ALBERTA
PUBLIC LANDS APPEAL BOARD

Decision

Date of Decision – September 4, 2018

IN THE MATTER OF sections 121 and 124 of the *Public Lands Act,* R.S.A. 2000, c. P-40, and sections 211, 213, 228, and 235 of the *Public Lands Administration Regulation*, Alta. Reg. 187/2011;

-and-

IN THE MATTER OF appeals filed by Gerald Gionet, Gionet Holdings Corporation, Aqua Industrial Ltd., and GEO Worldwide Ltd. with respect to the decisions by the Director, Lower Athabasca Region, Alberta Environment and Parks, to issue under the *Public Lands Act* Administrative Penalty Nos. PLA-17/01-AP-LAR-17/01, PLA-17/02-AP-LAR-17/02, and PLA-17/03-AP-LAR-17/03.

Cite as: *Gionet et al.* v. *Director, Lower Athabasca Region, Alberta Environment and Parks* (4 September 2018), Appeal Nos. 17-0014-0016-D (A.P.L.A.B.).

See: Erratum: Gionet et al. v. Director, Lower Athabasca Region, Alberta Environment and Parks (19 November 2018), Appeal Nos. 17-0014-0016-E (A.P.L.A.B.).

BEFORE:	Ms. Marian Fluker, Acting Board Chair and Appeals Co-ordinator.
SUBMISSIONS BY:	
Appellants:	Mr. Gerald Gionet, Gionet Holdings Corporation, Aqua Industrial Ltd., and GEO Worldwide Ltd., represented by Mr. Matthew Farrell, Guardian Law Group.
Director:	Mr. Neil Brad, Regional Compliance Manager, Lower Athabasca Region, Alberta Environment and Parks, represented by Ms. Vivienne Ball and Ms. Lisa Semenchuk, Alberta Justice and Solicitor General.

EXECUTIVE SUMMARY

Alberta Environment and Parks (AEP) issued administrative penalties to Mr. Gerald Gionet, Gionet Holdings Corporation, Aqua Industrial Ltd., and GEO Worldwide Ltd. (the Appellants) on September 1, 2017. The administrative penalties totalled approximately $2.1 million.

On September 28, 2017, the Public Lands Appeal Board (the Board) received appeals from the Appellants regarding AEP's decisions to issue the administrative penalties.

The Board received and reviewed submissions from the Appellants and AEP on why the appeals were filed after the legislated appeal period and whether the Board should use its discretion to extend the appeal period, taking into consideration whether it would "not be in the public interest to do so."

The appeal period provided for in the *Public Lands Administration Regulation* is 20 days after the appellant received, became aware of, or should reasonably have become aware of the decision objected to, or 45 days after the date of the decision, whichever is the earliest.

Based on the submissions provided, the Board found the appeals were filed after the appeal period expired. The Appellants did not provide any persuasive reasons to extend the appeal period. The Appellants argued, among other things, the appeal period should be extended because Mr. Gionet did not have an opportunity to review the Notices of Administrative Penalty until 10 days after he received them. This action, and the other reasons provided, show the Appellants did not treat this matter with the importance it deserved. The Board expects individuals and corporations who are involved in a regulated industry to treat enforcement matters with the importance they deserve. As a result, granting an extension to the appeal period would be contrary to the public interest.

Therefore, the Board dismissed the appeals.

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I. Introduction

[1] This is the Public Lands Appeal Board's decision concerning when and whether Notices of Administrative Penalty were properly served on the Appellants: Mr. Gerald Gionet, Gionet Holdings Corporation, Aqua Industrial Ltd., and GEO Worldwide Ltd. (the "Appellants"). An appeal of a notice to pay an administrative penalty can be made to the Public Lands Appeal Board (the "Board"), but subject to a short statutory time limit.[1] If, as the Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks (the "Director") argues, the statutory time limit was missed, the Appellants can only proceed with their appeals if they obtain an extension from the Appeals Co-ordinator.[2] She can only grant such an extension in circumstances where, in her opinion, it is "not contrary to the public interest to do so."[3]

II. Legislation

[2] Under the *Public Lands Act*, R.S.A. 2000, c. P-40 ("PLA"), public lands owned by the Government of Alberta (the "Crown") may, with a proper permit, be put to use by the individuals or corporations holding the permit. Mr. Gerry Gionet and Gionet Holdings Corporation ("Gionet Holdings") obtained such a permit, although it expired in 2014.[4] Such lands cannot be sublet to others without permission, and monies cannot be collected by the

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1 Section 217(1) of the *Public Lands Administration Regulation*, Alta. Reg. 187/2011 (the "Regulation") provides:

> "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 is a statutory decision-maker under the *Public Lands Act*, R.S.A. 2000, c. P-40, ("PLA") with respect to appeals. In this case, the Board's authority is being exercised by the Appeals Co-ordinator, who is also the Chair of the Board. See: section 214(2) of the Regulation, which provides "The appeals co-ordinator is the chair of the Board."

3 Section 217(2) of the Regulation provides: "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."

4 Gionet Holdings held Miscellaneous Permit 060011 (the "MPL") for a storage site, lay down site, shop, and office on lands legally described as SE 4-92-10-W4M, near Fort McMurray, Alberta.

permit holder because of such subletting arrangements, without proper authority.[5] Otherwise, the monies collected belong to, or at least can be claimed by, the Crown.

[3] The responsibility for the use of public lands rests with one of a number of statutory decision-makers called Directors, appointed within Alberta Environment and Parks. The particular Director in this case is the Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks, who is one of the Directors charged with enforcing the legislation. The Director has a variety of statutory and regulatory tools for ensuring compliance with the PLA, the regulations, and the various types of authorizations created by the legislation, such as the permit issued in this case. Two of these tools are: (1) the ability of the Director to impose an administrative penalty amount – a monetary fine - for failing to comply with the legislation;[6] and (2) the ability of the Director to require payment to the Crown of any monies inappropriately collected contrary to the legislation, which under the PLA is referred to as the "proceeds."[7]

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[5] Section 43 of the PLA provides: "The holder shall not mortgage, assign, transfer or sublet the land contained in the holder's disposition, or any part of it, without the written consent of the director." Further, section 54.01(5) of the PLA provides:

> "No person shall provide or receive money or other consideration for the purpose of gaining or allowing access to, passage on or over or use of public land unless
>
> (a) the person receiving the money or other consideration is the holder of a disposition or authorization under section 20 and is entitled at law to receive money or other consideration for that purpose, and
>
> (b) the access, passage or use is in respect of public land that is the subject of the disposition or authorization."

