

ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – March 13, 2023

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 Diana Graling, Alenda Schafer, Teodulo Barocio Asterisk, Karl Giroux, John Willier, Dustin Twin, Wendy Freeman, Julie Asterisk, Bonnie Raho, Allan Atkinson, Barb Courtorielle, Bruce Jackson, Donna Courtourielle, Elsie Stenstrom-Dumont, Melanie Cline-Thera, April Isadore, Ryan Davis, and Keepers of the Athabasca Watershed Society, with respect to Approval No. 1744-03-00 issued under the *Environmental Protection and Enhancement Act* by the Director, Capital District, Regulatory Assurance Division, Alberta Environment and Protected Areas, to Suez Canada Waste Services Inc. and Her Majesty the Queen in Right of Alberta as represented by the Minister of Infrastructure.

Cite as: *Graling et al. v. Director, Capital District, Regulatory Assurance Division, Alberta Environment and Protected Areas, re: Suez Canada Waste Services Inc. and Her Majesty the Queen in Right of Alberta as represented by the Minister of Infrastructure* (13 March 2023), Appeal Nos. 19-051-058, 087-088, and 103-110 (A.E.A.B.), 2023 ABEAB 5.

BEFORE:

Ms. Meg Barker, Acting Board Chair (ret'd)

SUBMISSIONS BY:

Appellants: Ms. Diana Graling, Ms. Alenda Schafer, Mr. Teodulo Barocio Asterisk, Mr. Karl Giroux, Mr. John Willier, Mr. Dustin Twin, Ms. Wendy Freeman, Ms. Julie Asterisk, Ms. Bonnie Raho, Mr. Allan Atkinson, Ms. Barb Courtorielle, Mr. Bruce Jackson, Ms. Donna Courtourielle, Ms. Elsie Stenstrom-Dumont, Ms. Melanie Cline-Thera, Ms. April Isadore, Mr. Ryan Davis, and Keepers of the Athabasca Watershed Society.

Director: Mr. Muhammad Aziz, Director, Capital District, Regulatory Assurance Division, Alberta Environment and Protected Areas,* represented by Ms. Vivienne Ball, Alberta Justice.

Approval Holders: Suez Canada Waste Services Inc. and Her Majesty the Queen in Right of Alberta as represented by the Minister of Infrastructure, represented by Mr. Martin Ignasiak, Osler, Hoskin & Harcourt Ltd.

* Alberta Environment and Protected Areas is the successor to Alberta Environment and Parks.

EXECUTIVE SUMMARY

In 2015, Suez Canada Waste Services Inc. (Suez) applied to the Director for an Approval to continue operating the Swan Hills Treatment Centre (SHTC). The Keepers of the Athabasca Watershed Society (KOAWS) filed a statement of concern with the Director detailing their opposition to the Approval.

On December 13, 2019, the Director issued the Approval to Suez and Her Majesty the Queen in Right of Alberta as represented by the Minister of Infrastructure. In January and March 2020, the Board received 17 notices of appeal from individuals (the Appellants) and one from the KOAWS.

On February 4, 2020, the Director requested the Board dismiss the Notices of Appeal from the Appellants for not having filed Statements of Concern with the Director during the Approval application process.

The Board requested the parties provide written submissions regarding the filing of statements of concern and the lateness of the Notices of Appeal. The Board reviewed the written submissions and determined:

- it did not have the jurisdiction to consider the constitutional issues involving First Nations treaty rights and the duty of the Crown to consult;
- the Appellants did not file statements of concern with the Director as required by the *Environmental Protection and Enhancement Act* (EPEA);
- the Appellants did not have any extenuating circumstances that prevented them from filing a statement of concern;
- only the KOAWS filed a valid statement of concern; and
- as the Board found the Appellants had not filed valid statements of concern, it was not necessary to consider if the Notices of Appeal were filed late.

In accordance with the provisions of EPEA, the Board dismissed the Appellants' Notices of Appeal. The Board found the KOAWS filed a valid statement of concern with the Director and filed its Notice of Appeal with the Board on time, therefore, the KOAWS appeal, Appeal No. 19-055, may proceed to the next step in the appeal process.

