ALBERTA
ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision: July 22, 2022

IN THE MATTER OF sections 91, 92, 95, and 101, 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 an appeal filed by Robert Tomlinson with respect to the decision of the Director, Regional Approvals, Alberta Environment and Parks, to issue *Environmental Protection and Enhancement Act* Approval No. 248406-01-00 to Evergreen Regional Waste Management Services Commission.

Cite as: Reconsideration Decision: *Tomlinson* v. *Director, Regional Approvals, Alberta Environment and Parks, re: Evergreen Regional Waste Management Services Commission* (22 July 2022), Appeal No. 19-048-ID1 (A.E.A.B.), 2022 ABEAB 30.

WRITTEN SUBMISSIONS BEFORE:

Ms. Meg Barker, Acting Board Chair.*

PARTIES:

Appellant:	Mr. Robert Tomlinson.
Director:	Mr. Michael Lapointe, Regional Approvals Manager, Alberta Environment and Parks, represented by Ms. Shannon Keehn, Alberta Justice and Solicitor General.
Approval Holder:	Evergreen Regional Waste Management Services Commission, represented by Mr. Derek King, Brownlee LLP.

* Meg Barker was the Acting Board Chair at the time this decision was made.

EXECUTIVE SUMMARY

Evergreen Regional Waste Management Services Commission (Evergreen) holds an Approval to operate a Class II landfill near the Town of St. Paul, Alberta. In 2017, Evergreen applied to the Director, Alberta Environment and Parks (the Director) for a renewal of the Approval. In 2019, the Director issued the renewal (the Approval). The decision to issue the Approval was appealed by Mr. Robert Tomlinson (the Appellant) who provided the Environmental Appeals Board (the Board) with a Notice of Appeal.

In April 2020, the Appellant made a preliminary motion to split the hearing into two parts. The first part would address the Appellant's claim that the Approval is void and is not enforceable because documents in Evergreen's application were allegedly fraudulent. The second part of the hearing would address the Appellant's request for amendments to the Approval.

The Board requested comments from the Director, Evergreen and the Appellant, and decided on June 3, 2020, to not grant the Appellant's motion to split the hearing. The Appellant requested the Board reconsider its decision. The Board said it would review the documents and make its decision.

There are two requirements an applicant must meet to obtain a reconsideration from the Board: (a) the Board has made an error in interpreting the law that was the basis of the original decision, or (b) new information has become available that was not available at the time of the original decision.

The Board found the Appellant did not demonstrate the Board made an error, nor that there was new information available that was not available at time of the hearing. As the Appellant did not meet the requirements for the Board to reconsider its decision to refuse to divide the hearing into two parts, the Board denies the Appellant's request and dismisses the Appellant's preliminary motion.

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I. INTRODUCTION

[1] This is the Environmental Appeal Board's (the "Board") decision on a preliminary motion regarding a Notice of Appeal filed by Mr. Robert Tomlinson (the "Appellant"). The Appellant appealed the decision of the Director, Regional Approvals, Alberta Environment and Parks (the "Director"), to issue Approval No. 248406-01-00 (the "Approval") to Evergreen Regional Waste Management Services Commission ("Evergreen"), for the construction, operation, and reclamation of the Evergreen Regional Landfill (Class II). The Approval was issued under the *Environmental Protection and Enhancement Act*, R.S.A., 2000, c. E-12 ("EPEA").

[2] The Appellant requested the Board reconsider its June 3, 2020 decision not to allow the hearing to be split into two parts. The Board reviewed the written submissions from the Appellant, Evergreen and the Director and found the Appellant does not meet the requirements for a reconsideration. The Board dismisses the Appellant's request for reconsideration.

II. BACKGROUND

[3] On December 30, 2008, Alberta Environment and Parks ("AEP") issued Approval No. 248406-00-00 (the "Original Approval") to Evergreen for the construction, operation, and reclamation of the Evergreen Regional Landfill (Class II) (the "Landfill"), located at W-15-56-10-W4M in the County of St. Paul, Alberta. On December 1, 2017, Evergreen applied for a renewal of the Original Approval. On November 29, 2019, the Director issued a new Approval for ten years.