[6] Section 59.3 of the PLA provides:

> "The director may, in accordance with the regulations, require a person to pay an administrative penalty in an amount determined by the director if the person
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> (a) contravenes a provision of an ALSA regional plan, this Act or the regulations that is prescribed in the regulations for the purposes of this section,
>
> (b) without legal authority makes use of public land,
>
> (c) as a holder of a disposition or of an authorization under section 20, without the consent of the director, or a person authorized by the Minister to provide consent, makes use of the public land that is the subject of the disposition or authorization for any purpose other than the purpose for which the disposition or authorization is granted,
>
> (d) contravenes a term or condition of a disposition or of an authorization under section 20...."

[7] Section 59.4(4) of the PLA provides:

> "A notice of administrative penalty under this section may require one or more of the following:
>
> (a) payment of the penalty determined by the director under section 59.3;

III. Administrative Penalties

[4] On August 31, 2017, the Director issued three Notices of Administrative Penalty to the Appellants.[8] The Notices of Administrative Penalty differ with respect to the parties to whom they were directed, the details of the offences, and the amount required to be paid.

[5] All three Notices of Administrative Penalty were issued to Mr. Gerald Gionet, in his personal capacity, and Gionet Holdings. The first Notice of Administrative Penalty (17/01) was issued only to Mr. Gionet and Gionet Holdings, and provided:

> "Between June 1, 2009 and June 26, 2016, the Parties received money or other consideration from Carmacks Industrial Limited, Canwest Propane, Tervita Corporation and Oilsands Expediting for the purpose of allowing access and use of public lands without authority, discovered by the Department on September 2, 2015.
>
> I am assessing an administrative penalty which includes a $20,000 penalty assessment and a proceeds assessment of $1,895,272.03 for a total penalty of $1,915,272.03 pursuant to sections 59.3(a) and 59.4(4)(c) of the *Public Lands Act* and section 171(2) of the *Public Lands Administration Regulation*."[9]

[6] The second Notice of Administrative Penalty (17/02) added Aqua Industries Ltd. as a party, in addition to Mr. Gionet and Gionet Holdings, and provided:

> "Between July 1, 2014 and July 31, 2015, the Parties received money or other consideration from Tervita Corporation for the purpose of allowing access and use of public lands without authority, as discovered by the Department on February 5, 2016.

> (b) any person who in the director's opinion is in receipt of proceeds derived directly or indirectly from any use of public land in contravention of this Act or the regulations to provide an accounting of the proceeds believed by the director to have been received by that person;
>
> (c) payment by a person referred to in clause (b) of any proceeds referred to in that clause, or an amount equivalent to the value of the proceeds if the person has converted the proceeds."

[8] On October 15, 2015, the Director inspected the Public Lands and found seven companies occupying and using the MPL. The three Notices of Administrative Penalty were PLA-17/01-AP-LAR-17/01 ("17/01"), PLA-17/02-AP-LAR-17/02 ("17/02"), and PLA-17/03-APOLAR-17/03 ("17/03"). The Penalties totalled approximately $2.1 million.

[9] Carmacks Industrial Limited, Canwest Propane Ltd., Tervita Waste Processing Corporation, Oilsands Expediting Ltd., 4 Refuel Corporation, C Wiseman Enterprises Ltd, and Aqua Industrial Limited are the companies said to have sublet the MPL, which was held by Gionet Holdings. See: Administrative Penalty Assessment Forms, File No: 21133.

> I am assessing an administrative penalty which includes a $5000.00 penalty assessment and a proceeds assessment of $100,800.00 for a total penalty of $105,800.00...."

[7] The third Notice of Administrative Penalty (17/03) added GEO Worldwide Ltd. as a party, in addition to Mr. Gionet and Gionet Holdings, and provided:

> "Between July 15, 2015 and July 31, 2016, the Parties received money or other consideration from Tervita Corporation for the purpose of allowing access and use of public lands without authority, as discovered by the Department on February 5, 2016.
>
> I am assessing an administrative penalty which includes a $5000.00 penalty assessment and a proceeds assessment of $100,800.00 for a total penalty of $105,800.00...."

[8] Each of the Notices of Penalty Assessment concluded with the following demand for payment and information about the right of appeal:

> "You are required to submit payment for the administrative penalty within thirty (30) days of the date of service of this Notice. If payment has not been received in the thirty (30) day period, the amount payable is recoverable in an action in debt.
>
> Dated this 31st day of August, 2017.
>
> RIGHT OF APPEAL
>
> Section 211 of the *Public Lands Administration Regulation* may provide a right of appeal against this decision to the Alberta Public Lands Appeals Board. There may be a strict time limit for filing such an appeal. For further information please contact the Appeals Coordinator at 780-638-4189 or toll free by dialing 310-0000 – 780-638-4189."

IV. Time Limits and Service Obligations

[9] The Director's ability to issue a Notice of Administrative Penalty is subject to a limitation period in the PLA. With an alleged offence date of September 2, 2015, with respect to the first Notice of Administrative Penalty, and a date of August 31, 2017, for the issuance of all three Notices of Administrative Penalty, this limitation is significant to one of the Appellant's grounds for appeal. Section 59.7 of the PLA provides:

> "A notice of administrative penalty may not be issued more than 2 years after
>
> (a) the date on which the contravention to which the notice relates occurred, or

(b) the date on which evidence of the contravention first came to the notice of the director,

whichever is later."

[10] Once issued, notices must be served on the responsible parties. Section 59.4(1) of the PLA provided: "If the director requires a person to pay an administrative penalty under this Act or the regulations, the director shall serve by personal service or registered mail a notice of administrative penalty demanding payment of the penalty."

[11] The Regulation allows for an appeal, and sets time limits in which the appeal must be filed:

"211 The following decisions are prescribed as decisions from which an appeal is available: ...

(h) an enforcement order, a stop order or an administrative penalty....

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."

[12] The Regulation also authorizes the Appeals Co-ordinator to extend the time limits for filing the appeal:

"217(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."

The Appellants' lawyer served the Appeals Co-ordinator with the Notice of Appeal on September 28, 2017.[10] A core question for this decision is whether the Notice of Appeal was filed within the time limits prescribed under section 217(1)(a) of the PLA. As stated in this section, this depends on the date the Notices of Administrative Penalty were served on the Appellants.

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[10] The Board's letter acknowledging the Notices of Appeal states they were received on September 29, 2017. However, the email attaching the Notices of Appeal indicates they were received on September 28, 2017, at 4:23 pm.

V. Service on the Appellants

[13] The Affidavit evidence and the written submissions establish that Mr. Paul A. Smith, an employee of Alberta Environment and Parks ("AEP"), dealt with service of the Notices of Administrative Penalty on the Appellants.[11] He attended at the registered offices of the three corporations on August 31, 2017.[12] Mr. Gionet's wife was present at the time, but Mr. Gionet was not. Mr. Smith advised that, while he was there, Ms. Gionet telephoned Mr. Gionet. Ms. Gionet advised Mr. Smith she had the authority to accept the documents on behalf of the corporations. Mr. Smith left the documents, including the Notices of Administrative Penalty, with Ms. Gionet.