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I. INTRODUCTION

[1] This is the Environmental Appeals Board's (the "Board") decision regarding the Notices of Appeal filed by 17 individuals (the "Appellants") and one group, the Keepers of the Athabasca Watershed Society (the "KOAWS"). The Appellants and the KOAWS appealed the decision of the Director, Capital District, Regulatory Assurance Division, Alberta Environment and Protected Areas (the "Director"), to issue Approval No. 1744-03-00 (the "Approval") to Suez Canada Waste Services Inc. ("Suez") and Her Majesty the Queen in Right of Alberta as represented by the Minister of Infrastructure ("HMQR"), for the construction, operation, and reclamation of the Swan Hills Treatment Centre ("SHTC"). The Director requested the Board dismiss the Notices of Appeal of all the Appellants, as they had not filed a statement of concern during the application process for the Approval. The Director did not request that the KOAWS Notice of Appeal be dismissed as the KOAWS had filed a valid statement of concern.

[2] The Board dismissed the Notices of Appeal from the Appellants for not filing Statements of Concern with the Director within the timeframe specified by the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E- 12 ("EPEA"). The appeal from the KOAWS (19-055) may proceed to the next step in the appeal process.

II. BACKGROUND

[3] The SHTC is a hazardous waste disposal and treatment facility located north of the Town of Swan Hills, in Big Lakes County. The SHTC began operations in 1987 with authorization from the Government of Alberta. On December 13, 2019, the Director issued the Approval to Suez and HMQR on December 13, 2019. The Approval's term was for ten years, from December 15, 2019 to December 14, 2029.

[4] Between January 2, 2020, and March 2, 2020, the Board received Notices of Appeal from the Appellants appealing the issuance of the Approval. The Board also received an appeal from the KOAWS (Appeal No. 19-055). The Board wrote to the Appellants, KOAWS, the Director, Suez and HMQR and acknowledged receipt of the Notices of Appeal as they were received. The Board also requested the Director provide the records related to the Approval.

Because of the preliminary motions, the Director's records were not received. The Appellants and their appeal numbers are listed below:

- Diana Graling, Appeal No. 19-051;
- Alenda Schafer, Appeal No. 19-052;
- Teodulo Barocio Asterisk, Appeal No. 19-053;
- Karl Giroux, Appeal No. 19-054;
- John Willier, Appeal No. 19-056;
- Dustin Twin, Appeal No. 19-057;
- Wendy Freeman, Appeal No. 19-058;
- Jule Asterisk, Appeal No. 19-087;
- Bonnie Raho, Appeal No. 19-088;
- Allan Atkinson, Appeal No. 19-103;
- Barb Courtorielle, Appeal No. 19-104;
- Bruce Jackson, Appeal No. 19-105;
- Donna Courtourielle, Appeal No. 19-106;
- Elsie Stenstrom-Dumont, Appeal No. 19-107;
- Melanie Cline-Thera, Appeal No. 19-108;
- April Isadore, Appeal No. 19-109; and
- Ryan Davis, Appeal No. 19-110.

[5] On February 4, 2020, the Director requested the Board dismiss the appeals filed by Diana Graling, Alenda Schafer, Teodulo Barocio Asterisk, Karl Giroux, John Willier, Dustin Twin, Wendy Freeman, Jule Asterisk, and Bonnie Raho, because they did not file statements of concern with Alberta Environment and Protected Areas (AEPA) during the application process for the Approval. The Board set a schedule for those Appellants, Suez, HMQR, and the Director, to provide written submissions on the Director's request.

[6] On March 27, 2020, the Board acknowledged receipt of Appeal Nos. 19-103-110, from Allan Atkinson, Barb Courtorielle, Bruce Jackson, Donna Courtourielle, Melanie Cline-Thera, April Isadore, and Ryan Davis. The Board requested written submissions from the Appellants, the Director, HMQR, and Suez on whether the appeals were filed late and whether

statements of concern were filed during the Approval application process (the Appellants, the Director, HMQR, and Suez are collectively the “Parties”). The Board received submissions from the Parties by April 30, 2020.

III. ISSUES

[7] The issues before the Board are:

1. Did the Appellants file valid statements of concern with the Director?
2. Are there extenuating circumstances that prevented the Appellants from filing their statements of concern?
3. Did the Appellants file their Notices of Appeal late?
4. Is the Appellant, Dustin Twin, on behalf of the Swan River First Nation (“SRFN”), raising a constitutional question?

