alberta Environment and Sustainable Resource Development* (14 August 2014), Appeal Nos. 13-031 and 032-D1 (A.E.A.B.), at paragraphs 38-39.

¹³ *Cherokee Canada Inc. et al. v. Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks* (2 August 2018), at paragraph 29.

¹⁴ A.R. 114/1993.

appellant of an environmental protection order already subject to appeal, is unsupported by the legislation.¹⁵

[29] In this decision, the Board confirms that sections 91, 212 and 243 of EPEA do not provide the right to appeal an amendment of an enforcement order or an environmental protection order. Therefore, the Board finds that there is no appeal as of right in respect of an amendment to an environmental protection order or an enforcement order under EPEA.

[30] The Board disagrees with the Appellant's submissions that the right of appeal is assumed or implicit in section 115(1) of the *Water Act* by the mere fact that subsections 115(2)(c) and (d) prohibit appeal of certain amendments. In the Board's view, this is not a proper interpretation of section 115 of the *Water Act*. As adopted by the Supreme Court of Canada in *Rizzo & Rizzo Shoes Ltd.*,¹⁶ the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of the legislature.

[31] Section 115(1) of the *Water Act* expressly provides the types of amendments that certain persons have the right to appeal to the Board as follows:

- (a) if the Director issues or amends an approval;
- (b) if the Director issues or amends a preliminary certificate;
- (c) if a preliminary certificate has not been issued with respect to a licence and the Director issues or amends a licence;
- (d) if the Director refuses to amend an approval, preliminary certificate or licence;
- (e) if an inspector or the Director issues a water management order or amends a water management order, except an order with respect to administering priority or an order that is only for the purpose of carrying out emergency measures; and

¹⁵ *Imperial Oil Limited v. Director, Enforcement and Monitoring, Bow Region, Regional Services, Alberta Environment*, at paragraph 35.

¹⁶ *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, at paragraph 21.

- (f) if an inspector or the Director issues a water management order or amends a water management order with respect to administering priority.¹⁷

[32] In the Board's view, the intent of section 115(1) of the *Water Act* is to provide a right of appeal only for amendments to approvals, preliminary certificates, licences, and water management orders, except water management orders for certain specific purposes.

[33] Section 115(2)(c) and (d) of the *Water Act* further provides that notwithstanding subsection (1), a Notice of Appeal may not be submitted with respect to an amendment:

- (a) to correct a clerical error;
- (b) of a monitoring, reporting or inspection requirement in an approval, preliminary certificate or licence;
- (c) to extend the expiry date of an approval, preliminary certificate or licence; and
- (d) with respect to an amendment to reflect a disposition of land or an undertaking to which an approval, preliminary certificate, licence or registration is appurtenant.¹⁸

[34] It is a well-established principle of statutory interpretation that the legislature does not intend to produce absurd consequences. As stated by the Supreme Court of Canada, an interpretation can be considered absurd if it leads to frivolous consequences, is extremely unreasonable or inequitable, or is illogical or incoherent. A label of absurdity can be attached to interpretations that defeat the purpose of a statute or render some aspect of it pointless or futile.¹⁹

[35] It follows that the appeal prohibition for amendments in sections 115(2)(c) and (d) must adopt the context in the express right of appeal provided in section 115(1), especially having regard to the "notwithstanding" clause that introduces section 115(2). A harmonious and coherent interpretation of sections 115(1) and (2), read together, provides a right of appeal only for amendments to approvals, preliminary certificates, licences, and water management orders, which right of appeal is clawed back if the purpose of the amendment is:

¹⁷ Sections 115(1)(a), (b), (c), (f), (m) and (n) of the *Water Act*. See Appendix B for the full text.

¹⁸ Sections 115(2)(c)(i), (ii), (iii) and (d) of the *Water Act*. See Appendix B for the full text.

- (a) to correct a clerical error in an approval, preliminary certificate, licence and appealable water management order;
- (b) for monitoring, reporting or inspection requirement in an approval, preliminary certificate or licence;
- (c) to extend the expiry date of an approval, preliminary certificate or licence; and
- (d) to reflect a disposition of land or an undertaking to which an approval, preliminary certificate, licence or registration is appurtenant.

[36] The Appellant's interpretation that a right of appeal is assumed in the *Water Act*, with the only limited exceptions being those set out in section 115(2), would render the express appeal of amendment provisions in section 115(1) redundant. The Appellant's interpretation creates an absurdity that will defeat the purpose and intent of Part 9 of the *Water Act*, which is similar to that of EPEA.

[37] From the preceding analysis, the Board finds that there is no right of appeal under section 115 of the *Water Act* with respect to an amendment of a *Water Act* enforcement order.

[38] With respect to the appeal provisions in the Amendment Orders, the Board disagrees that the Directors' general practice to include Notice of Appeal provisions in orders and amendment orders is a matter of courtesy and not a requirement in EPEA or the *Water Act*. The Board notes that some of the Regulations made under the *Water Act* and EPEA require the Directors to include a statement in respect of an appeal to the Board in applicable circumstances.²⁰

¹⁹ *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, at paragraph 21.

²⁰ The *Water (Ministerial) Regulation*, A.R. 205/1998, subsection 13(3)(c), provides: "A notice with respect to a decision or order under subsection (1) must contain the following: ... if applicable, a statement that the decision may be appealed to the Environmental Appeal Board."

The *Water (Offences and Penalties) Regulation*, A.R. 193/1998, section 4(2)(d), provides: "A notice of administrative penalty must be given in writing and must contain the following information: ... a statement of the right to appeal by Notice of Appeal to the Environmental Appeal Board under section 115(1)(q) of the Act."

The *Environmental Protection and Enhancement (Miscellaneous) Regulation*, A.R. 118/1993, subsection 3(4)(e), provides: "A notice under this section shall contain... a statement that the decision may be appealed to the Environmental Appeal Board."

[39] However, the Board agrees that the use of the word “may” does not constitute an admission by the Directors that a right of appeal exists for each order containing such a provision. Further, the orders must be reviewed in light of the provisions of the enabling legislation and their various objectives. Given the Board’s finding that EPEA and the *Water Act* do not provide a right of appeal for an amendment to an environmental protection order or enforcement order, the Board rejects the Appellant’s submission that the Amendment Orders themselves could provide a right of appeal outside of and contrary to the legislation. The Board finds that no right of appeal exists in the Amendment Orders themselves.