[4] On November 30, 2019, the Board received a Notice of Appeal from the Appellant. The Board advised the Director and Evergreen of the Notice of Appeal and requested the documents related to the Approval (the "Director's Record") from the Director, which was

provided on January 29, 2020. The Board distributed the Director's Record to the Appellant, the Director, and Evergreen (collectively, the "Parties").

[5] The Board held a mediation on March 13, 2020, however, the Parties did not reach an agreement. The Board requested the Parties' available dates for a hearing to be held in September 2020.

[6] On April 19, 2020, the Appellant requested the hearing be divided into two parts. The first part would be a written submission hearing to address the Appellant's claim that the Approval is void and is not enforceable because documents in Evergreen's application were allegedly fraudulent. The second part of the hearing would address the Appellant's request for amendments to the Approval. The Board requested written comments from the Parties, which were received by the Board on May 28 and 29, 2020.

[7] In its June 3, 2020 letter, the Board made the following decision regarding the split hearing process:

> "In the Board's May 14, 2020 letter, the Board asked for comments from the parties regarding the Appellant's request to split the hearing into two parts to address his argument that the 'Approval is sufficiently vague such that it is void.' As there is no agreement from the parties to split the hearing into two parts, the hearing will proceed in one part in the ordinary course. The Board is only prepared to change the ordinary course of its hearings (i.e. split the hearing into two parts), where there is agreement between the parties."

[8] On June 6, 2020, the Appellant requested the Board reconsider its decision not to divide the hearing into two parts. On June 11, 2020, the Board advised the Parties it would review the information provided by the Appellant and, if the Board determined there was sufficient evidence on a *prima facie* basis that the Appellant may have met the legal requirement for a reconsideration, the Board would request comments from the Parties.

III. ISSUES

[9] The issue to be considered by the Board is whether it would be appropriate for the Board to reconsider its decision not to allow the hearing to be split.

IV. SUBMISSION

[10] The Appellant submitted the Director issued the Approval while Evergreen was in contravention of Ministerial Order 03/2010[1] and that the application documents appeared fraudulent.

[11] The Appellant stated:

(a) the Board failed to give sufficient reasons for its decision and therefore erred in law;

(b) requiring all parties to agree to split the hearing is not natural justice;

(c) the Board erred in not having all parties participate in the decision of whether a *prima facie* test is met; and

(d) the Board denied him the right to a fair hearing (albeit split) to determine whether or not the Approval 248406-01-00 is correct in law.

[12] The Appellant noted that the Board's 2001-2002 Annual Report indicated the Board would use written rather than public hearings to minimize cost. The Appellant stated that if the Board followed its mandate in this regard, it would have been in favour of a split hearing with written submissions.

V. ANALYSIS

[13] The Board reviewed the information and submissions provided by the Appellant

[1] *Shapka* v. *Director, Northern Region, Environmental Management, Alberta Environment,* re: *Evergreen Regional Waste Management Services Commission* (18 February 2010), Appeal No. 08-037-R (A.E.A.B.).

in support of his request for a reconsideration of the Board's June 3, 2020, decision not to grant the Appellant's request to split the hearing.

[14] As indicated above, the first step in the reconsideration process is determining whether the legal requirement to allow reconsideration has been met. In other words, the Board must first determine on a *prima facie* basis (on its initial review) that the Appellant may have met the legal requirement for reconsideration.

[15] The legal requirement to undertake the reconsideration is (a) the Board has made an error in interpreting the law that was the basis of the original decision, or (b) new information that was not available at the time of the original decision has become available.

[16] In its June 3, 2020 letter, the Board explained there was no agreement among the Parties, and the Board, therefore, decided to proceed with the hearing in one part, which is the Board's usual procedure in the ordinary course of conducting its hearings.