[14] The next day, on September 1, 2017, Mr. Gionet was asked to come to the AEP office, in Fort McMurray, which he concedes he did at about 3:00 p.m.[13] At the AEP office, Mr. Gionet was personally served and he received another copy of the documents addressed to the corporations, again including the Notices of Administrative Penalty. In addition to the personal service, the Director also served the documents on Mr. Gionet and the three corporations by Recorded Delivery Mail. According to the Director, the records show the mail was received as of September 6, 2017. (Based on service by Recorded Delivery Mail, the 20 day appeal period would have ended on September 26, 2018, and the Notices of Appeal would still have been filed late.)

[15] Mr. Gionet's evidence is that he was travelling out of town until September 11, 2017, and that Ms. Gionet placed the documents she received with the rest of his mail, none of which he examined until September 11, 2017. Once he reviewed the Notices of Administrative Penalty and other documents, he scanned them to email to his lawyer. However, he inadvertently mistyped the lawyer's email address, and the documents were not received. Mr.

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[11] The Director provided an Affidavit stating the Appellants had been personally served with notices of the Penalties on September 1, 2017. See: Affidavit of Mr. Paul A. Smith, sworn September 1, 2017, stating the Notices of Administrative Penalty were "personally served" on Mr. Gerald Gionet, Gionet Holdings, and Aqua Industrial Ltd. on September 1, 2017. See: Director's Letter, dated October 4, 2017.

[12] The three corporations are Gionet Holdings, Aqua Industrial Ltd. ("Aqua"), and GEO Worldwide Ltd. ("GEO"). Mr. Gionet is a Director of Gionet Holdings and Aqua, and an Officer of GEO. The Board understands the registered address of the corporations is also the home of the Gionets.

[13] Mr. Gionet initially asserted that service was impossible on that day. He subsequently apologized for his mistake and conceded that he attended at the offices of AEP and was given a package of documents, which included the Notices of Administrative Penalty.

Gionet did nothing to follow up on the matter until he contacted his lawyer on September 24, 2017. At that point, the documents were successfully sent to the lawyer, and four days later, on September 28, 2017, the lawyer served Notices of Appeal on the Appeals Co-ordinator.

[16] The reason put forward by the Appellants to suggest personal service of the Notices of Administrative Penalty was not effected on September 1, 2017 – when Mr. Gionet attended the offices of AEP in Fort McMurray - was the notices "were in the middle of other documents" and Mr. Gionet, who only flipped through the bundle, did not appreciate he was being served with the notices. This argument goes to the issue of why he failed to respond in a timely way, but it does not alter the effectiveness of actual personal service on him in his own right and as a director or officer of each of the corporations on September 1, 2017.

[17] Even if the delivery to the corporate Appellants on August 31, 2017, may be questioned by the Appellants, there is no doubt all of the Appellants received the Notices of Administrative Penalty on September 1, 2017. Therefore, the Board finds as fact that service of the Notices of Administrative Penalty occurred on September 1, 2017.[14]

VI. Late Filed Notices of Appeal

[18] Having found service on Mr. Gionet and the other Appellants was effected on September 1, 2017, it follows the appeals filed on September 28, 2017, were out of time under section 217(1), unless an extension under section 217(2) is granted. Specifically, the applicable appeal period under section 217(1)(a) was that the Notices of Appeal must have been served on the Appeals Co-ordinator within 20 days after the Appellants received the Notices of Administrative Penalty or became aware of or should reasonably have become aware of the Notices of Administrative Penalty. As the Notices of Administrative Penalty were served on September 1, 2017, the latest the Notices of Appeal should have been received by the Appeals Co-ordinator was Thursday, September 21, 2017. The Board finds as fact the Notices of Appeal were served on Thursday, September 28, 2017, which was seven days late.

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[14] The Board also finds that service was also effected by mail as of September 6, 2017.

[19] As the appeals were filed late, the Appeals Co-ordinator can only accept the appeals by granting an extension. To grant an extension, she must be of the opinion that to do so would not be contrary to the public interest.[15]

VII. Discretion to Extend Time Limits

[20] As the Notices of Appeal were filed late, the only way for the Board to accept the appeals is for the Appeals Co-ordinator, to grant an extension under section 217(2). As prescribed by this section, for the Appeals Co-ordinator to grant such an extension, she must be of the opinion "it is not contrary to the public interest to do so."

[21] The Director's position is an extension in these circumstances would be contrary to the public interest. The Appellants' position is it would be unfair and unjust to deny an extension in these circumstances, and the public interest is not prejudiced in any material way.[16]

[22] The parties differ on how the Appeals Co-ordinator should address the discretion granted by section 217(2) and the factors relevant to what might be contrary to the public interest.

[23] The Appellants argue the vast majority of the amount claimed here is in the nature of a civil claim for debt. The Notices of Administrative Penalty, they say, are akin to a statement of claim, and the request for an extension is closely analogous to seeking leave to set aside a court judgment entered by default. For that they rely upon the test from *Graylake Holsteins Ltd.* v. *Kzam Farms Ltd.* (2004) ABQB 828 ("*Graylake*"), wherein Justice Veit of the Court of Queen's Bench stated at paragraph 19:

> "The test is whether the Appellant is able to show that:
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> a) she has an arguable defence; and
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> b) she did not deliberately let judgment go by default and has some excuse for the default, such as illness or a solicitor's inadvertence; and
>
> c) after learning of the default judgment, she moved promptly to open it up."[17]

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[15] A detailed summary of the Board's process is found in Appendix A to this decision.

[16] A detailed summary of the arguments of the Appellants and the Director is found in Appendix B to this decision.

[17] A similar test was described in *Khan* v. *Canada (Minister of Citizenship and Immigration)*, 2015 CarswellNat 8704, 2015 CarswellNat 8705 before the Appeal Division of the Immigration and Refugee Board at

[24] The Appellants' emphasize the observations of Veit J. about the nature and application of this test in *Don Reid Upholstery Ltd.* v. *Patrie*, 1995 ABQB 9187 at 24 and 25:

> "... [T]he British Court of Appeal reminds us that discretion, by definition, rejects rigid rules. When judges say that an applicant must prove the three things set out above, they are merely using a form of shorthand: they are saying that fairness must always be done and that usually fairness requires that these three things be proved. Under R. 158, the court has discretion to do what is just; the most that case law can do is to provide 'general indications to help the Court in exercising the discretion' ...
>
> Our own Court of Appeal has, of course, taken the same approach as the British Court of Appeal. In many different situations, it has emphasized that the objective of the Rules is to achieve fairness, not blind adherence to mere formalism."

[25] Further, the Appellants argue this "opening up a default judgment test" was used for just this type of PLA claim before the advent of administrative penalties.18 An example of opening up such a claim arose in *Alberta* v. *Fjeld* (2008) ABQB 558 (Yamauchi, J.) at paragraphs 26 to 28. According to the Appellants, the Crown filed a statement of claim seeking penalties associated with the breach of a timber license. They obtained default judgment that the Respondents sought to open up. The *Graylake* test was applied, although in that case, the request to open up the default judgment was denied.