[40] The Board, therefore, concludes that neither EPEA, the *Water Act*, nor the Amendment Orders themselves, provide the Appellant with a right to appeal the Amendment Orders.

B. Whether the Board has jurisdiction to hear an appeal of an amendment to an environmental protection order or an enforcement order? If yes, whether the Board should hear the Appellant’s Notices of Appeal of the Amendment Orders?

[41] The Board considered in this section whether EPEA and the *Water Act*, which do not provide an express right to appeal an amendment of an environmental protection order or an enforcement order, precludes the Board from hearing the issues raised in a Notice of Appeal of such amendments.

(i) Appellant’s Submissions

[42] The Appellant argued that case law supports the appeal of an amendment to an environmental protection order or enforcement order under EPEA. The Appellant submitted that in the case of *Imperial Oil Limited v. Alberta (Minister of Environment)* (“*Imperial Oil*”)²¹ the

The *Administrative Penalty Regulation*, A.R. 23/2003, subsection 2(2)(d), provides: “A notice of administrative penalty must be given in writing and must contain the following information: ... a statement of the right to appeal to the Environmental Appeal Board given under section 91(1)(n) of the Act.”

²¹ *Imperial Oil Limited v. Alberta (Minister of Environment)*, 2003 ABQB 388.

Court's contrast of the applicant's inability to appeal a Director's letter, to the ability to appeal amendments or a new environmental protection order, suggested that both environmental protection orders and amendments could be appealed. The Appellant argued that this case clearly shows there is no prohibition to appeal an amendment to an environmental protection order or an enforcement order. The Appellant acknowledged that not all amendments to an order are appealable, however, "...where in this case the appeal goes to the heart of the order/amendment, namely who it has been issued to, such an appeal should be considered."²²

[43] In his rebuttal submissions, the Appellant argued that the Directors' jurisdictional analysis supports the conclusion that the Board has jurisdiction to allow an appeal of an amendment to an environmental protection order and an enforcement order and has used this jurisdiction in the past. The Appellant submitted that the issues raised in his appeals support the exercise of the Board's jurisdiction to consider his appeals. The Appellant argued that the Directors have the ability to remove him as a party by cancelling the orders as they relate to him. However, the Directors have refused to do so despite his advice to the Directors that he was improperly named in the orders, and despite the significant liability associated with non-compliance and his inability to carry out the orders. The Appellant submitted that he is faced with an impossible scenario as a former corporate director of JMB. He cannot comply with the orders because he is no longer associated with the other named parties and he is completely dependent on them to carry out the orders.

[44] The Appellant submitted that the other named parties are well-situated to address the concerns raised in the orders. He argued that the Amendment Orders are evidence that the other named parties are actively working with the Directors to comply with the orders. He noted that the process has neither involved the Appellant's participation nor required his future participation. The Appellant requested the Board use its discretion and jurisdiction to hear his appeals of the Amendment Orders, given the significant effects on him.

²² Appellant's Initial Submission on Amendments, May 10, 2021, at page 3.

(ii) *Directors' Submissions*

[45] The Directors stated that administrative tribunals, unlike the Courts, do not have inherent jurisdiction but obtain their jurisdiction solely from the statute that provides it. The Directors submitted that the Board does not have jurisdiction to hear the Appellant's appeals of the Amendment Orders because EPEA and the *Water Act* did not provide the Board jurisdiction to hear appeals of amendments to environmental protection orders and enforcement orders. However, the Directors noted that the Board has recognized there may be limited exceptions where an appellant may be able to appeal an amendment to an environmental protection order:

- (a) when an amendment, in substance, amounts to a decision to issue a new environmental protection order;²³ or
- (b) where a new party is added to an order.²⁴

[46] The Directors stated that the Court's analysis in *Imperial Oil* is consistent with the first exception. The Court's statement was limited to substantive decisions of the Director and was not a statement that all amendments to environmental protection orders were appealable. The Directors argued that since the Court's decision in *Imperial Oil*, the Board has not interpreted section 91(1) of EPEA to include a right to appeal all amendments to environmental protection orders. With respect to the second exception, the Directors took the position that where a party is added to an environmental protection order, the practical result is that a substantive order is issued to the newly named party as opposed to an "amendment" to an existing order. The Directors submitted that neither of these exceptions applied to the Amendment Orders issued under EPEA in this case.

[47] The Directors also stated that the scope of an appeal of an amendment must be confined to the substance of the amendment. The Directors noted the Board's previous decisions, which found that appealing an amendment of an order did not expose the underlying

²³ *Imperial Oil Limited v. Director, Enforcement and Monitoring, Bow Region, Regional Services, Alberta Environment*, 2001 ABEAB 75 at paragraph 33; *Imperial Oil v. Alberta (Minister of Environment)*, 2003 ABQB 388 at paragraphs 123 and 125.

²⁴ *Cherokee Canada Inc. et al. v. Director, Red Deer North Saskatchewan Region, Alberta Environment and Parks* (2 August 2018), at paragraph 32.

order to review by the Board.²⁵ The Directors submitted that all of the Amendment Orders, except for Amendment No. 1 to EPO-EPEA 35659-08, only extended a deadline in the underlying Original Orders. Amendment No. 1 to EPO-EPEA 35659-08 corrected a clerical error by adding a hectare amount that was missing in the underlying environmental protection order. Similarly, the EO-WA-35659-01 amendment extended a deadline in the underlying enforcement order.

[48] The Directors submitted that, as the Amendment Orders did not change the substantive requirements of the Original Orders and did not add the Appellant or any other party to the Original Orders, they did not amount to decisions to issue new orders. The Directors stated that the proper forum for the Appellant to dispute the substance of any of the Original Orders (i.e. naming him as a party) is an appeal of the Original Orders. The Directors requested the Board limit the issues in each of the Appellant's Notices of Appeal of the Amendment Orders to the substance of the amendments.

[49] The Directors further submitted that if an appellant fails to appeal an environmental protection order or enforcement order, that appellant has no right of appeal if those orders are later amended.²⁶ Therefore, because the Appellant failed to appeal some of the Original Orders by the appeal deadline, if the Board declined to extend the appeal deadline for those Original Orders, the Appellant cannot appeal the amendments to those Original Orders.²⁷

(iii) *Board's Analysis and Findings*

[50] As stated above, the Board previously considered appeals of amendments to environmental protection orders and enforcement orders under EPEA. In *Legal Oil and Gas Ltd.*

²⁵ *ConocoPhillips Canada Resources Corp. and Bonavista Energy Corporation v. Director, South Saskatchewan Region, Alberta Environment and Sustainable Resource Development* (14 August 2014), Appeal Nos. 13-031 and 032-D1 (A.E.A.B.) at paragraph 44.