IV. SUBMISSIONS

(i) *Appellants*

[8] The Board requested submissions on whether statements of concern were filed by the Appellants. The Board received written submissions from Diana Graling, Dustin Twin, Wendy Freeman, Bonnie Raho, April Isadore, Barb Courtorielle, Bruce Jackson, Melanie Cline-Thera, Allan Atkinson, Donna Courtourielle, Elsie Stenstrom-Dumont, Ryan Davis, and Jule Asterisk. Other than their Notices of Appeal, the Board did not receive responses from Karl Giroux and John Willier. The responses the Board received are summarized below.

[9] Ms. Diana Graling, Appeal No. 19-051, stated her name was not in the KOAWS’ original statement of concern because she was not aware of the Approval application. Ms. Graling stated it was reasonable for approvals for sites such as the SHTC to be issued yearly to ensure safe operations. She submitted that long-term approvals should not be granted until there is further testing and reporting from an independent group and more extensive public information.

[10] Ms. Alenda Shafer, Appeal No. 19-052, stated she did not have her name included in the KOAWS’ statement of concern because she was no longer living in the community in

2015. She submitted that long-term approvals should not be granted until an independent group determines where and how far contaminants from the SHTC travel and the information is shared with the local communities.

[11] Mr. Teodulo Barocio Asterisk, Appeal No. 19-053, stated he did not see the public notice published in the newspapers until 2020, because he was working in Edmonton at the time. He said the public notice provided insufficient information about the SHTC and that it would be more appropriate to publish additional notices and broadcast on the radio on local stations.

[12] Mr. Dustin Twin, Appeal No. 19-057, a member of the SRFN, noted that the SRFN, “holds and exercises inherent Aboriginal and Treaty rights within our territory in Treaty 8.”¹ Mr. Twin submitted that the Alberta government is obligated to consult with the SRFN on decisions that may affect or infringe on their rights. Mr. Twin stated the SRFN expected the provincial and federal governments to involve them and seek their consent before allowing third parties to use or develop SRFN lands. Mr. Twin submitted that the SHTC affects the SRFN’s ability to exercise their rights and use their territory for cultural, spiritual, and traditional purposes. Mr. Twin argued that any decision allowing the SHTC to continue operations directly affects the SRFN, their members, and their lands.

[13] Mr. Twin submitted he is directly affected by the Director’s decision to grant the Approval. He stated he sought to address his concerns by attending meetings as part of the application phase, raising concerns regarding the Approval renewal request, and filing a Notice of Appeal within the Board’s timelines. Mr. Twin argued it would be “unreasonable for the Board to now prevent SRFN representatives from appealing the AEP’s December 13 decision based solely on the fact that we did not file Statements of Concern in the course of the application process.”²

¹ Swan River First Nation submissions, March 2, 2020, at page 1.

² Swan River First Nation Submissions, March 2, 2020, at page 2.

[14] Mr. Twin stated:

“The provincial government is obligated to protect and respect our rights and to fulfil its promises pursuant to our Treaty. Attempting to foreclose SRFN’s ability to participate in this appeal based on a technicality in the legislation is inconsistent with these obligations and with the honour of the Crown.”³

[15] Mr. Twin submitted that the information provided by the Board was “unclear and inconsistent with respect to the appeal requirements.”⁴ He stated that the Board’s appeal guidelines provide that any person who is directly affected by an AEP decision may appeal by filing a notice of appeal with the Board, but do not indicate that individuals who did not file statements of concern during the application phase are prohibited from appealing a decision. Mr. Twin stated that SRFN representatives should not be penalized for relying on the information provided by the Board.

[16] Ms. Wendy Freeman, Appeal No. 19-058, stated she had opposed the SHTC since the 1980s. Ms. Freeman indicated that Swan Hills is not a suitable location for the SHTC because of the “shifting mountainous terrain” and that Swan Hills is located at the bottom of a hill “...and would eventually feel the effects of the negative circumstances arising from the plant.”⁵ Ms. Freeman submitted that the monitoring of the SHTC’s outflow was insufficient and that testing of the Lesser Slave Lake, Swan River, and lands further away from the SHTC was needed.