[26] The Director argues the test that should be used was described by the Environmental Appeals Board (the "EAB") in *Phippen,*[19] a decision under the *Water Act*, R.S.A. 2000, c. W-3. The Director, in that case, issued a *Water Act* license to allow the license holder to take water from Pigeon Lake for oil injection purposes. A number of interested parties appealed in time but withdrew those appeals following a mediated resolution. Thirteen months later Ms.

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paragraph 6, referencing *Canada (Attorney General)* v. *Hennelly*, 1999 CanLII 8190, (1999), 244 N.R. 399 (Fed. C.A.). The guidance of the Federal Court of Appeal was:

> "... in order to be successful in obtaining an order extending a time limit the appellant must show:
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> (1) a continuing intention to pursue the claim;
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> (2) the claim has some merit;
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> (3) no prejudice to the responding party arises from the delay; and
>
> (4) a reasonable explanation for the delay exists."

[18] Under the previous version of the legislation there was no appeal mechanism that was part of the regulatory scheme. There was just the civil claims mechanism to collect any monies owed to the Crown.

[19] *Phippen* v. *Director, Central Region, Environmental Management, Alberta Environment re: MEC Operating Company* (17 March 2011), Appeal No. 10-037-D (A.E.A.B.) ("*Phippen*").

Phippen filed an appeal. The *Water Act* contained a short limitation period for appeals, but the EAB had the ability to extend the appeal period. Under section 93 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, the Board can "... before or after the expiry of the prescribed time, advance or extend the time prescribed in this Part or the regulations for the doing of anything where the Board is of the opinion that there are sufficient grounds for doing so."

[27] In *Phippen*, at paragraphs 11 to 14, the EAB explained its available discretion in the following terms:

> "The legislation has provided the Board with some flexibility to allow for late filed appeals in certain circumstances, but the Board uses this authority in only limited situations. To allow an extension of time, the Appellant must be able to show that extenuating or special circumstances existed that prevented her from filing within the legislated timeframe. The onus is on the Appellant to demonstrate there are exceptional circumstances that warrant an extension of time to file an appeal. The Board may consider extending time limits by a few days in certain circumstances, but the appellant must be able to give the Board sufficient reasons to justify the action. In the circumstances of this case as presented by the Appellant, an extension of one year cannot be justified....
>
> One of the purposes of having deadlines incorporated into legislation, particularly regulatory legislation, is to bring some element of certainty to the regulatory process. In this case, the *Water Act* requires an applicant for a licence to go through an application process. This process provides for public notice, which allows anyone who may be directly affected by the proposed licence to submit their concerns to the Director in the form of a Statement of Concern. Once a decision is made to issue, or for that matter not to issue, the licence, then there is an appeal period in which the applicant or anyone who is directly affected (and who filed a Statement of Concern) can file an appeal. The time limit in which an appeal must be filed is legislated so that all participants – the applicant, the people who are directly affected, and the regulator – know when the process is complete. The time limits included in the legislation, and the certainty these time limits create, balances the interests of all the participants.
>
> If there were no time limits placed on the appeal period, the applicant for a licence would never know when it could proceed with its project, as there would always be the possibility of an appeal that could result in changes to the licence. Licence holders need to know that decisions that are made that affect the way they are required to operate will not be susceptible to continuous change by those wanting to file appeals months or years after the licence was issued."

[28] The Appellants' replied it is inappropriate to rely on *Phippen* in these circumstances, because of:

- the differences between the two Acts and the nature of the disputes that appeals under these two Acts are designed to address;
- obtaining certainty for project sponsors who want to proceed with a permitted development is quite different from the certainty sought by a Director seeking to collect a civil claim, and by implication, to avoid the adjudication of an arguable defence to that claim; and
- fair hearings and proper oversight of administrative decisions are far more important "cornerstones" than certainty.

VIII. Analysis

[29] Neither the PLA nor the Regulation provides a definition or interpretation of the term "public interest." According to Macaulay and Sprague, the authors of *Practice and Procedure before Administrative Tribunals*, where discretion is to be exercised based on what is in, or harms, the public interest, the public interest must be assessed taking into account the interests reflected in the particular legislation and the nature of the issue that would end up in dispute should the matter proceed.[20]

[30] The purpose of the legislation here is to ensure public lands are managed in a responsible manner throughout the Province. A key part of that management is balancing the various competing interests of people wanting to use the land for different purposes, along with ensuring the land is available for use by future generations.

[31] The nature of the issue is an enforcement proceeding. In this case, the Director had determined (and for this decision, the Board does not have to agree or disagree with this

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[20] In its decision in *Warner* v. *Alberta (Environment and Sustainable Resource Development)*, 2014 ABPLAB 14-0010, the Board considered the comment from Robert W. Macaulay and James L.H. Sprague:

> "The concept of doing something in the 'public interest' refers to actions or decisions which are seen in the context of the spirit and intent of the legislation granting the authority as resulting in the good, or the benefit, or the well-being, of the public (to use different words to convey essentially the same meaning). Beyond that, the term does not have a specific meaning but takes its parameters from the legislative context in which it is found. The application of the phrase involves the value judgment, or discretion, of the decision-maker that the thing being done will be, in the context of the relevant legislation, to the benefit of the public." Macaulay and Sprague, *Practice and Procedure before Administrative Tribunals*, page 8.2.

See: *Memorial Gardens Association (Canada) Limited* v. *Colwood Cemetery Company*, [1958] S.C.R. 353 at page 357, 1958 SCC 82 at paragraph 7.

assessment) the Appellants contravened the legislation by subletting the land, and charging rent for the use of the land, without proper authorization. The unauthorized use of public lands is directly contrary to AEP's ability to properly manage the land, and the use of administrative penalties is one of the tools the Director uses to respond to such contraventions.

[32] As described in the Director's Summary documents attached to the Notices of Administrative Penalty, an administrative penalty is composed of two parts.[21] The first part is the penalty amount, which is up to a maximum of $5000 per offence. This is the monetary "fine" assessed for contravening the legislation. The second part is the "proceeds" the person who contravened the legislation collected. In this case, according to the Director, it is the monies paid to the Appellants by illegal lessees under a series of unauthorized subleases. The vast majority of money the Director is claiming under the Notices of Administrative Penalty are these proceeds. The importance of including the proceeds in a Notice of Administrative Penalty, as allowed under the regulatory scheme, is to eliminate the economic benefit the person who contravened the legislation received. Without eliminating this economic benefit, the monetary

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[21] See: Sections 59.3 and 59.4(4) of the PLA, which provide:

"59.3 The director may, in accordance with the regulations, require a person to pay an administrative penalty in an amount determined by the director if the person

(a) contravenes a provision of ... this Act or the regulations that is prescribed in the regulations for the purposes of this section,

(b) without legal authority makes use of public land,

(c) as a holder of a disposition or of an authorization under section 20, without the consent of the director, or a person authorized by the Minister to provide consent, makes use of the public land that is the subject of the disposition or authorization for any purpose other than the purpose for which the disposition or authorization is granted,

(d) contravenes a term or condition of a disposition or of an authorization under section 20...."