²⁶ *Cherokee Canada Inc. et al. v. Director, Red Deer North Saskatchewan Region, Alberta Environment and Parks* (2 August 2018), at paragraph 29.

²⁷ EPO-EPEA 35659-01 to 35659-06 and EO-WA-35659-01.

v. Director of Land Reclamation Division, Alberta Environmental Protection (“Legal Oil”),²⁸ the Director issued an environmental protection order to an appellant. Later, the Director issued an amendment to the environmental protection order (“Amendment EPO”). By subsequent letters (the “Letters”), the Director issued further directions to the appellant. Approximately six months later, the appellant appealed the decisions of the Director in the Letters, arguing they had the effect of amending the original environmental protection order.

[51] In *Legal Oil*, the Board reviewed whether the Letters should be considered amendments to the original environmental protection order and, if so, whether the Board had the jurisdiction to hear the appeal. The Board held that notwithstanding the absence of a clear legislative directive on this matter, if the Amendment EPO had substantively increased the consequences of the environmental protection order on the party served with the order, the Board would have been strongly inclined to hear the appeal. The Board ultimately refused to hear the appeal because the Board was not persuaded that the Amendment EPO substantially increased the consequences of the original environmental protection order on the appellant. Further, the appellant did not appeal the Amendment EPO, and the Letters had neither the form nor the substance to be an amendment to the environmental protection order.²⁹

[52] In *Cherokee Canada Inc. et al. v. Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks (“Cherokee Canada”)*, the Board received appeals from Cherokee Canada Ltd., its subsidiary, and Domtar Inc. of five enforcement orders and two significant amendments to the enforcement orders, which the Director issued between December 2016 and July 2018.³⁰ Domtar was not named in EO-2016/03 when it was issued in December 2016, and was added as a party in Amendment No. 1 to EO-2016/03. Domtar filed a Notice of

²⁸ *Legal Oil and Gas Ltd. v. Director of Land Reclamation Division, Alberta Environmental Protection* (December 22, 1997), EAB Appeal No. 97-024, at paragraph 36.

²⁹ *Legal Oil and Gas Ltd. v. Director of Land Reclamation Division, Alberta Environmental Protection* (December 22, 1997), EAB Appeal No. 97-024, at paragraphs 36, 39 and 42.

³⁰ The first enforcement order was EO-2016/03, issued on December 16, 2016. On March 16, 2018, the Director issued Amendment No. 1 to EO-2016/03, EO-2018/02, EO-2018/03, and EO-2018/04. On July 19, 2018, the Director issued Amendment No. 2 to EPEA-EO-2016/02 and EO-2018/06.

Appeal to EO-2016/03 and Amendment No. 1. Cherokee appealed Amendment No. 1 by way of a notice of motion to amend its Notice of Appeal.

[53] The Director in *Cherokee Canada* argued that the Board did not have jurisdiction to hear the appeals. The Director requested the Board determine whether an amendment to an enforcement order can be appealed and whether a party added to an enforcement order by an amendment can appeal the enforcement order. Among the issues determined were whether the Board has jurisdiction to accept and hear: (a) the Amended Notice of Appeal of Cherokee with respect to Amendment No. 1; and (b) the Notice of Appeal of Domtar with respect to Amendment No. 1.

[54] The Board determined that it had jurisdiction to hear the appeals for the following reasons:

- (a) while appeals of amendments of enforcement orders are not listed under section 91(1) of EPEA, an appellant who has already appealed an enforcement order when the order was first issued is not precluded from amending their Notice of Appeal when an amendment to that order is issued; and
- (b) an amendment to an enforcement order is a new enforcement order to a newly added party. It is not proper to interpret section 91(1) of EPEA in a manner that removes the right of appeal of a named party to an enforcement order.³¹

[55] The Board found support from two sources for its jurisdiction to accept and hear Cherokee's amended Notice of Appeal and Domtar's Notice of Appeal. The first was the Board's authority under section 93 of EPEA to extend the deadline for filing a Notice of Appeal, which effectively allowed the Board to permit an amendment to a Notice of Appeal. The second was the Board's authority to hold a hearing on a *de novo* basis under section 95(2)(d) of EPEA. Given the Board's core function of providing the Minister with the best possible advice to resolve an appeal, the Board must decide the appeals based on the facts that exist on the date of

³¹ *Cherokee Canada Inc. et al. v. Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks* (2 August 2018), at paragraphs 31-32.

the hearing of the appeals. Therefore, where an enforcement order has been amended, the Board's report and recommendations to the Minister will be based on the enforcement order "as amended," with the appellant having had the opportunity to present its concerns fully. The Board's authority to hear *de novo* evidence also includes the ability to hear the appeal of an appellant that has been added to an enforcement order by way of an amendment.³²

[56] In the appeals currently before the Board, the Appellant referred to the Court's analysis in *Imperial Oil*, where the Court considered the Director's letters similar to, or more substantive than, the Letters in *Legal Oil*, and held that the Director cannot make substantive decisions through letters that are not appealable. The Appellant inferred from the Court's statement that there is no prohibition on the ability to appeal an amendment to an order. The Board disagrees with the Appellant's inference and finds that the Court's statement is consistent with the Board's decision in *Legal Oil*.³³

[57] The Board disagrees with the Directors' argument that the Board lacks jurisdiction to hear an appeal of an amendment to an environmental protection order and an enforcement order simply because section 91(1) of EPEA and section 115(1) of the *Water Act* do not expressly provide a right of appeal in respect of those amendments. As set out above, one of the purposes of the appeal provisions of EPEA and Part 9 of the *Water Act* is to provide a timely hearing of appeals related to environmental protection orders and enforcement orders. Multiple appeals by the same parties of substantially the same orders would not promote timeliness.

[58] Both EPEA and the *Water Act* intend to prevent separate notices of appeal and separate appeal hearings, by the same appellants, over the same factual circumstances, of the same environmental protection order or enforcement order. Further, the statutes intend to prevent an extension of the statutory timelines by the occurrence of an amendment. The underlying policy is to provide a degree of certainty in the appeal process and to prevent creating

³² *Cherokee Canada Inc. et al. v. Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks* (2 August 2018), at paragraphs 30 and 33.

