

**ALBERTA
PUBLIC LANDS APPEAL BOARD**

**Decision
Preliminary Decision**

October 28, 2015

IN THE MATTER OF section 121(2) of the *Public Lands Act* and section 217 of the
Public Lands Administration Regulation, A.R. 187/2011

-and-

IN THE MATTER OF appeals filed by Keephills Aggregate Company Ltd.,
Central Aggregates Ltd., Northwest Rentals Ltd., and 1494737 Alberta Ltd.

-and-

IN THE MATTER OF a Preliminary Motion filed by the Director,
Alberta Environment and Parks

INDEX

Introduction **Page 1**

Facts **Page 1**

15-0011 **Page 1**

15-0017 **Page 1**

15-0018 **Page 2**

15-0019 **Page 2**

Issue **Page 2**

Analysis **Page 2**

15-0011 **Page 3**

15-0017, 150018, 15-0019 **Page 4**

Conclusion **Page 5**

INTRODUCTION

- [1] This is a decision by the Public Lands Appeal Board regarding the preliminary application by the Director asking the Board to reconsider its decision to accept appeals 15-0011, 15-0017, 15-0018, and 15-0019. Appeal 15-0011 was filed by Keephills Aggregate Company Ltd.; appeal 15-0017 was filed by Central Aggregates Ltd.; appeal 15-0018 was filed by Northwest Rentals Ltd.; and appeal 15-0019 was filed by 1494737 Alberta Ltd. Due to their similar facts and location of the land in question the Board combined the four appeals for administration purposes, but all four appeals are considered independently for the Board's decision. The combined files have been given the appeal number of 15-0011A.
- [2] In a letter dated August 19, 2015 the Director requested "that the Board reconsider its decision to accept the Notices of Appeal associated PLAB 15-0011A." The Director alleged that the Notices of Appeal were outside of the time limit provided for in section 217(1) of the Public Lands Administration Regulation (PLAR).
- [3] In response to the Director's letter the Board requested that the parties provide submissions regarding the issue of:
- Whether it is contrary to the public interest to extend the time for surface of the notices of appeal?
- [4] The Board has reviewed the submissions from the parties and issues the following decisions.

FACTS

PLAB 15-0011

- [5] The Appellant, Keephills Aggregate Company Ltd., applied to Alberta Environment and Sustainable Development (now known as Alberta Environment and Parks) for Surface Materials Lease (SML) 110070. The Director rejected the application in a letter dated May 20, 2015. The Board received the Appellant's Notice of Appeal on June 26, 2015 and rejected it as being incomplete. A second Notice of Appeal was filed June 29, 2015, which was also rejected for being incomplete. A third Notice Appeal was filed with the Board on June 30, 2015 which corrected previous omissions and was accepted as being complete. The Board calculates that there was 41 days between the date of the Director's letter and the filing of the complete Notice of Appeal by the Appellant.

PLAB 15-0017

- [6] The Appellant, Central Aggregate Company Ltd., applied to Alberta Environment and Sustainable Development (now known as Alberta Environment and Parks) for Surface Materials Lease (SML) 110071. The Director rejected the application in a letter dated May 20, 2015. The Board received a Notice of Appeal from the Appellant on July 7, 2015 which was rejected by the Board for being submitted as a Summary Appeal. A Notice of Appeal for a General or Complex Appeal was received by the Board on July 10, 2015, and an amended page 3 on July 13, 2015. The Board calculates that there was 54 days between the

date of the Director's letter and the filing of the complete Notice of Appeal by the Appellant on July 13, 2015.

PLAB 15-0018

- [7] The Appellant, Northwest Rentals Ltd., applied to Alberta Environment and Sustainable Development (now known as Alberta Environment and Parks) for Surface Materials Lease (SML) 110077. In a letter dated May 20, 2015 the Director rejected the application. The Appellant appealed the director's decision to the Public Lands Appeal Board, but used a notice of appeal form for a Summary Appeal. The Board informed the Appellant that this was an incorrect form and the Appellant filed a Notice of Appeal for a General or Complex Appeal on July 10, 2015. The notice of appeal was missing the decision letter of the Director which was faxed to the Board on July 13, 2015. Between the date of the Director's May 20, 2015 decision letter and the filing of the Notice of Appeal by the Appellant on July 13, 2015, is a period of 54 days.

PLAB 15-0019

- [8] The Appellant, T494737 Alberta Ltd., applied to Alberta Environment and Sustainable Development (now known as Alberta Environment and Parks) for Surface Materials Lease (SML) 110077. In a letter dated May 20, 2015 the Director rejected the application. The Appellant filed a Notice of Appeal with the Board on July 14, 2015. The Board advised the Appellant that the second page of the decision letter from the Director was missing and the Appellant faxed the missing page to the Board that same day. The Board calculates the time between the May 20, 2015 decision letter from the Director and the filing of the Notice of Appeal with the Board on July 14, 2015 to be 55 days.

Director's Application

- [9] In a letter dated August 19, 2015 the Director requested "that the Board reconsider its decision to accept the Notices of Appeal associated PLAB 15-0011A." The Director alleged that the Notices of Appeal were outside of the time limit provided for in section 217(1) of the PLAR.
- [10] The Board, in a letter dated August 20, 2015, invited the parties to provide submissions regarding the Director's application.

ISSUE

- [11] Is it contrary to the public interest to extend the time for filing of the notices of appeal?

ANALYSIS

- [12] The Board has reviewed the submissions from the parties, Director's record, the legislation, and relevant case law, and issues the following decisions.
- [13] Section 217(1) of PLAR states:

217(1) A notice of appeal must be served on the appeals co-ordinator within

- (a) 20 days after the appellant received, became aware of or should reasonably have become aware of the decision objected to, or
 - (b) 45 days after the date the decision was made,
- whichever elapses first.