"59.4(4) A notice of administrative penalty under this section may require one or more of the following:

(a) payment of the penalty determined by the director under section 59.3;

(b) any person who in the director's opinion is in receipt of proceeds derived directly or indirectly from any use of public land in contravention of this Act or the regulations to provide an accounting of the proceeds believed by the director to have been received by that person;

(c) payment by a person referred to in clause (b) of any proceeds referred to in that clause, or an amount equivalent to the value of the proceeds if the person has converted the proceeds."

"fine" portion of the penalty would merely become a cost of doing business, and the administrative penalty would have no real effect on the person who contravened the legislation.[22]

[33] In this context, the approach advocated by the Appellants is not an appropriate interpretation of the Appeal Co-ordinator's discretion to grant an extension. The determination of whether granting an extension is contrary to the public interest cannot be interpreted in the same manner as setting aside a default judgment in a civil debt collection proceeding. Undertaking an enforcement proceeding under a regulatory scheme such as the public lands legislation, which has a significant public interest element and requires the balancing of many competing interests, is not the same as a civil debt collection proceeding where there are only two interests, the person owing the debt and the person to whom the debt is owed.[23]

[34] The approach advocated by the Director is more consistent with the correct interpretation of the discretion to grant an extension as long as "it is not contrary to the public interest to do so" as provided for in section 217(2) of the Regulation. While the test under the EAB's legislation, advocated for by the Director, and the test under the PLAB's legislation are different, they do have some similarities. Some of the basic principles that apply to both tests are:

- the time limits for filing an appeal in both pieces of legislation were included in order to provide a level of certainty to the appeal process;[24]
- the authority to extend an appeal period is used only in extenuating circumstances, as it would render the appeal period meaningless if extensions were routinely granted;

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22 For a discussion of economic benefit: *Alberta Reclaim and Recycling Company Inc. et al.* v. *Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks* (18 August 2016), Appeal Nos. 14-025-027-D (A.E.A.B.).

23 As noted, the Board is aware the Notices of Administrative Penalty refer to the total penalty amount being "recoverable in an action in debt." The Board wants to be clear that this refers to the proceeding that would be undertaken if the administrative penalty is not paid. This statement does not refer to, and is of no assistance in interpreting, the procedure with respect to the Board's appeal process.

24 According to the Director, it would not be in the public interest to allow an indefinite appeal period. Therefore, the Director argues certainty is a factor that should be considered in deciding whether granting the extension. The Appellants disagree, noting in an EAB appeal there is usually three parties (the appellant, the Director, and the approval holder whose approval is being appealed), wherein a PLAB appeal there is usually only two parties (the appellant and the Director). Therefore, according to the Appellants, where a lack of certainty may be prejudicial to the approval holder in an EAB appeal, it is not prejudicial to the Director in a PLAB appeal. While the Board appreciates the difference between these two situations, the Board does not accept the argument of the Appellants; certainty is one of the factors that can be considered in deciding whether extending the appeal period is not contrary to the public interest.

- the Board should not extend the appeal period without a valid reason for doing so; and
- the onus is on the appellants to provide sufficient reasons to grant the extension.

While certainty and extenuating circumstances are considerations in whether to grant an extension, in the Board's view, the key consideration in deciding whether the granting of an extension is not contrary to the public interest is the effect granting the extension would have on the decision being appealed. To understand the effect on the decision being appealed, the reasons for the request to grant the extension need to be considered.

[35] The reasons provided by the Appellants for granting the extension of the time limit for filing the appeals are: (1) Mr. Gionet was away from home when the documents were served on the corporations, therefore he did not review them until September 11th; (2) there was no clear indication as to the significance or immediacy of the documents Mr. Gionet picked up at the AEP office in Fort MacMurray; (3) as he was travelling, according to Mr. Gionet, even if he had looked at the documents there was nothing he could have done to respond to them; and (4) it would be unfair not to allow the appeal simply because Mr. Gionet typed the wrong email address when attempting to send the documents to his legal counsel. Considering these reasons, the Board believes it would be contrary to the public interest to grant the extension to the time limit for filing the appeals.

[36] It is important to understand the Director's decision to issue the Notices of Administrative Penalty was not a surprise to Mr. Gionet. Leading up to the Notices of Administrative Penalty being issued, the Director had been in contact with Mr. Gionet, and on August 3, 2018, the Director provided Mr. Gionet with the Preliminary Assessments of Administration Penalty. The Preliminary Assessments of Administrative Penalty advised Mr. Gionet the Director was considering issuing administrative penalties to Mr. Gionet and the three corporations. Mr. Gionet was provided with an opportunity to respond to the Preliminary Assessments. The Appellants acknowledged the Preliminary Assessments of Administrative Penalty were received and the Appellants provided a reply to the Director. It is important to note the Preliminary Assessments of Administrative Penalty clearly identified the Director was considering issuing administrative penalties in the total amount of $2,096,872.

[37] Therefore, Mr. Gionet, on behalf of himself and the corporate Appellants was expecting or should have been expecting, a decision of the Director. Further, he was aware, or should have been aware, the decision could have a significant impact on himself personally, and on the corporate Appellants.

[38] Given this, the fact an AEP employee attended at his home, which is also the corporate offices of the other Appellants, on August 31, 2017, and the fact he was requested to attend the offices of AEP, on September 1, 2017, should have clearly indicated to Mr. Gionet that something significant was happening. Given the potential consequences facing him, and the other Appellants, a reasonable person would have made inquiries as to the contents of the documents served at his home and a reasonable person would have reviewed the documents provided to him at the AEP offices as soon as possible. Reviewing the documents 10 days later is not the reasonable response of a prudent businessperson facing a potential administrative penalty of more than $2 million.

[39] Further, the Board does not accept because Mr. Gionet was travelling he could not have done anything with the documents. Possible options included asking Ms. Gionet to forward the documents to his legal counsel. Alternatively, Mr. Gionet could have contacted his legal counsel by telephone, who in turn could have contacted AEP to provide him with an emailed or faxed version of the documents.

[40] The Board also does not believe Mr. Gionet's actions once he reviewed the documents on September 11, 2017, were reasonable. While it was appropriate for Mr. Gionet to email the documents to his legal counsel, it was not reasonable that he did not follow up with his legal counsel in a timely manner. Regardless of the amount of the administrative penalty, a reasonable businessperson would have followed up with legal counsel at the next opportunity to ensure the documents were received and to ensure an appeal was going to be filed within the time limit.