³³ *Imperial Oil Limited v. Alberta (Minister of Environment)*, 2003 ABQB 388, at paragraphs 109-110.

shifting targets with respect to the scope of an appeal.³⁴ However, by not providing a right of appeal for these types of amendments, the Legislature did not intend to prohibit the resolution of valid issues arising from an amendment to an environmental protection order and an enforcement order in an ongoing appeal of the original order. Consequently, the Legislature empowered the Board to deal with new issues that may arise from an amendment of an environmental protection order and an enforcement order, within the Board's process as the Board deems appropriate. These powers of the Board are seen in EPEA, particularly section sections 91(5), 93, and 95(2)(d) and 116(2) of the *Water Act*,³⁵ regarding amendments to a Notice of Appeal and hearing an appeal *de novo*.

[59] As the Directors and the Appellant have acknowledged, the Board has jurisdiction to hear an appeal of an amendment to an environmental protection order and an enforcement order in appropriate circumstances. The Board has recognized three circumstances it considers appropriate to hear an appeal of an amendment to an environmental protection order or an enforcement order:

- (a) where an amendment significantly increased the consequences of the environmental protection order or enforcement order on the party named and served with the order;³⁶
- (b) when an amendment, in substance, amounts to a new environmental protection order or new enforcement order; and
- (c) where an amendment adds a new party to an environmental protection order or enforcement order under EPEA.

³⁴ *Castle-Crown Wilderness Coalition v. Director, Southern Region, Regional Services, Alberta Environment re: Castle Mountain Resort Inc.* (8 August 2006), Appeal No. 03-144-D1 (A.E.A.B.) at paragraphs 67-70; *ConocoPhillips Canada Resources Corp. and Bonavista Energy Corporation v. Director, South Saskatchewan Region, Alberta Environment and Sustainable Resource Development* (14 August 2014), Appeal Nos. 13-031 and 032-D1 (A.E.A.B.) at paragraph 36.

³⁵ See full text in Appendix B.

³⁶ An example would be where the amendment raised new liability issues which were not adequately explained in the original environmental protection order or enforcement order. See *Legal Oil and Gas Ltd. v. Director of Land Reclamation Division, Alberta Environmental Protection* (December 22, 1997), EAB Appeal No. 97-024, at paragraph 51.

However, for the third exception the Board finds that, for a newly added party, the order and its amendment together constitute a new substantive order appealable under section 91(1) of EPEA and 115(1) of the *Water Act* within the timeline provided under those statutes, rather than an “amendment order.” The Board recognizes that this list of exceptions is not exhaustive and does not limit the power of the Board or preclude the Board from determining other circumstances that may be appropriate for the Board to hear appeals of an amendment to an environmental protection order or an enforcement order.

[60] Having determined that the Board has jurisdiction to hear an appeal of an amendment to an environmental protection order or an enforcement order, the Board now turns to whether it should accept the Appellant’s Notices of Appeal of the Amendment Orders. The Board finds that appealing an amendment of an order does not expose the underlying order to review. Therefore, the scope of an appeal of an amendment must be confined to the substance of the amendment.³⁷

[61] The Board has reviewed the Amendment Orders and finds that the substance of all the Amendment Orders, except Amendment No. 1 to EPO-EPEA 35659-08, was an extension of a deadline in their underlying Original Orders. The substance of Amendment No. 1 to EPO-EPEA 35659-08 was the addition of a hectare amount that was not in the underlying environmental protection order.

[62] The Board finds that the Appellant’s Notices of Appeal of the Amendment Orders did not challenge the Directors’ extension of the deadlines or the addition of the new hectare amount. Instead, the Notices of Appeal of the Amendment Orders largely repeat the Appellant’s Notices of Appeal of the Original Orders. The Board notes the following entries on the Appellant’s Notices of Appeal of the Amendment Orders where the Notice of Appeal form asks:

³⁷ *ConocoPhillips Canada Resources Corp. and Bonavista Energy Corporation v. Director, South Saskatchewan Region, Alberta Environment and Sustainable Resource Development* (14 August 2014), Appeal Nos. 13-031 and 032-D1 (A.E.A.B.) at paragraph 44.

- “what parts of Alberta Environment and Parks’ decision do you not like,” the Appellant’s response was “the naming of Jeffrey Buck as a party to the Enforcement Order in his capacity as a former director.”
- “what are you concerned about,” the Appellant’s response was either “failed to adequately establish the basis for naming Mr. Buck” or “the decision seeks to not only pierce the corporate veil but also pursue former directors.”
- “what would you like the Board to do to resolve your appeal,” the Appellant’s response was “we seek the removal of Jeffrey Buck (former Director) as a party related to Amendment No. 1 to ... (and associated amending Orders).”

[63] The Board also reviewed the Appellant’s initial and rebuttal submissions. The Board finds that the Appellant did not provide any argument related to the extended deadlines or the added hectare amount, which are the subject matter of the Directors’ amendments in the Amendment Orders. The substance of the Appellant’s submissions is naming him as a party in the Original Orders and Amendment Orders.

[64] The Board notes the Appellant’s argument that his appeals of the Amendment Orders go to the heart of the order or the amendment, namely, who was named in the orders. He also argued that the issues raised in his appeals support the exercise of the Board’s jurisdiction to hear his appeals. The Board finds, on the facts of these appeals, that the proper mechanism to challenge the Directors’ decision to name the Appellant as a party in the orders is in an appeal of the Original Orders, not the Amendment Orders.

[65] The Board finds that the Appellant’s Notices of Appeal of the Amendment Orders did not raise the extension of the deadlines and the addition of a new hectare amount, which were the substance of the Amendment Orders. Therefore, the Board finds that the Appellant’s Notices of Appeal of the Amendment Orders are not properly before the Board and are not valid appeals. The Board declines to accept and hear the Appellant’s Notices of Appeal in this instance.