[17] Ms. Jule Asterisk, Appeal No. 19-087, explained she did not sign the original KOAWS’ statement of concern in 2015 because she prepared it on behalf of the KOAWS and was not aware she needed to file individually. Ms. Asterisk stated her concerns regarding the SHTC included the effect of pollution from the facility affecting her’s and her children’s health, and the environment. She was especially concerned that the SHTC did not monitor the Lesser Slave Lake, and that the Government of Alberta owns and regulates the facility. Ms. Asterisk submitted that a one-year approval would be more appropriate until the concerns are addressed.

³ Swan River First Nation Submissions, March 2, 2020, at page 2.

⁴ Swan River First Nation Submissions, March 2, 2020, at page 2.

⁵ Wendy Freeman Submissions, February 28, 2020, at page 1.

[18] Ms. Bonnie Raho, Appeal No. 19-088, stated she believed she had filed a statement of concern as the statement of concern filed by the KOAWS in 2015 included her name. Ms. Raho indicated she signed the KOAWS' statement of concern in 2015 because of concerns regarding the facilities operations and monitoring, which are unresolved. Ms. Raho stated that a letter from the KOAWS to AEPA dated June 23, 2015, identified her as directly affected by the Approval.

[19] Mr. Allan Atkinson, Appeal No. 19-103, noted that the information received from the Board did not include the requirement of appellants to have been part of the original Statement of Concern, however, he was included in the original statement of concern filed by the KOAWS and, therefore, he considered himself to have filed a statement of concern through KOAWS. Mr. Atkinson stated the Approval directly affected him. Mr. Atkinson said he signed the KOAWS' statement of concern in 2015 because of his concerns regarding the SHTC's operations and monitoring, which have not been resolved.

[20] Ms. Barb Courtorielle, Appeal No. 19-104, noted that the information received from the Board did not specify that appellants had to be participants in the original statement of concern. Ms. Courtorielle stated that she was involved in the statement of concern filed by the KOAWS in 2015 regarding the SHTC and considered that she had filed a statement of concern as a result. Ms. Courtorielle said she signed the KOAWS' statement of concern in 2015 because of concerns regarding the SHTC's operations and monitoring, which are still not resolved.

[21] Mr. Bruce Jackson, Appeal No. 19-105, stated that he was a signatory to the original statement of concern filed by KOAWS in 2015. Mr. Jackson expressed concerns over the impact the SHTC is having on the environment and submitted the Government of Alberta was in a conflict of interest by owning and regulating the SHTC. While Mr. Jackson believed the SHTC has an important role in making Alberta safer, he submitted the Approval should not proceed.

[22] Ms. Donna Courtourielle, Appeal No. 19-106, said the information provided by the Board did not specify that she needed to be part of the original statement of concern in order to be an appellant, however, Ms. Courtourielle indicated that she was part of the original

statement of concern filed by the KOAWS in 2015 and that she is directly affected by the Approval. Ms. Courtourielle said she signed the KOAWS' statement of concern in 2015 because of concerns regarding the facilities' operations and monitoring, which are unresolved.

[23] Ms. Elsie Stenstrom-Dumont, Appeal No. 19-107, said she was a member of the SRFC. She stated there was nothing in the information received from the Board that specified appellants had to be part of the original statement of concern to be an appellant. She stated she filed a statement of concern as she was involved in the statement of concern filed by the KOAWS in 2015. Ms. Stenstrom-Dumont submitted that she no longer can pick berries and traditional herbs across from the SHTC. She said she signed on to the KOAWS' statement of concern in 2015 due to her concerns regarding the SHTC's operations and monitoring, which have still not been resolved.

[24] Ms. Melanie Cline-Thera, Appeal No. 19-108, pointed out that the information received from the Board did not specify that appellants were required to be part of the original statement of concern. She stated she was involved in the original statement of concern filed by the KOAWS in 2015 and, therefore, considered that she had filed a statement of concern. Ms. Cline-Thera noted that she was included in the letter from the KOAWS to AEPA dated June 23, 2015, as one of the individuals directly affected by the Approval. Ms. Cline-Thera said she signed the KOAWS' statement of concern in 2015 because of concerns regarding the SHTC's operations and monitoring, which are unresolved.