[41] In the Board's view, these actions lead to the conclusion that it is not in the public interest to grant an extension to the appeal period. An important factor in protecting the public

interest is ensuring the integrity of the legislation.[25] Individuals and corporations, who are involved in regulated activities under the PLA, must take the requirements of the legislation seriously. They must respond to the legal requirement of the legislation in a reasonable manner.

[42] As stated, in this case, Mr. Gionet on his own behalf and on behalf of the corporate Appellants, knew that AEP was investigating them for violating the public lands legislation and that a decision – potentially involving a penalty in excess of $2 million – was imminent. Yet he delayed in responding, thereby not respecting the importance of the public lands legislation. In the Board's view, an important aspect of ensuring compliance under the public lands legislation is that regulated parties understand the significance of enforcement actions. Sending a message that failing to respond in a timely manner to an enforcement action is acceptable is not in the public interest. Therefore, granting an extension of the appeal period in these circumstances is not in the public interest.

[43] In summary, the public interest in these appeals requires weighing the importance of maintaining integrity in the regulatory process and ensuring administrative penalties are addressed in a timely manner against the rights of the Appellants to proceed with their appeals. In this case, the Appellants did not provide a reasonable explanation for the delay in submitting the Notices of Appeal and, therefore, have not met the onus placed on them.

[44] The Board appreciates the significance of this decision to the Appellants, and that they may view the effects of this decision as "harsh" or "severe." However, the Board is mindful of a recent decision of the Alberta Court of Queen's Bench in a judicial review of an EAB decision dismissing an appeal for being filed nine days past the legislated timeframe. In that case, Justice Michalyshyn stated:

> "But the question cannot be whether 'harshness' or 'severity' without more results in an unreasonable administrative law outcome. Any decision based on a limitation period for example may be harsh or severe. The question has to be whether the outcome is harsh or severe having regard for all of the circumstances."[26]

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[25] In other legislative schemes, this could be referred to as not allowing "the administration of justice to be held in disrepute."

[26] *Olineck* v. *Alberta (Environmental Appeals Board)*, 2017 ABQB 311, at paragraph 47.

[45] The Board also recognizes the appeal period of 20 days is relatively short, and although the Notices of Administrative Penalty did not specify the exact appeal period, it did note there may be strict time limits for filing an appeal and provided the contact information for the Board. If the Appellants had taken the time to review the documents when they were received, rather than waiting for a convenient time, they could have contacted the Board to seek information on appeal periods and the way to file an appeal. Although it might be helpful for the Director to attach the relevant section to the notices, there was sufficient information regarding the right to appeal for the Appellants to be aware of the appeal process and that it was time sensitive.

IX. Conclusion

[46] The Board finds the Notices of Appeal were filed outside the legislated time frame and it would be contrary to the public interest to extend the appeal period. Therefore, the Board dismisses the appeals pursuant to section 123(5)(b) of the PLA and section 219 of the Regulation.[27]

Dated on September 4, 2018, at Edmonton, Alberta.

Marian Fluker
Acting Chair and
Acting Appeals Co-ordinator

[27] Section 123(5)(b) of the PLA states: "The appeal body may dismiss a notice of appeal if … (b) for any other reason the appeal body considers that the notice of appeal is not properly before it…."

Appendix A - Procedural History before the Board

[1] On September 28, 2017, legal counsel for the Appellants served the Notices of Appeal on the Appeals Co-ordinator.

[2] October 2, 2017, the Board acknowledged receipt of the Notices of Appeal and notified the Director of the appeals. The Notices of Appeal state the grounds of appeal are: (a) the Director's decisions erred in the determination of a material fact on the face of the record; and (b) the Director's decisions erred in law.

[3] On October 5, 2017, the Board asked the Appellants and the Director to respond to the following questions:

1. When were the Appellants served with Administrative Penalty Nos. PLA-17/01-AP-LAR-17/01, PLA-17/02-AP-LAR-17/02, and PLA-17/03-AP-LAR-17/03?
2. In serving the Notices of Appeal at issue on the Appeals Coordinator, did the Appellants meet the requirements of section 217(1) of the Public Lands Administration Regulation?
3. Would it be contrary to the public interest for the Appeals Coordinator to extend the time for service of the Notice of Appeal?

[4] On October 18, 2017, the Board received the Appellants' submission, and on October 25, 2017, the Board received the Director's response. The Board received the Appellants' rebuttal submission on November 1, 2017.

[5] On November 3, 2017, the Director noted the Appellants' rebuttal submission was filed on November 1, 2017, when the deadline was October 27, 2017. The Director stated the Appellants' rebuttal submission was not a proper rebuttal and attempted to introduce new arguments. The Director provided further clarification regarding service of the Notices of Administrative Penalty.

[6] On December 1, 2017, the Appellants submitted a reply to the Director's November 3, 2017 letter.

Appendix B - Detailed Summary of the Written Submissions

A. Appellants

[1] The Appellants stated they were not served with the Notices of Administrative Penalty in the manner or at the time alleged by the Director, and they did not become aware of the Notices of Administrative Penalty until September 11, 2017. The Appellants argued they still were not properly served in accordance with the PLA, but they filed their Notices of Appeal within 20 days of the date they became aware of the Notices of Administrative Penalty.

[2] The Appellants stated the Director could not have personally served Mr. Gionet at his home near Calgary on September 1, 2017, as alleged in the affidavit of service. The Appellants noted the Director works in Fort McMurray and would have had to travel almost 1500 km on September 1, 2017, to serve the documents and return to Fort McMurray in time to sign the affidavit before a Commissioner of Oaths. The Appellants said the time and distance involved suggest the Director did not serve Mr. Gionet personally at Mr. Gionet's residence.

[3] The Appellants further stated that Mr. Gionet was not at his residence on September 1, 2017, and was travelling between Fort McMurray and the White Bear First Nations Reserve. Therefore, according to the Appellants, Mr. Gionet could not have been personally served.

[4] The Appellants noted that, under section 59.4(1) of the PLA,[28] the Director is required to serve a notice of administrative penalty either personally or by registered mail. The Appellants said no registered mail was sent, and if personal service was possible on a corporate entity, it could only be served on an officer or director of the corporation. The Appellants explained the only officer or director of any of the corporate Appellants who resides at the address identified is Mr. Gionet, and as he was not at that address on September 1, 2017, the Director or AEP staff could not have served any of the corporate Appellants personally at that location on that date.

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[28] Section 59.4(1) of the PLA states: "If the director requires a person to pay an administrative penalty under this Act or the regulations, the director shall serve by personal service or registered mail a notice of administrative penalty demanding payment of the penalty."

[5] The Appellants explained Mr. Gionet returned home on September 11, 2017, and he saw the documents left by someone from AEP. Mr. Gionet stated this was when he became aware of the Notices of Administrative Penalty being issued against the Appellants.