[66] The Directors submitted that the Appellant failed to appeal EPO-EPEA 35659-01 to 35659-06 and EO-WA-35659-01 by the appeal deadline, and if the Board declines to extend

the appeal deadline for those appeals, the Appellant has no right to appeal the amendments to EPO-EPEA 35659-01 to 35659-06 and EO-WA-35659-01. The issue of the Appellant's timeline for filing his Notices of Appeal and request for extension of the appeal period is the subject of a separate decision of the Board and therefore not considered in this decision. Given the Board's finding that the Appellant's Notices of Appeal of the Amendment Orders are not properly before the Board, the Board does not need not decide whether to accept the Appellant's Notices of Appeal based on filing timelines.

C. Whether there was a breach of procedural fairness owed to the Appellant, or prejudice was suffered by any of the parties?

[67] The Parties made submissions on the existence or breach of the duty of procedural fairness. The Appellant also made submissions regarding prejudice.

(i) Appellant's Submissions

[68] The Appellant submitted that he was inundated with orders and amendments in relation to a company he was no longer employed by, since June 23, 2020. He stated it would be unfair to him to continue to be named in the proceedings because he cannot take any action with regard to the orders, and has no ability to influence the actions of the current permit/authorization holder, access their records, or carry out work at their sites. The Appellant submitted that his appeals raised important issues regarding the exercise of discretion in what he considered an arbitrary inclusion of his name. He stated that it was unreasonable to expect him to comply with the Original Orders or the Amendment Orders, which exposed him to significant legal consequences under EPEA and the *Water Act*. The Appellant also questioned why he was named in the Amendment Orders, which he was not consulted on.

[69] The Appellant submitted that the Directors would not be prejudiced by allowing the appeals of the Amendment Orders because the other named parties and current directors of those corporations were well-situated to address the concerns raised in the Original Orders. The Appellant argued that the totality of his circumstances were exceptional, and outweighed the

Board's general policy of not allowing an appeal to an amendment to an environmental protection order and an enforcement order.

(ii) *Directors' Submissions*

[70] The Directors submitted that neither the Board nor the Directors owed the Appellant a duty of procedural fairness. The Directors stated that the Board should not consider procedural fairness when making a decision on whether it has jurisdiction under EPEA or the *Water Act* to accept the Appellant's appeals of the Amendment Orders.

(iii) *Board's Analysis and Findings*

[71] The Board adheres to the principles of administrative law and natural justice, which requires fairness to all parties concerned, whether it be an appellant, an approval holder, or a Director.³⁸ However, the Board finds that the Appellant's submissions on procedural fairness do not relate to the Board's processes. Therefore, the Board finds no breach of procedural fairness to the Appellant regarding the Board's processes in relation to any of his Notices of Appeal filed with the Board.

[72] The Appellant's submissions on procedural fairness were that it would be unfair to him to continue to be named in the proceedings. He also argued that his appeals raise important issues on the exercise of discretion in what he considered the arbitrary inclusion of his name in the orders, and that he was named in amendments he was not consulted on. The Board finds that the Appellant's argument on procedural fairness does not relate to the subject of the Amendment Orders. The Board finds that the Appellant did not raise any issues, disclose any facts, or make any submissions challenging the Directors' process in extending the deadlines or adding the missing hectare amount. The Board finds that there was no breach of procedural fairness to the Appellant regarding the Amendment Orders.

³⁸ *Castle-Crown Wilderness Coalition v. Director, Southern Region, Regional Services, Alberta Environment re: Castle Mountain Resort Inc.* (8 August 2006), Appeal No. 03-144-D1 (A.E.A.B.) paragraphs 65-66.

[73] With respect to prejudice, the Appellant did not allege any prejudice occasioned to him by the substance of the Amendment Orders. The Board finds that the continued naming of the Appellant in the various orders was not the subject matter of the Amendment Orders. Therefore, the Board does not need to decide whether the Directors will be prejudiced by allowing the appeals of the Amendment Orders.

VI. DECISION

[74] Having reviewed the Amendment Orders, the Appellant's Notices of Appeal of the Amendment Orders, and the written submissions of the Parties, the Board has determined as follows:

- (a) There is no right to appeal an amendment to an enforcement order or an environmental protection order under EPEA, the *Water Act*, or an amendment to an enforcement order or an amendment to an environmental protection order itself.
- (b) The Board has jurisdiction to hear an appeal of an amendment to an environmental protection order or an enforcement order in appropriate circumstances. The Legislature empowered the Board to deal with new issues that may arise from an amendment of an environmental protection order or an enforcement order within the Board's process as the Board deems appropriate. To date, the Board has recognized three circumstances it considers appropriate to hear an appeal of an amendment to an environmental protection order or an enforcement order:
 - (i) where an amendment significantly increased the consequences of the environmental protection order or enforcement order on the party named and served with the order;
 - (ii) when an amendment, in substance, amounts to a new environmental protection order or enforcement order; and
 - (iii) where an amendment adds a new party to an environmental protection order or enforcement order under EPEA.

For the newly added party, both the order and its amendment constitute a new substantive order appealable under EPEA and the *Water Act* within the timeline provided under those statutes, rather than an "amendment

order.” The list of appropriate circumstances to hear an appeal of an amendment to an environmental protection order or an enforcement order is not exhaustive. The list does not preclude the Board from determining other circumstances that may be appropriate for the Board to hear an appeal of an amendment to an environmental protection order or an enforcement order.

- (c) The Appellant’s Notices of Appeal do not raise or challenge the subject matter of the Amendment Orders, namely the extension of the deadlines and the addition of a new hectare amount. The Appellant’s Notices of Appeal of the Amendment Orders are not properly before the Board and are not valid appeals. The Board declines to accept and hear the Appellant’s Notices of Appeal in this instance.
- (d) There is no breach of procedural fairness to the Appellant in regards to the Amendment Orders. Further, there is no alleged prejudice occasioned to the Appellant or the Directors by the subject matter of the Amendment Orders.

[75] Accordingly, Notices of Appeal EAB 20-066 (Amendment No. 1 to EO-WA-35659-01) and EAB 20-067 to 068 and 21-002 to 007 (Amendment Nos. 1 to EPO-EPEA-35659-01 to EPO-EPEA-35659-08) are dismissed under section 95(5)(a)(iii) of EPEA.³⁹

Dated on May 20, 2022, at Edmonton, Alberta.

“original signed by”

Chidinma Thompson, Ph. D.
Board Chair

³⁹ Section 95(5)(a)(iii) of EPEA states:

“The Board

- (a) may dismiss a notice of appeal if ...
 - (iii) for any other reason the Board considers that the notice of appeal is not properly before it...”