(2) The appeals co-ordinator may, either before or after the expiry of a period described in subsection (1)(a) or (b), extend the time for service of a notice of appeal if, in the opinion of the appeals co-ordinator, it is not contrary to the public interest to do so.

- [14] The Board must follow the legislation which sets out the time frames which an appeal must be filed. The Board assumes the Alberta Legislature had specific reasons for setting the time frames as they did. The legislation, in section 217(2), permits the Appeals Coordinator to exercise his discretion and extend the period to file a Notice of Appeal, if in his opinion it would not be contrary to the public interest to do so.
- [15] The Director alleges that it would be contrary to the public interest to extend the time frames for filing a notice of appeal. The Appellant claims that it would not be contrary to the public interest and cites the money invested into these SML applications as reason for the Board to continue with the appeals.
- [16] Certainty and consistency are important components of the public lands appeal process, as is procedural fairness and natural justice. The discretionary power granted to the Appeals Coordinator to extend the timelines allow the Board to preserve fairness where lack of sufficient notice or other extraordinary circumstances prevent the timely filing of a notice of appeal. The Board has considered these factors in making its decision.

PLAB 15-0011

- [17] The Appellant argues in its submissions that it filed the Notice of Appeal for 15-0011 on time. The Appellant states in its submissions:

We were not sure what day we received the May 20th 2015 letter (copy enclosed), however it is our recollection that when we filed the appeal in June 26, 2015 that we were within the 20 days period.

- [18] This statement, as with the other evidence provided by the Appellant, does not provide definitive evidence of when the Appellant received the decision letter.
- [19] The Director argues that the Activity Report from the Appellant (tab 16 of the Director's Record) is evidence that the Appellant received the Director's letter refusing the application on May 20, 2015. The Activity Report entry for May 20, 2015 states:

Letter from SRD stating Refusal of SML since it does not comply with policy of 80 acres. See File.

- [20] The Board notes that the Director's September 29, 2015 submissions state:

The Director refused the applications for the above-noted SMLs in four decision letters all dated May 20, 2015. On May 21, 2015, the Director provided these

decision letters to the Applicants via email to the email address provided with respect to all four applications.

- [21] If the Director did not email the Director's letter until May 21, 2015, then the entry in the Activity Report is inaccurate. There is no evidence before the Board as to how or when the Activity Report was compiled. The Board finds the evidence provided by the Director in support of the allegation that 15-0011 was filed late to be inconclusive.
- [22] As there is no conclusive evidence from either the Director or the Appellant as to when the Appellant received the May 20, 2015 letter from the Director, the Board applies section 217(1)(b) to the appeal and finds that the Notice of Appeal was filed within the 45 day timeline set out in this section of PLAR. The Board, upon reconsideration, confirms its original decision to accept the Notice of Appeal for PLAB 15-0011.

PLAB 15-0017, 15-0018, and 15-0019

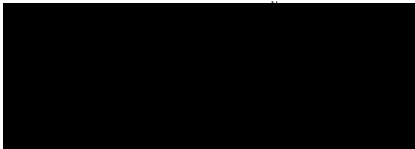
- [23] All three of the Notices of Appeal for PLAB 15-0017, 15-0018, and 15-0019 were filed past the 45 day time frame provided in section 217(1)(b) of PLAR. In order for these appeals to continue the Appeals Coordinator would have to exercise his discretion under 217(2) of PLAR to extend the period of time to file a Notice of Appeal.
- [24] In the Director's submissions the Director references the Environmental Appeals Board decision in *The Town of Valleyview v. Director*¹, where the EAB states that statutory time limits should be followed, there are extenuating or special circumstances that prevent filing within the timeframe prescribed by the legislation. The Director argues that there are no extenuating circumstances in these appeals to justify the extension of time for filing.
- [25] The Appellant stated in its submissions that they initially thought the Notice of Appeal for SML 110070 (PLAB 15-0011) would cover the other SMLs in the project. Once the Appellant "became aware that the appeals for SML 110071, SML 110077 and SML 110078 had to be submitted" they proceeded to file separate appeals. The Appellant also states in their submissions that it "would be in the public interest to review the representation made by Alberta Environment and Sustainable Resource Development representatives which resulted in the expenditure of considerable monies of the SML holders."
- [26] The Appeals Coordinator finds that the Appellant has not provided any substantial reason for filing these three notices of appeal late, nor has the Appellant provided sufficient reason to justify extending the time frame for filing. The Appeals Coordinator finds that in these three appeals, it would be contrary to the public interest to extend the time frame for filing of the notices of appeal, as it would undermine consistency and certainty in the public lands appeal process. Having reconsidered its decision to accept these three Notices of Appeal, the Board dismisses PLAB 15-0017, 15-0018 and 15-0019 due to the Notices of Appeal being filed contrary to the timelines provided in section 217(1) of PLAR.

¹ *Town of Valleyview v. Director, Northern Region, Regional Services, Alberta Environment* (1 August 2003), Appeal No. 03-009-D (A.E.A.B.).

CONCLUSION

[27] The Board reaffirms its decision to accept the Notice of Appeal for PLAB 15-0011. The Board, upon reconsideration, dismisses PLAB 15-0017, 15-0018 and 15-0019 as the Notices of Appeal for each of these appeals were filed after the expiration of the timelines listed in section 217(1) of PLAR and, in the opinion of the Appeals Coordinator, it would be against the public interest to extend the timeline for filing of the Notices of Appeal under section 217(2) of PLAR.

Signed on October 28, 2015.



Gordon McClure
Appeals Coordinator
Public Lands Appeal Board