[25] Ms. April Isadore, Appeal No. 19-109, said the information she received from the Board did not specify that appellants must have been part of the original statement of concern. Ms. Isadore stated she was involved in the original statement of concern filed by the KOAWS in 2015 and therefore, considered that she had filed a statement of concern. Ms. Isadore commented that she signed the KOAWS' statement of concern in 2015 because of unresolved concerns regarding the SHTC's operations and monitoring and that she had no confidence in the SHTC as there had been PCB leaks in the past.

[26] Mr. Ryan Davis, Appeal No. 19-110, submitted that the information he received from the Board did not include any notice that appellants had to be part of the original statement

of concern to appeal. Mr. Davis stated he was involved in the KOAWS' statement of concern filed in 2015 and that he was identified in the KOAWS' letter to AEPA, dated June 23, 2015, as someone directly affected by the Approval. Mr. Davis said he signed the KOAWS' statement of concern because he was concerned about losing his right to hunt in his traditional territory, the health risk from the SHTC, and the monitoring of the SHTC, which remain unresolved.

(ii) Director

[27] In a letter dated February 4, 2020, the Director requested the Board strike the Notices of Appeal from the following Appellants:

- Diana Graling;
- Alenda Schafer;
- Teodulo Barocio Asterisk;
- Karl Giroux;
- John Willier;
- Dustin Twin;
- Wendy Freeman;
- Julie Asterisk, and her personal capacity; and
- Bonnie Raho.

[28] The Director stated the Appellants listed above did not submit a statement of concern as required under section 73 of EPEA,⁶ and, therefore, there was no need to consider if they were directly affected by the Approval.

⁶ Section 73 of EPEA provides:

- “(1) Where notice is provided under section 72(1) or (2), any person who is directly affected by the application or the proposed amendment, addition, deletion or change, including the approval holder in a case referred to in section 72(2), may submit to the Director a written Statement of concern setting out that person's concerns with respect to the application or the proposed amendment, addition, deletion or change.
- (2) A Statement of concern must be submitted within 30 days after the last providing of the notice or within any longer period specified by the Director in the notice.”

[29] The Director referred to section 95(5)(a)(iii) of EPEA, which provides authority for the Board to dismiss a notice of appeal where the Board finds the notice of appeal is not properly before it.⁷

[30] The Director explained that when the Director receives an application for an approval, the Director requires the applicant to provide public notice of the application. The Director required the applicant, then known as SENA Waste Services Inc. (“SENA”), to post a public notice in five newspapers, which SENA did between May 12, 2015, and May 16, 2015.

[31] The Director noted that any person who is directly affected by the application may submit a written statement of concern within thirty days of the last provision of notice, or longer, if specified by the Director in the public notice. As the Director did not specify a longer period, the last notice provided was May 16, 2015, and any statement of concern had to be submitted to the Director no later than June 15, 2015. The Director stated that on June 12, 2015, the KOAWS provided a statement of concern, the only statement of concern received. The Director noted that none of the Appellants listed above provided statements of concern.

(iii) Suez and HMRQ

[32] Suez and HMRQ (collectively the “Approval Holders”) supported the Director’s motion to dismiss any Notices of Appeal where the Appellants did not file a statement of concern. Suez submitted that only the KOAWS had submitted a statement of concern during the application process for the Approval.

[33] Suez noted section 72(1) of EPEA⁸ stated that a notice of appeal could only be submitted by the approval holder or a person who had already submitted a statement of concern.

⁷ 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...”

⁸ Section 72(1) of EPEA provides:
“Where the Director receives
(a) an application for an approval under section 66, (a.1) an application for registration under

Suez noted that the Board had held in previous appeals that filing a statement of concern was a prerequisite to filing a notice of appeal, and unless the appellant can demonstrate special circumstances existed that prevented them from filing a statement of concern within the legislated timeframe, the Board must dismiss the notice of appeal.⁹ Suez submitted that none of the Appellants demonstrated special circumstances that prevented them from filing a statement of concern within the legislated timeframe.

[34] Suez noted that several of the Appellants submitted that although they were signatories to the KOAWS' statement of concern in 2015, they were not aware they needed to provide individual statements of concern to appeal the Approval. Suez noted that being unaware of the legislated requirements or being unaware of the newspaper notices is not an acceptable excuse for failing to file a statement of concern. Suez submitted that the Appellants had not shown any special circumstances to explain why they did not file the statement of concern within the legislated timelines, and the Board must dismiss the notices of appeal.

