
ALBERTA
ENVIRONMENTAL APPEALS BOARD
Decision

Date of Decision – November 21, 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 an appeal filed by Harold Hoffman with respect to the decision of the Director, Boreal East District, Alberta Environment and Protected Areas, to issue *Water Act* Enforcement Order No. EO-WA-40579 to Frederick Hayden Blanchard and Harold Hoffman.

Cite as: *Hoffman v. Director, Boreal East District, Alberta Environment and Protected Areas*, re: *Frederick Hayden Blanchard and Harold Hoffman* (21 November 2023), Appeal No. 23-060-D (A.E.A.B.), 2023 ABEAB 14.

BEFORE:

Dr. Brenda Ballachey, Panel Chair and Board Member.

PARTIES:

Appellant: Mr. Harold Hoffman.

Director: Ms. Heather Dent, Director, Boreal East District, Alberta Environment and Protected Areas, represented by Ms. Jodie Hierlmeier, Assistant Director, Environmental Law Section, Alberta Justice.

EXECUTIVE SUMMARY

Alberta Environment and Protected Areas (EPA) issued Enforcement Order EO-WA-40579 under the *Water Act* to Mr. Frederick Hayden Blanchard and Mr. Harold Hoffman with respect to unauthorized activities affecting a wetland on Mr. Hoffman's lands in the M.D. of Bonnyville. The Enforcement Order requires Mr. Hoffman and Mr. Blanchard to cease all unauthorized activities and submit a report to EPA with an assessment of the wetland and options for its restoration or replacement.

The Board received an appeal from Mr. Hoffman. The Board noted Mr. Hoffman filed the Notice of Appeal after the expiry of the 7-day time limit for filing appeals of enforcement orders specified in the *Water Act* and requested Mr. Hoffman provide written reasons as to why he filed the appeal late and why the Board should extend the time to file the appeal. Mr. Les Helm, an agent working on behalf of Mr. Hoffman, provided a response. The Board considered the Appellant's response and the legislation. The Board determined that Mr. Hoffman did not provide sufficient evidence to demonstrate that extenuating circumstances prevented him from filing the Notice of Appeal on time.

The Board dismissed the late-filed appeal.

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I. INTRODUCTION

[1] This is the Environmental Appeal Board's (the "Board") decision regarding the Notice of Appeal filed by Mr. Harold Hoffman (the "Appellant") of an enforcement order issued under the *Water Act*, R.S.A. 2000, c.W-3, by Ms. Heather Dent, Director, Boreal East District, Alberta Environment and Protected Areas (the "Director") to Mr. Frederick Hayden Blanchard and Mr. Harold Hoffman.

[2] The Board found the Notice of Appeal was filed late and the Appellant did not provide sufficient reasons for the Board to extend the time to file, and therefore dismissed the appeal.

II. BACKGROUND

[3] On August 10, 2023, the Director issued *Water Act* Enforcement Order No. EO-WA-40579 (the "Order") to Mr. Frederick Hayden Blanchard and Mr. Harold Hoffman (the "Parties") for unauthorized activities on lands owned by Mr. Hoffman in the M.D. of Bonnyville. The lands have been under the care and control of Mr. Blanchard, who is in the process of purchasing the lands from Mr. Hoffman. The Order states that the Parties have conducted unauthorized activities with respect to a wetland (the "Wetland") on the lands. The Order further requires that the Parties cease the unauthorized activities and retain a professional wetlands expert to provide a detailed assessment of the Wetland and recommendations for its restoration or replacement.

[4] On August 27, 2023, the Board received a Notice of Appeal from Mr. Hoffman, represented by Mr. Les Helm of Silver Sage Enterprises Ltd., appealing the Order. In that appeal, Mr. Hoffman stated that he had received the Order from EPA on "August 14th or 15th, 2023."

[5] On August 30, 2023, the Board acknowledged receipt of the Appellant's Notice of Appeal. The Board noted the normal time limit for filing an appeal of an enforcement order was 7 days after the appellant received the Order. The Board requested the Appellant provide reasons

why the Notice of Appeal was filed outside the 7-day time limit, and why the Board should provide an extension to the time limit.

[6] The Appellant, Mr. Hoffman, submitted a written response to the Board on August 20, 2023, listing the circumstances that led to a late filing of the appeal. This response was provided by Mr. Helm on behalf of Mr. Hoffman.

III. ISSUE

[7] The issue to be decided is whether the Board should extend the appeal period for the Appellant's late-filed Notice of Appeal.