Appendix A

| EAB File No. | AEP Order No. | Date Issued by AEP | Recipient |
|--------------|-------------------|--------------------|---|
| EAB 20-055 | EO-WA-35659-01 | March 12, 2021 | 2161889 Alberta Ltd.; Byron Levkulich, former corporate director of 2161889 Alberta Ltd., JMB Crushing Systems Inc.; Aaron Patsch, former Director of 2161889 Alberta Ltd., JMB Crushing Systems Inc.; Jeffrey Buck, former Director of 2161889 Alberta Ltd., JMB Crushing Systems Inc.; Lisa Ball, former Director of 2161889 Alberta Ltd., 2161889 Alberta Ltd.; 541466 Alberta Ltd., o/a JLG Ball Enterprises; Robert Beaverford |
| EAB 20-056 | EPO-EPEA-35659-01 | March 2, 2021 | JMB Crushing Systems Inc.; Byron Levkulich, Director of JMB Crushing Systems Inc.; Aaron Patsch, Director of JMB Crushing Systems Inc.; Jeffrey Buck, former Director of JMB Crushing Systems Inc. |
| EAB 20-057 | EPO-EPEA-35659-02 | March 11, 2021 | JMB Crushing Systems Inc.; Byron Levkulich, Director of JMB Crushing Systems Inc.; Aaron Patsch, Director of JMB Crushing Systems Inc.; Jeffrey Buck, former Director of JMB Crushing Systems Inc. |
| EAB 20-058 | EPO-EPEA-35659-03 | March 11, 2021 | JMB Crushing Systems Inc.; Byron Levkulich, Director of JMB Crushing Systems Inc.; Aaron Patsch, Director of JMB Crushing Systems Inc.; Jeffrey Buck, former Director of JMB Crushing Systems Inc. |
| EAB 20-059 | EPO-EPEA-35659-04 | March 11, 2021 | JMB Crushing Systems Inc.; Byron Levkulich, Director of JMB Crushing Systems Inc.; Aaron Patsch, Director of JMB Crushing Systems Inc.; Jeffrey Buck, former Director of JMB Crushing Systems Inc. |
| EAB 20-060 | EPO-EPEA-35659-05 | March 11, 2021 | JMB Crushing Systems Inc.; Byron Levkulich, Director of JMB Crushing Systems Inc.; Aaron Patsch, Director of JMB Crushing Systems Inc.; Jeffrey Buck, former Director of JMB Crushing Systems Inc. |
| EAB 20-061 | EPO-EPEA-35659-06 | March 11, 2021 | JMB Crushing Systems Inc.; Byron Levkulich, Director of JMB Crushing Systems Inc.; Aaron Patsch, Director of JMB Crushing Systems Inc.; Jeffrey Buck, former Director of JMB Crushing Systems Inc. |
| EAB 20-062 | EPO-EPEA-35659-07 | March 12, 2021 | 2161889 Alberta Ltd.; Byron Levkulich, former Director of 2161889 Alberta Ltd., JMB Crushing Systems Inc.; Aaron Patsch, former Director of 2161889 Alberta Ltd., JMB Crushing Systems Inc.; Jeffrey Buck, former |

| EAB File No. | AEP Order No. | Date Issued by AEP | Recipient |
|--------------|--------------------------------------|--------------------|---|
| | | | Director of 2161889 Alberta Ltd., JMB Crushing Systems Inc.; Lisa Ball, former Director of 2161889 Alberta Ltd., 2161889 Alberta Ltd.; 541466 Alberta Ltd.; and Robert Beaverford |
| EAB 20-063 | EPO-EPEA-35659-08 | March 19, 2021 | JMB Crushing Systems Inc.; Byron Levkulich, Director of JMB Crushing Systems Inc.; Aaron Patsch, Director of JMB Crushing Systems Inc.; Jeffrey Buck, former Director of JMB Crushing Systems Inc.; and George Shandro |
| EAB 20-064 | EPO-EPEA-35659-09 | March 19, 2021 | JMB Crushing Systems Inc.; Byron Levkulich, Director of JMB Crushing Systems Inc.; Aaron Patsch, Director of JMB Crushing Systems Inc.; Jeffrey Buck, former Director of JMB Crushing Systems Inc. |
| EAB 20-065 | EPO-EPEA-35659-10 | March 19, 2021 | JMB Crushing Systems Inc.; Byron Levkulich, Director of JMB Crushing Systems Inc.; Aaron Patsch, Director of JMB Crushing Systems Inc.; Jeffrey Buck, former Director of JMB Crushing Systems Inc. |
| EAB 20-066 | Amendment No. 1 to EO-WA-35659-01 | March 19, 2021 | 2161889 Alberta Ltd.; Byron Levkulich, former Director of 2161889 Alberta Ltd., JMB Crushing Systems Inc.; Aaron Patsch, former Director of 2161889 Alberta Ltd., JMB Crushing Systems Inc.; Jeffrey Buck, former Director of 2161889 Alberta Ltd., JMB Crushing Systems Inc.; Lisa Ball, former Director of 2161889 Alberta Ltd., 2161889 Alberta Ltd.; 541466 Alberta Ltd., o/a JLG Ball Enterprises; Robert Beaverford |
| EAB 20-067 | Amendment No. 1 to EPO-EPEA-35659-01 | March 16, 2021 | JMB Crushing Systems Inc.; Byron Levkulich, Director of JMB Crushing Systems Inc.; Aaron Patsch, Director of JMB Crushing Systems Inc.; Jeffrey Buck, former Director of JMB Crushing Systems Inc. |
| EAB 20-068 | Amendment No. 1 to EPO-EPEA-35659-07 | March 19, 2021 | 2161889 Alberta Ltd.; Byron Levkulich, former Director of 2161889 Alberta Ltd., JMB Crushing Systems Inc.; Aaron Patsch, former Director of 2161889 Alberta Ltd., JMB Crushing Systems Inc.; Jeffrey Buck, former Director of 2161889 Alberta Ltd., JMB Crushing Systems Inc.; Lisa Ball, former Director of 2161889 Alberta Ltd., 2161889 Alberta Ltd.; 541466 Alberta Ltd.; and Robert Beaverford |
| EAB 21-002 | Amendment No. 1 to EPO-EPEA-35659-08 | April 26, 2021 | JMB Crushing Systems Inc.; Byron Levkulich, corporate director of JMB Crushing Systems Inc.; Aaron Patsch, corporate director of JMB Crushing Systems Inc.; Jeffrey Buck, former corporate director of JMB Crushing Systems Inc.; and George Shandro |