V. ANALYSIS

Indigenous Consultation

[35] The Appellant, Mr. Twin, on behalf of the SRFN, raised the issue of the Crown's duty to consult with First Nations on matters that may affect indigenous treaty rights. Mr. Twin stated he had been involved in meetings during the Approval application phase and it would be unreasonable for the Board to exclude him as an appellant for not filing a statement of concern.

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- section 66 or a notice under section 87 or 88 and the Director has given notice under section 66.1 that the application or notice is deemed to be an application for an approval,
- (b) an application under section 67(2) in respect of a change to an activity, or
 - (c) an application under section 70(1)(a) to amend a term or condition of, add a term or condition to or delete a term or condition from an approval,
- the Director shall, in accordance with the regulations, provide or require the applicant to provide notice of the application.”

⁹ See: *O'Neill v. Regional Director of Parkland Region* (March 12, 1999), Doc. 98-250-D (Alta. Environmental App. Bd.) at pars. 14.

[36] Mr. Twin linked the Crown's duty to consult with his argument that the requirement to file a statement of concern to preserve the right to appeal is inconsistent with the obligations and honour of the Crown "... to protect and respect our rights and to fulfil its promises pursuant to our Treaty."¹⁰

[37] The Board does not have jurisdiction to consider whether there was adequate consultation of indigenous communities or to determine if the Crown's actions were consistent with treaty rights. These are questions of duties and rights that relate to the Constitution of Canada, and only tribunals and boards specifically named in legislation have the jurisdiction to consider these matters.

[38] Section 11 of the *Administrative Procedures and Jurisdiction Act*¹¹ states: "Notwithstanding any other enactment, a decision maker has no jurisdiction to determine a question of constitutional law unless a regulation made under section 16 has conferred jurisdiction on that decision maker to do so." There is no regulation that confers the jurisdiction to determine constitutional questions on the Board. The Board is therefore, not in a position to determine the adequacy of consultation or determine if the Crown has acted appropriately to uphold Mr. Twin's and the SRFN's treaty rights.

Legislative Requirements for Statements of Concern

[39] For the Board to find the appeals are valid, the Board must determine the Appellants have met the requirements to file an appeal. Under section 91(1)(a)(i) of EPEA, filing a statement of concern with the Director in response to a notice of the application for an approval is a prerequisite to filing a valid notice of appeal. Section 91(1)(a)(i) provides:

"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

¹⁰ Swan River First Nation Submission, March 2, 2020, at page 2.

¹¹ *Administrative Procedures and Jurisdiction Act*, R.S.A. 2000, c. A-3.

an amendment, addition or deletion pursuant to section 70(3)(a), a Notice of Appeal may be submitted Application to Appellants

- (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)..."

[Emphasis is the Board's.]

[40] Filing a Statement of Concern is an important part of the application process and has been discussed in previous Board decisions. In *O'Neill v. Regional Director, Parkland Region, Alberta Environmental Protection, re: Town of Olds*, the Board stated:

“Statements of concern are a legislated part of the appeal process. Though it is seldom seen, circumstances could arise where it may be possible for the Board to process an appeal where a Statement of Concern was filed late. Or perhaps an appeal could be processed even when a Statement of Concern has not been filed - due to an extremely unusual case (e.g. a directly affected party being hospitalized) where a person's intent to file is otherwise established in advance. But those circumstances are highly fact-specific, exceptionally rare, and they do not apply to the present case.”¹²

[41] Without filing a statement of concern as required under EPEA, the Board cannot consider an appeal as valid unless extenuating circumstances prevented the statement of concern from being filed.

[42] The KOAWS filed a statement of concern with the Director on June 12, 2015, which the Director accepted. On June 23, 2015, the KOAWS sent a letter to the Director in response to the Director's request for further information demonstrating that the KOAWS was directly affected by the SHTC. The letter included 34 individuals who alleged they were directly affected. Many of the Appellants are listed in the letter.

[43] Members of a group must submit separate statements of concern if they want to appeal a decision individually. None of the Appellants, including those named in the KOAWS letter of June 23, 2015, filed individual statements of concern. The Board also notes the

¹² *O'Neill v. Regional Director, Parkland Region, Alberta Environmental Protection,*

KOAWS letter of June 23, 2015, cannot be considered a statement of concern as it was provided after the thirty-day deadline set by EPEA.