[6] The Appellants stated they became aware of the Notices of Administrative Penalty on September 11, 2017, and they served their Notices of Appeal on the Board on September 28, 2017, even though the last day of service would have been October 1, 2017. Therefore, according to the Appellants, they complied with the requirements of section 217(1) of the Regulation.[29]

[7] The Appellants stated there would be no significant prejudice to the Director as a result of a delay of a week at most, given the total amount of the administrative penalties is in excess of $2 million. The Appellants argued it would be unfair to deprive the Appellants of their ability to appeal over a delay of no more than one week.

[8] The Appellants stated, given the amount of the administrative penalties, the effect the administrative penalties would have on the corporate Appellants and Mr. Gionet personally, the small amount of delay, the issues with the evidence provided by the Director, the manner in which Mr. Gionet was misled and mistreated, and the legal concerns associated with the assessments, it would be in the public interest to grant an extension for filing the Notices of Appeal.

B. Director

[9] The Director argued the Board must reject the Notices of Appeal because the Notices of Appeal were filed after the deadline for service required under section 217(1)(a) of the Regulation.

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[29] Section 217(1) of the Regulation states:

"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."

[10] The Director stated the Notices of Administrative Penalty were personally served to each of the corporate Appellants on August 31, 2017, and again on September 1, 2017, and Mr. Gionet was served in his personal capacity on September 1, 2017.

[11] The Director acknowledged the Board has the discretion to extend the legislated timeline to serve a Notice of Appeal, but that is an exceptional remedy. The Director stated the Appellants did not meet their onus of demonstrating that extending the time for service was not contrary to the public interest and, therefore, the Board should not extend the time for service and dismiss the Notices of Appeal.

[12] The Director explained the PLA requires the Director serve a notice of administrative penalty by personal service or registered mail, but neither the PLA nor the Regulation prescribes the method of personal service or when personal service on individuals or corporations is effective.

[13] The Director referred to the Alberta Rules of Court for guidance. The Director stated that, where an enactment does not otherwise provide, every document to be served in Alberta may only be served by a method described in the Alberta Rules of Court for service of a commencement document.[30]

[14] The Director noted service on corporations of documents, such as a notice of administrative penalty, may be effected by:

> "1) being left with either
>
> a) an officer of the corporation who appears to have management or control responsibilities with respect to the corporation, or
>
> b) with an individual who appears to have management or control responsibilities with respect to the corporation at its principal place

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30 Rule 11.20 of the Alberta Rules of Court provides:

"Unless the Court otherwise orders or these rules or an enactment otherwise provides, every document, other than a commencement document, that is to be served in Alberta may only be served by

(a) a method of service described in Division 2 *[Service of Commencement Documents in Alberta]* for service of a commencement document,

(b) a method of service described in rule 11.21 *[Service by an electronic method]*,

(c) recorded mail under rule 11.22 *[Recorded mail service]*, or

(d) a method of service agreed to under rule 11.3 *[Agreement between parties]*."

> of business or activity in Alberta, or at the corporation's place of business or activity in Alberta where the facts took place,
>
> or
>
> 2) being sent by recorded mail, addressed to the corporation, to the principal place of business or activity in Alberta of the corporation."[31]

[15] The Director noted for service on an individual the document may be served by:

1. leaving it with the individual; or
2. sending it by recorded mail addressed to the individual.[32]

[16] The Director stated the Appellants did not provide any legal authority for their argument that the only basis for such personal service would be on an officer or director of the corporation.

[17] The Director explained AEP personally served Gionet Holdings Corporation, Aqua Industrial Ltd., and GEO Worldwide Ltd. on August 31, 2017, by leaving it with Ms. Gionet at the registered office of the corporations indicated on the Corporate Report provided by the Appellants to the Board on October 18, 2017. The Director provided a sworn affidavit that confirmed effective service on the corporations. The Director explained the attempt by AEP staff to serve Mr. Gionet personally on August 31, 2017, was unsuccessful.

[18] The Director stated AEP staff personally served Mr. Gionet in his personal capacity and as a director of Gionet Holdings Corporation, Aqua Industrial Ltd., and GEO Worldwide Ltd. on September 1, 2017, at the AEP Fort McMurray office. The Director provided sworn affidavits that Mr. Gionet was personally served in his personal capacity and as a director or officer of each of the corporations.

[19] The Director said AEP staff contacted Mr. Gionet on August 31, 2017, and Mr. Gionet confirmed he was travelling to Fort McMurray, which was consistent with Mr. Gionet's evidence. The Director stated, during that conversation, Mr. Gionet agreed to come to the AEP office in Fort McMurray on September 1, 2017, at 10:00 am to pick up documents. Affidavit evidence indicated Mr. Gionet picked up the documents at approximately 3:00 pm on September 1, 2017.

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[31] Rule 11.9(1) of the Alberta Rules of Court.

[20] The Director argued the Appellants did not meet the requirements of section 217(1) of the Regulation. The Director noted the Notices of Appeal were to be served on the appeals coordinator within 20 days after each of the Appellants received the decisions objected to, which in these appeals, were the Notices of Administrative Penalty.

[21] The Director stated the applicable Notices of Administrative Penalty were served on each of the corporate Appellants on August 31, 2017, and on September 1, 2017, and on Mr. Gionet in his personal capacity on September 1, 2017. The Director noted that, since AEP staff effected service on each of the Appellants on September 1, 2017, the deadline for filing the Notices of Appeal was September 21, 2017. The Director noted the Notices of Appeal were filed on September 28, 2017, seven days after the deadline.

[22] The Director stated the Appellants did not meet their onus to demonstrate extending the appeal timeline was not contrary to the public interest.

[23] The Director stated that extending the time for appellants to serve their notice of appeal compromises regulatory certainty, the cornerstone of appeals and is, therefore, contrary to the public interest.

[24] The Director referred to decisions made by the EAB in which the Board identified certainty as a cornerstone to the appeal process, and by having timeframes, participants know when the process is complete.

[25] In response to the Appellants' argument that there would be "no significant prejudice" to AEP, the Director stated the regulatory uncertainty caused by extending the legislated timeframe frustrates the ability of AEP to exercise its authority under the PLA to enforce three administrative penalties that total over $2.1 million.

[26] The Director said, given the serious contraventions of the PLA upon which the administrative penalties were issued and the continued non-payment of the administrative penalties, extending the timeline would cause prejudice to AEP as the regulator of public lands and, therefore, to the public interest.

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[32] See: Rule 11.5(1) of the Alberta Rules of Court.

[27] The Director stated legislated time limits provide certainty to AEP as the regulator of public lands and a participant in the matter. The Director said it is critical to his authority under the PLA to enforce the administrative penalties against the Appellants for non-payment that he knows when the appeal process is complete. The Director explained the authority to enforce the administrative penalties is subject to any right of appeal, and he is unable to take steps to enforce the administrative penalties without risk. The Director stated that without certainty of timelines, there is the possibility the administrative penalties could be varied or reversed, and it is not until the appeal period expires that the Director is in a position to start enforcement proceedings without the risk of changes because of an appeal.