| EAB File No. | AEP Order No. | Date Issued by AEP | Recipient |
|---------------------|--------------------------------------|---------------------------|--|
| EAB 21-003 | Amendment No. 1 to EPO-EPEA-35659-02 | May 3, 2021 | JMB Crushing Systems Inc.; Byron Levkulich, Director of JMB Crushing Systems Inc.; Aaron Patsch, Director of JMB Crushing Systems Inc.; Jeffrey Buck, former Director of JMB Crushing Systems Inc. |
| EAB 21-004 | Amendment No. 1 to EPO-EPEA-35659-03 | May 3, 2021 | JMB Crushing Systems Inc.; Byron Levkulich, corporate director of JMB Crushing Systems Inc.; Aaron Patsch, corporate director of JMB Crushing Systems Inc.; Jeffrey Buck, former corporate director of JMB Crushing Systems Inc. |
| EAB 21-005 | Amendment No. 1 to EPO-EPEA-35659-04 | May 3, 2021 | JMB Crushing Systems Inc.; Byron Levkulich, corporate director of JMB Crushing Systems Inc.; Aaron Patsch, corporate director of JMB Crushing Systems Inc.; Jeffrey Buck, former corporate director of JMB Crushing Systems Inc. |
| EAB 21-006 | Amendment No. 1 to EPO-EPEA-35659-05 | April 30, 2021 | JMB Crushing Systems Inc.; Byron Levkulich, corporate director of JMB Crushing Systems Inc.; Aaron Patsch, corporate director of JMB Crushing Systems Inc.; Jeffrey Buck, former corporate director of JMB Crushing Systems Inc. |
| EAB 21-007 | Amendment No. 1 to EPO-EPEA-35659-06 | May 3, 2021 | JMB Crushing Systems Inc.; Byron Levkulich, corporate director of JMB Crushing Systems Inc.; Aaron Patsch, corporate director of JMB Crushing Systems Inc.; Jeffrey Buck, former corporate director of JMB Crushing Systems Inc. |

Appendix B

Relevant sections of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12

Section 91(1)

- (1) A notice of appeal may be submitted to the Board by the following persons in the following circumstances:
 - (a) where the Director issues an approval, makes an amendment, addition or deletion pursuant to an application under section 70(1)(a) or makes an amendment, addition or deletion pursuant to section 70(3)(a), a notice of appeal may be submitted
 - (i) by the approval holder or by any person who previously submitted a statement of concern in accordance with section 73 and is directly affected by the Director's decision, in a case where notice of the application or proposed changes was provided under section 72(1) or (2), or
 - (ii) by the approval holder or by any person who is directly affected by the Director's decision, in a case where no notice of the application or proposed changes was provided by reason of the operation of section 72(3);
 - (b) where the Director refuses
 - (i) to issue an approval, or
 - (ii) to make an amendment, addition or deletion in respect of an approval pursuant to an application under section 70(1)(a), the applicant may submit a notice of appeal;
 - (c) where the Director cancels or suspends an approval under section 70(3)(b) or (4), the approval holder may submit a notice of appeal;
 - (d) where the Director cancels a certificate of qualification under section 83(1)(b), the holder of the certificate of qualification may submit a notice of appeal;
 - (e) where the Director issues an enforcement order under section 210(1)(a), (b) or (c), the person to whom the order is directed may submit a notice of appeal;
 - (f) where an inspector issues an environmental protection order regarding conservation and reclamation under section 140 or 141, the person to whom the order is directed may submit a notice of appeal;
 - (g) where the Director issues an environmental protection order under section 129,
 - (i) the person to whom the order is directed, and

- (ii) any person who is directly affected by the designation of the contaminated site may submit a notice of appeal;
- (h) where the Director issues an environmental protection order, except an environmental protection order directing the performance of emergency measures under section 114, 151 or 160 and an environmental protection order referred to in clause (g), the person to whom the order is directed may submit a notice of appeal;
- (i) where an inspector issues a reclamation certificate under section 138, or the Director or an inspector amends a reclamation certificate under section 139, the operator and any person who receives a copy of the certificate or amendment under section 145 may submit a notice of appeal;
- (j) where the Director or an inspector cancels a reclamation certificate, the operator may submit a notice of appeal;
- (k) where the Director or an inspector refuses to accept an application for a reclamation certificate or an inspector refuses to issue a reclamation certificate, the operator may submit a notice of appeal;
- (l) where the Director or an inspector issues, amends or cancels a remediation certificate under section 117, any person who receives notice of the issuance, amendment or cancellation as provided for in the regulations may submit a notice of appeal;
- (l.1) where the Director or an inspector refuses to accept an application for a remediation certificate or refuses to issue a remediation certificate under section 117, any person who receives notice of the refusal as provided for in the regulations may submit a notice of appeal;
- (m) where the Director designates an area as a contaminated site under section 125, any person who is directly affected by the designation may submit a notice of appeal;
- (n) where the Director requires a person to pay an administrative penalty under section 237, the person to whom the notice is directed may submit a notice of appeal;
- (o) where the Director refuses a request for confidentiality under section 35(5)(b), the person to whom the notice is directed under section 35(6) may submit a notice of appeal;
- (p) persons authorized under Part 9 of the *Water Act*, in accordance with Part 9 of the *Water Act*.

Section 91(4)

- (4) 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.

Section 212

- (1) The Director may
 - (a) amend a term or condition of, add a term or condition to or delete a term or condition from an enforcement order,
 - (b) cancel an enforcement order, or
 - (c) amend a clerical error in an enforcement order.
- (2) The Director may amend an enforcement order by adding to the list of persons to whom the order is directed.
- (3) The Director may exercise powers under subsection (1) or (2) notwithstanding that the original enforcement order may have been issued by an investigator.
- (4) A copy of an enforcement order issued under subsection (1) must be served on the same person to whom the original order was directed.
- (5) A copy of an enforcement order issued under subsection (2) must be served on
 - (a) any person whose name was added to it, and
 - (b) the same person to whom the original order was directed.