[17] How appeals are heard has to do with the procedures of the Board, which it has established over many years. The Board has the final say over its own procedures and, in doing so, did not err in law. The Board is entitled to establish its own procedures as long as it adheres to the principles of natural justice and procedural fairness.[2] The Board's procedures support the

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[2] See section 95(8) of EPEA, which provides: "Subject to the regulations, the Board may establish its own rules and procedures for dealing with matters before it."

See Macauly, R.W. and Sprague, J. *Practice and Procedure before Administrative Tribunals*, (Carswell: Toronto, 1988), Looseleaf Chapter 13.1, where it states: "…[S]ubject to certain limitations which will be discussed below, an administrative agency is 'master of its own procedure'."

See *Nicholson* v. *Haldimand-Norfolk (Regional Municipality) Commissioners of Police*, (1978) SCC 24, [1979] 1 SCR 311, at paragraph 26, it provides:

> "The investigating body is, however, the master of its own procedure. It need not hold a hearing. It can do everything in writing. It need not allow lawyers. It need not put every detail of the case against a man. Suffice it if the broad grounds are given. It need not name its informants. It can give the substance only. Moreover it need not do everything itself. It can employ secretaries and assistants to do all the preliminary work and leave much to them. But, in the end, the investigating body itself must come to its own decision and make its own report."

See *Prassad* v. *Canada (Minister of Employment and Immigration)*, (1989) SCC 131, [1989] 1 SCR 560, at

objectives and strategies the Board has listed in its annual reports, one of which the Appellant cited and which he stated he supports.

[18] The Board decided not to split the hearing because there was no agreement among the Parties. The Appellant stated that he was denied procedural fairness because two of the parties were opposed to splitting the hearing. If the Board had granted the Appellant's motion to split the hearing, the other two parties who disagreed would have a basis to claim the process was unfair. The Board rejects the Appellant's argument that its decision denied him procedural fairness.

[19] Hearing the merits at one hearing, where there was no agreement among the parties for a split hearing, serves the principles of natural justice. As a result, the Board finds no evidence of a contravention of procedural fairness nor the principles of natural justice.

[20] The Board indicated in its June 3, 2020 letter, that it will still hear the merits of the appeal at the hearing, should one be held, and that the decision is yet to be made. If the hearing on the merits proceeds, the Board will hear the Appellant's arguments regarding the Approval.

[21] The Board's decision to hear the matter as one, rather than to split the hearing, does not deny the Appellant's right to a fair hearing on the merits of the appeal. The Board finds no evidence that it erred in law. The Board's decision not to split the hearing does not constitute an error in law.

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paragraph 47, which states:

> "In *Re Cedarvale Tree Services Ltd. and Labourers' Int. Union of N. Amer*., [1971] 3 O.R. 832, 22 D.L.R. (3d) 40, … Arnup J.A., speaking for the [Court of Appeal], stressed that the board was 'master of its own house' (p. 49) …. The board was free to adopt such procedures as appeared to it to be just and convenient in the particular circumstances. Arnup J.A. concluded at p. 50: ... it is for the Board itself to decide how it shall proceed. If procedural guidelines of a mandatory nature

[22] The excerpts from the Board's 2001-2002 Annual Report that the Appellant provided and from which he cited portions of the Board's objectives and strategies is not new information. It was available when the Appellant made his original argument for splitting the hearing. The Board finds no new evidence was presented that was not available at the time of the original decision.

[23] As there has been no error in law and no new information has become available, the Board finds the Appellant did not meet the legal requirement for the Board to undertake the reconsideration of its decision to not split the hearing. Therefore, the Appellant's motion to reconsider the Board's decision is denied.

VI. DECISION

[24] The Board has determined the Appellant did not meet the legal requirement for the Board to undertake the reconsideration of its decision not to split the hearing, therefore, the Appellant's motion to reconsider the Board's decision is denied.

Dated on July 22, 2022, at Edmonton, Alberta.

"*original signed by*"
Meg Barker
Acting Board Chair

are to be laid down, they should come from the Legislature and not from the Court."