



ALBERTA
ENVIRONMENTAL APPEALS BOARD

2022 ABEAB 26

June 27, 2022

Via E-Mail

Mr. Albert Rakowski

[REDACTED]
[REDACTED]
[REDACTED]

(Appellant)

Mr. Craig Knaus

Director,
Regulatory Assurance Division, South
Alberta Environment and Parks
2nd Flr., 2938 - 11 Street NE
Calgary, AB T2E 7L7
(Director)

Ms. Jodie Hierlmeier

Assistant Director
Alberta Justice and Solicitor General
Environmental Law Section
8th Floor, Oxbridge Place
9820 – 106 Street
Edmonton, AB T5K 2J6
(representing Director, Alberta Environment
and Parks)

Dear Gentlemen and Ms. Hierlmeier:

**Re: Decision* – Rockyview Aqua Ltd./EPEA Authorization No. 207596-06-00
Our File No.: EAB 22-035**

This is the Environmental Appeal Board's (the "Board") decision concerning the appeal filed by Rockyview Aqua Ltd. (the "Appellant"). The issue determined is whether the appeal is properly before the Board. Dr. Chidinma Thompson, Board Chair, made the decision. The Board dismisses the appeal pursuant to section 95(5)(a)(iii) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-21 ("EPEA"), as the decision appealed is a written authorization issued under section 176(b) of EPEA and it is not appealable to the Board.

Background

On March 11, 2022, the Director, Regulatory Assurance Division, South, Alberta Environment and Parks (the "Director") issued EPEA Authorization No. 207596-06-00 to the Appellant for the purposes of domestic wastewater disposal, in Rockyview County (the "Authorization"). Prior to the Authorization, the Appellant had disposed of domestic wastewater pursuant to EPEA Authorization No. 207596-05-00.

* Cite as: *Rockyview Aqua Ltd. v. Director, Regulatory Assurance Division, South, Alberta Environment and Parks* (27 June 2022), Appeal No. 22-035-D (A.E.A.B.), 2022 ABEAB 26.

The Authorization contained a new condition which requires domestic wastewater collected within 50 kilometres of a wastewater treatment facility to be disposed of at a wastewater treatment facility and prohibited the collected wastewater from being applied to land.¹

The Appellant filed a Notice of Appeal of the Authorization on April 7, 2022. The Board acknowledged receipt of the Notice of Appeal and advised the Director of the appeal on April 12, 2022. The Board advised the Appellant that it appeared the Authorization was issued under section 176 of EPEA.² The Board noted section 176 was not listed in Part 4, section 91 of EPEA. The Board advised the Appellant that it appeared the Authorization may not be appealable and requested the Appellant provide comments or further information regarding its appeal to the Board by April 26, 2022.

Summary of the Appellant's Comments

In its Notice of Appeal, the Appellant appealed the inclusion of Condition 4.3 in the Authorization.³ The Appellant stated the previous version of the Authorization was developed with industry stakeholders and the Alberta Onsite Wastewater Management Association, and had detailed criteria and a scientific basis. According to the Appellant, the purpose of the previous written authorization was to apply domestic wastewater to agricultural lands. The Appellant stated the inclusion of Condition 4.3 rendered the land application criteria redundant.

The Appellant stated the impact of Condition 4.3 was devastating and would result in a change in its business model. The Appellant noted 95% of its market is within the 50 kilometre range as is all of its approved agricultural lands for domestic wastewater application.

The Appellant noted Condition 4.3 did not taken into account the receiving wastewater treatment facility's ability to accept wastewater derived from outside the municipality. According to the Appellant, receiving wastewater treatment facilities are not under a provincial or municipal mandate to accept rural wastewater and consequently, rural wastewater may not have been considered in the design or operation of the wastewater treatment facility. The Appellant stated wastewater treatment facilities are often reluctant to accept rural wastewater or place restrictive disposal times, volumes, costs, only to still apply it to land in the end. Finally, the Appellant noted proximity to a wastewater treatment facility does not impact the ability of nearby land to be used to treat wastewater, and argued proximity to a wastewater treatment plant should not be used as a practical restriction.

Analysis and Finding

Part 4, section 91(1) of EPEA, lists the decisions made by the Director which may be appealed to the Board.⁴ Not all decisions made by the Director are appealable.

¹ See Appendix A – Excerpts from the Authorization and Legislation, no. 1.

² See Appendix A – Excerpts from the Authorization and Legislation, no. 2.

³ See Appendix A – Excerpts from the Authorization and Legislation, no. 1.

⁴ See Appendix A – Excerpts from the Authorization and Legislation, no. 3.

In the current appeal, the Director issued a renewal of a written authorization pursuant to section 176(b) of EPEA for the purposes of domestic wastewater disposal. In the course of doing so, the Director included a new condition which prohibits the application of domestic wastewater on land within 50 kilometres of a wastewater treatment facility. The Appellant argued that it was not appealing the Authorization, but only the inclusion of this new condition.

The Appellant noted the impact of this additional condition was serious, as all of its authorized and tested land disposal locations were within 50 kilometres of a wastewater treatment facility. The Appellant requested the Authorization be left in its original form, without the inclusion of Condition 4.3.

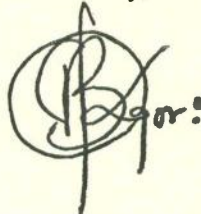
The Board appreciates the Appellant's concerns and the impacts arising from the inclusion of Condition 4.3. However, as noted above, the Authorization was issued pursuant to section 176(b) of EPEA. The provisions relating to appealing the Director's decisions do not apply to written authorizations for wastewater disposal issued pursuant to 176(b) of EPEA. Neither the Authorization nor the inclusion of Condition 4.3 in the Authorization can be appealed to the Board.

Decision

The Board dismisses the appeal filed by Rockyview Aqua Ltd. pursuant to section 95(5)(a)(iii) of EPEA as the Authorization cannot be appealed to the Board.

Please do not hesitate to contact Mr. Gilbert Van Nes, General Counsel and Settlement Officer, if you have any questions. He can be reached toll-free by first dialing 310-0000 followed by 780-427-4179 or by email at gilbert.vannes@gov.ab.ca.

Yours truly,

A handwritten signature in black ink, appearing to be 'Dr. Thompson', written over a circular stamp or logo.

Dr. Chidinma Thompson
Chair

Att.

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 this appeal. The information you provide will be considered a public record.

Appendix A
Excerpts from the Authorization and Legislation

EPEA Authorization No. 207596-06-00

1. Condition 4.3 of the Authorization provides:
Domestic wastewater collected within 50 km travelling distance of an approved wastewater treatment facility which accepts trucked domestic wastewater must be taken to the facility for treatment and shall not be applied on land.

Applicable Legislation

Environmental Protection and Enhancement Act, R.S.A. 2000, c. E-12

2. Section 176 of EPEA provides:
176 No person shall dispose of waste except
 - (a) at a waste management facility, or in a container the contents of which will be taken to a waste management facility, that is the subject of the appropriate approval, registration or notice required under this Act, or
 - (b) in accordance with the written authorization of the Director.

3. Section 91 of EPEA provides in part:
91(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 sitemay 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.