IV. APPELLANT'S SUBMISSION

[8] Mr. Helm's August 30, 2023, response provided the following explanation for the Appellant's late filing:

- “1. Frederick Blanchard (Rick) has the authority from Harold Hoffman to speak on his behalf. He is also in the process of purchasing the land from Harold Hoffman. He is also the principal occupant in care and control of the lands when this [Order] was issued.
2. As mentioned within the Appeal Application, Frederick Blanchard received this order from one of his workers on either August 14 or 15, 2023.
3. He contacted me [(Mr. Helm)] on August 17th and informed me that he had this paperwork that told him he had to stop all work. I had not seen the [Order] and asked him to get it to me. In the meantime, I contacted Denise Black [of the Board] to ask for a copy of an application to appeal and I received everything via email.
4. August 18, 2023, I contacted Frederick Blanchard and asked him to please get me the Order that he had received because his responses and notes were written on this order. I also mentioned to him that time was not on his side.

5. August 19, 2023 Received the Order and started my research on the information and events provided by Frederick Blanchard and Nathan Bennett (Inspector) leading up to the issuing of the order by Heather Dent (Director).
6. Due to health and financial problems with Frederick Blanchard, I was unable to get the go ahead to file this Appeal until the 27th.”

V. ANALYSIS

[9] After reviewing the Appellant’s submission, the Board determined the appeal should be dismissed based on two grounds:

- (a) the Appellant did not meet the legislated time limits for filing the Notice of Appeal; and
- (b) the Appellant failed to provide sufficient reasons for the Board to grant an extension of time.

[10] Section 116(1)(a)(i) of the *Water Act* provides a time period for filing an appeal of an enforcement order of not later than 7 days after receipt of the order. The Board may, on application under section 116(2), extend the time period for filing a notice of appeal if the Board is of the opinion there are sufficient grounds to do so. Section 116(2) of the *Water Act* states:

“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.”

[11] The legislation has a strict time limit of 7 days to submit a Notice of Appeal in this case. However, the *Water Act* provides the Board with some flexibility to allow for late-filed appeals in certain situations. The Board uses this authority only in exceptional circumstances. The legislation included time limits for filing an appeal to provide a level of certainty to the appeal process and to balance the interests of the parties. The Board will not exercise its

discretion to extend the time limit unless an appellant can demonstrate there were exceptional circumstances that caused the Notice of Appeal to be filed late.¹

[12] The onus is on the appellant to show that extenuating or special circumstances existed that prevented them from filing a Notice of Appeal within the legislated timeframe.² While the Board is not bound by the formal rules of evidence that bind the courts, there must be a factual basis for its decisions. Although in his submission the Appellant listed some “circumstances” that led to a late filing, the Board did not consider them to provide sufficient explanation or convincing justification for filing a late appeal. In the Board’s view, the Appellant provided insufficient evidence to support a finding of exceptional or special circumstances that would warrant extending the appeal period.

[13] As in the *O’Neill* case, the type of situation where there may be extenuating or special circumstance is where the appellant was in the hospital at the time the Notice of Appeal should have been filed.³ While it is stated that there were “health and financial problems with Frederick Blanchard,” no specifics were provided and there was no explanation as to why the Appellant himself, Mr. Hoffman, could not have given Mr. Helm instructions. (The Board notes the appeal was filed on behalf of Mr. Hoffman and not by Mr. Blanchard. The Board understands that Mr. Blanchard was acting as the agent of Mr. Hoffman, giving instructions to Mr. Helm.)

¹ *Fritz v. Director, Regulatory Assurance Division South, Alberta Environment and Protected Areas, re: Ian MacGregor* (10 January 2023), Appeal No. 22-090-D (A.E.A.B.), 2023 ABEAB 1. *O’Neill v. Regional Director, Parkland Region, Alberta Environmental Protection, re: Town of Olds* (12 March 1999), Appeal No. 98-250-D (A.E.A.B.), 1999 ABEAB 98.

² *Olineck v. Director, Red Deer-North Saskatchewan Region, Operations Division, Alberta Environment and Sustainable Resource Development, re: Hutterian Brethren Church of Vegreville* (28 October 2014), Appeal No. 14-012-D (A.E.A.B.), 2014 ABEAB 25, at paragraph 63. Affirmed following a judicial review at: *Olineck v. Alberta (Environmental Appeals Board)*, 2017 ABQB 311.

³ *O’Neill v. Regional Director, Parkland Region, Alberta Environmental Protection, re: Town of Olds* (12 March 1999), Appeal No. 98-250-D (A.E.A.B.), 1999 ABEAB 98.

VI. DECISION

[14] The Board finds the Notice of Appeal filed by Mr. Harold Hoffman, EAB No. 23-060, was filed outside the legislated 7-day time period, and the Appellant did not provide sufficient evidence of extenuating circumstances that prevented him from filing the appeal on time. Therefore, the Board will not extend the appeal period, and the appeal is dismissed pursuant to section 116(2) of the *Water Act*.

Dated on November 21, 2023, at Edmonton, Alberta.

“original signed by”

Dr. Brenda Ballachey
Board Member