Section 243

- (1) The Director may
 - (a) amend a term or condition of, add a term or condition to or delete a term or condition from an environmental protection order,
 - (b) cancel an environmental protection order, or
 - (c) correct a clerical error in an environmental protection order.
- (2) The Director may amend an environmental protection order by adding to the list of persons to whom the order is directed.

- (3) The Director may exercise powers under subsection (1) or (2) notwithstanding that the original environmental protection order may have been issued by an inspector or investigator.
- (4) A copy of an environmental protection order amended under subsection (1) shall be served on the same person to whom the original order was directed.
- (5) A copy of an environmental protection order amended under subsection (2) must be served on
 - (a) any person whose name was added to it, and
 - (b) the same person to whom the original order was directed.

Relevant sections of the *Water Act*, R.S.A. 2000, c. W-14

Section 115

- (1) A notice of appeal under this Act may be submitted to the Environmental Appeals Board by the following persons in the following circumstances:
 - (a) if the Director issues or amends an approval, a notice of appeal may be submitted
 - (i) by the approval holder or by any person who previously submitted a statement of concern in accordance with section 109 who is directly affected by the Director's decision, if notice of the application or proposed changes was previously provided under section 108, or
 - (ii) by the approval holder or by any person who is directly affected by the Director's decision, if the Director waived the requirement to provide notice under section 108(6) and notice of the application was not provided;
 - (b) if the Director issues or amends a preliminary certificate, a notice of appeal may be submitted
 - (i) by the preliminary certificate holder or by any person who previously submitted a statement of concern in accordance with section 109 who is directly affected by the Director's decision, if notice of the application or proposed changes was previously provided under section 108, or
 - (ii) by the preliminary certificate holder or by any person who is directly affected by the Director's decision, if the Director waived the requirement to provide notice under section 108(6) and notice of the application was not provided;
 - (c) if a preliminary certificate has not been issued with respect to a licence and the Director issues or amends a licence, a notice of appeal may be submitted

- (i) by the licensee or by any person who previously submitted a statement of concern in accordance with section 109 who is directly affected by the Director's decision, if notice of the application or proposed changes was previously provided under section 108, or
 - (ii) by the licensee or by any person who is directly affected by the Director's decision, if the Director waived the requirement to provide notice under section 108(6) and notice of the application or proposed changes was not provided;
- (d) subject to clause (e), the applicant for the approval or licence, if the Director refuses to issue an approval or licence;
 - (e) if the Director issues or refuses to issue a licence to the Government under section 51(2), the applicant for the licence and any directly affected person;
 - (f) the applicant, if the Director refuses to amend an approval, preliminary certificate or licence;
 - (g) the approval holder, preliminary certificate holder, licensee or registrant, if the Director suspends or cancels an approval, licence or registration or cancels a preliminary certificate;
 - (h) the licensee, if the Director refuses to renew a licence;
 - (i) if the Director renews a licence where there has been a public review, any person who previously submitted a statement of concern in accordance with section 109;
 - (j) if the Minister takes over any works or undertaking, the approval holder, preliminary certificate holder or licensee or the owner of the works or undertaking;
 - (k) if the Director provides notice that no further applications for licences are to be accepted, a person who wishes to apply for a licence for any water that was the subject of the notice;
 - (l) the owner of the works, if the Minister issues an order with respect to the use of another person's works under section 52(3);
 - (m) if an inspector or the Director issues a water management order or amends a water management order, except an order with respect to administering priority or an order that is only for the purpose of carrying out emergency measures, the person to whom the order is directed;
 - (n) if an inspector or the Director issues a water management order or amends a water management order with respect to administering priority, the person to whom the order is directed, or any person whose rights to divert water may be affected by the issuance of the order with respect to who has priority;

- (o) a person who is entitled to divert water pursuant to section 21 and who is affected by a declaration by the Director that a diversion of water must cease;
 - (p) the person to whom an enforcement order is directed, if the Director issues an enforcement order directing
 - (i) the suspension or cancellation of an approval or licence or the cancellation of a preliminary certificate,
 - (ii) the stopping or shutting down of any activity, diversion of water or operation of a works if the activity, diversion or operation is the subject-matter of an approval or licence,
 - (iii) the ceasing of construction, operation, maintenance, repair, control, replacement or removal of any works or the carrying out of an undertaking, if the works or undertaking is the subject of an approval, or
 - (iv) the removal or otherwise rendering ineffective of any works or obstruction;
 - (q) if the Director requires a person to pay an administrative penalty, the person to whom the notice of the administrative penalty is directed;
 - (r) if the Director approves or refuses a request for a transfer of an allocation of water, the applicant and any person who submitted a statement of concern in accordance with section 109 who is directly affected by the Director's decision.
- (2) Notwithstanding subsection (1), a notice of appeal may not be submitted
- (a) if, pursuant to an order of the Minister under section 34, the Director
 - (i) refuses to issue an approval, preliminary certificate or licence, or
 - (ii) refuses to approve a transfer of an allocation of water under a licence;
 - (b) with respect to any matter relating to a licence for the temporary diversion of water;
 - (c) with respect to an amendment
 - (i) to correct a clerical error,
 - (ii) of a monitoring, reporting or inspection requirement in an approval, preliminary certificate or licence, or
 - (iii) to extend the expiry date of an approval, preliminary certificate or licence;
 - (d) with respect to an amendment to reflect a disposition of land or an undertaking to which an approval, preliminary certificate, licence or registration is appurtenant.

Section 116

- (1) A notice of appeal must be submitted to the Environmental Appeals Board
 - (a) not later than 7 days after
 - (i) receipt of a copy of a water management order or enforcement order, or
 - (ii) in the case of an approval, receipt of notice of the decision that is appealed from or the last provision of notice of the decision that is appealed from,
 - (b) in any other case, not later than 30 days after receipt of notice of the decision that is appealed from or the last provision of notice of the decision that is appealed from.
- (2) The Environmental Appeals Board may, on application made before or after the expiry of the period referred to in subsection (1), extend that period, if the Board is of the opinion that there are sufficient grounds to do so.
- (3) A notice of appeal must contain the information and be made in the manner provided for in the *Environmental Protection and Enhancement Act* and the regulations under that Act.

Section 137

- (1) The Director may on the Director's own initiative
 - (a) amend a term or condition of an enforcement order,
 - (b) cancel an enforcement order, or
 - (c) amend a clerical error in an enforcement order.
- (2) A copy of an amendment made under subsection (1) must be given to the same person to whom the original order was directed.