[44] Many of the Appellants provided reasons for not filing their statement of concern. Appellants Ms. Raho, Mr. Jackson, Ms. Cline-Thera, Mr. Atkinson, Ms. Stenstrom-Dumont, Ms. Asterisk, Ms. Isadore, and Ms. Courtorielle, each stated they were unaware they needed to file an individual statement of concern. Appellants Mr. Twin, Ms. Raho, Ms. Isadore, Ms. Courtorielle, Ms. Cline-Thera, Mr. Atkinson, Ms. Courtourielle, Ms. Stenstrom-Dumont, and Mr. Davis, stated the appeals information provided by the Board did not indicate that appellants had to file individual statements of concern to appeal. Mr. Teodulo Asterisk stated he had not read information about the application for the Approval in the local newspapers because he was working in Edmonton.

[45] The Board may find circumstances exist where the Board may process an appeal where a statement of concern was filed late or not filed at all. These are rare and exceptional situations where a person had the intent to file a statement of concern, but could not do so due to extremely unusual extenuating circumstances, such as the person being hospitalized.¹³ Being unaware of the necessity to file a statement of concern to appeal, or not seeing the public notice of the application, is not an extenuating circumstance the Board can accept, especially when the legislation is explicit on the requirements for potential appellants.

[46] The Board finds none of Appellants demonstrated any extenuating circumstances that prevented them from filing a statement of concern. The Board therefore, dismisses the Notices of Appeal from the Appellants for not filing valid statements of concern as per section 91(1)(a)(i) of EPEA.

re: *Town of Olds* (March 12, 1999) E.A.B. Appeal No. 98-250-D, at paragraph 14.

¹³ See: *O'Neill v. Regional Director, Parkland Region, Alberta Environmental Protection*, re: *Town of Olds*, 98-025-D, at paragraph 14.

Lateness of the Notices of Appeal

[47] The Appellants all commented on the question of whether their notices of appeal were filed late. Generally, each Appellant stated the reason the Notice of Appeal was filed late was that the Appellant was unaware the Approval had been issued. As the Board found none of the Appellants filed a valid statement of concern, there is no need for the Board to consider the issue of whether the Notices of Appeal were filed late.

VI. DECISION

[48] The Board does not have jurisdiction to consider arguments raised by the Appellant, Mr. Twin, on behalf of the SRFN, relating to the Province of Alberta's duty to consult and to uphold treaty rights.

[49] The Board dismisses the notices of appeal from the following Appellants who did not file a valid statement of concern and have not demonstrated sufficient extenuating circumstances to warrant the Board accepting the notices of appeal without the prerequisite statements of concern:

- Diana Graling, Appeal No. 19-051;
- Alenda Schafer, Appeal No. 19-052;
- Teodulo Barocio Asterisk, Appeal No. 19-053;
- Karl Giroux, Appeal No. 19-054;
- John Willier, Appeal No. 19-056;
- Dustin Twin, on behalf of the SRFN, Appeal No. 19-057;
- Wendy Freeman, Appeal No. 19-058;
- Jule Asterisk, Appeal No. 19-087;
- Bonnie Raho, Appeal No. 19-088;
- Allan Atkinson, Appeal No. 19-103;
- Barb Courtorielle, Appeal No. 19-104;
- Bruce Jackson, Appeal No. 19-105;

- Donna Courtourielle, Appeal No. 19-106;
- Elsie Stenstrom-Dumont, Appeal No. 19-107;
- Melanie Cline-Thera, Appeal No. 19-108;
- April Isadore, Appeal No. 19-109; and
- Ryan Davis, Appeal No. 19-110.

[50] The Board dismisses Appeal Nos. 19-051 to 19-054, 19-056 to 19-058, and 19-087 to 19-088, 19-103 to 19-110.

[51] As the Board has dismissed the Appellants' appeals for not filing statements of concern, there is no need for the Board to consider whether the Notices of Appeal were filed late.

[52] The Board finds the KOAWS provided a statement of concern to the Director within the legislated timeframe and filed its Notice of Appeal on time with the Board. Therefore, the KOAWS appeal, Appeal No. 19-055, may proceed to the next step in the appeal process.

Dated on March 13, 2023, at Edmonton, Alberta.

"original signed by"

Meg Barker

Acting Board Chair (ret'd)