[28] The Director submitted the Appellants did not provide sufficient grounds to warrant the Board granting the exceptional remedy of extending the legislated timeframe for the appeal.

[29] The Director stated section 217(2) of the Regulation puts the onus on the Appellants to demonstrate that it is not contrary to the public interest for the Board to extend the time for service of the Notices of Appeal. The Director argued, unless the Appellants can demonstrate that extending the time is not contrary to the public interest, the Board cannot grant an extension.

[30] In response to the Appellants' argument that it would be unfair to deprive them of the ability to appeal given the length of delay, the Director noted the Appellants were personally served on September 1, 2017, which triggered the running of the 20-day limit for submitting an appeal. The Director said the Appellants had the responsibility of responding promptly to ensure they maintained their appeal rights. The Director stated the steps needed to appeal are not onerous (complete the standard notice of appeal form and serve it on the Board) and could have been easily completed by September 21, 2017. The Director noted the Appellants were represented by legal counsel during all relevant times.

[31] The Director stated the Appellants' argument that a possible limitations defence was sufficient grounds to extend the time for service was speculative as there was no "live" appeal.

[32] The Director said the Appellants' suggestion that because the Appellants believed they were misled and mistreated by AEP sometime in the past and therefore the legislated timeframe should be extended, was a flawed argument. The Director stated an alleged act or omission by AEP in the past has no causal connection with the Appellants' failure to meet the deadline for service on September 21, 2017.

[33] The Director submitted that none of the Appellants' arguments are sufficient to warrant the extension of time to serve the Notice of Appeal, and given the importance of regulatory certainty, extending the time to serve the Notice of Appeal is contrary to the public interest.

C. Appellants' Rebuttal Submission

[34] The Appellants said Mr. Gionet recalled meeting with someone at the AEP office in Fort McMurray and being handed some documents, but he did not look at them or realize their significance. They said Mr. Gionet did not equate accepting the documents as being served with the Notices of Administrative Penalty.

[35] The Appellants noted the Notices of Administrative Penalty were in the middle of the package, and the front page of each document was a copy of the preliminary assessment, to which they had already responded. The Appellants were not aware there were documents in the package that required urgent attention.

[36] The Appellants said Mr. Gionet first became aware of the documents on September 11, 2017, when he returned home and opened his mail. The Appellants explained the documents were forwarded to their lawyer, but the email address was mistyped. The Appellants said they followed up with their counsel, and even though the appeal period had already passed if the appeal period started on September 1, 2017, the appeal was filed in time if September 11, 2017, was counted as the date the documents actually came to the Appellants' attention.

[37] The Appellants submitted it would be in the public interest to extend the time for filing the appeals in order for the Appellants to defend themselves and their livelihood.

[38] The Appellants noted the Director wanted the Board to apply tests developed by the EAB regarding time extensions. The Appellants argued this would not be suitable given the differences between the Board and the EAB. The Appellants noted the EAB appeals involve

third-party disputes that require certainty in respect of decisions being made regarding the issuance of approvals and licences. The Appellants stated the concern for certainty in EAB appeals has nothing to do with the certainty of a government decision-maker that his decisions will never be challenged, but it has to do with balancing interests of different citizens. The Appellants said their appeals concern the review of when the Notices of Administrative Penalty were issued and concerned nothing other than a money judgment. The Appellants stated there is no third-party whose interests need to be protected, and no critical decision relies on the decision being reviewed.

[39] The Appellants argued fair hearings and proper oversight of administrative decisions are more important than certainty in the context of the PLA.

[40] The Appellants stated the courts developed a test for setting aside default judgments and is an appropriate reference point when the Board should exercise its discretion to allow the late filing of an appeal.

[41] The Appellants referenced the decision of the Alberta Court of Queen's Bench, *Alberta* v. *Fjeld*, 2008 ABQB 558, in which the test for a default judgment was presented. The test required the appellant to show:

1. the appellant had an arguable ground of defence;
2. the appellant did not deliberately let judgment go by default, and there was some excuse for the default, such as illness or solicitor's inadvertence; and
3. after learning of the default, the appellant moved promptly to open it up.

[42] The Appellants stated there is a defence in that the PLA has limitation periods with respect to administrative penalties, and in this case, the time for levying a penalty had passed. The Appellants argued the Director made an error in law that establishes an arguable defence.

[43] The Appellants said they would also rely on the equitable doctrines of laches and waiver regarding the representations and directions given by AEP in respect of the tenants over the years. The Appellants said, since AEP directed the Appellants not to evict the tenants, the Director was bound by equity not to levy a fine in respect of the continued occupancy of those tenants.

[44] The Appellants said they have concerns with the parties named in the Notices of Administrative Penalty, particularly the inclusion of Mr. Gionet in his personal capacity.

[45] The Appellants said Mr. Gionet did not realize the nature of the documents he received on September 1, 2017, and had no idea the documents required his urgent attention.

[46] The Appellants stated leaving the documents with the wife of the corporate officer at a personal residence was not good service on a corporation since she was not, did not appear to be, and never identified herself as an officer of the corporation with management or control responsibilities of the corporation or had management or control responsibilities of the corporation at its principal place of business.

[47] The Appellants explained when they became aware of the contents of the documents on September 11, 2017, they attempted to address the documents by sending them to their counsel, and had they successfully done so, they could have met the deadline to appeal. The Appellants explained they mistyped the counsel's email address. The Appellants said they followed up on September 24, 2017, and within three days, the Notices of Appeal were filed. The Appellants stated the appeals were filed within 20 days of when they became aware of the Notices of Administrative Penalty.

[48] Mr. Gionet, on behalf of the Appellants, admitted he received documents on September 1, 2017, in Fort McMurray, but he did not know the significance of the documents and did not review them in detail. Mr. Gionet said, since he was on the road, he would not have been able to forward the documents to the Appellants' counsel at that time.

[49] The Appellants stated the delay in sending the documents to their counsel was inadvertent and should be excused.

[50] The Appellants submitted they should be provided with the opportunity to defend themselves before impartial decision-makers, and allowing them to do so would be in the public interest because that would be fair.

D. Additional Submissions

[51] The Director stated the Appellants' final submissions were not proper rebuttal submissions and attempted to provide new facts and arguments not raised in the initial submission.

[52] The Director stated the Appellants' rebuttal submissions contained arguments going to the merits of an appeal and were not related to the late filed Notices of Appeal.

[53] The Director included the following documents which, according to the Director, established the Appellants were or ought to have been aware of the importance of the documents:

1. Mr. Gionet instructed the documents be accepted at the corporate Appellants' registered business address on August 31, 2017. Mr. Gionet was on the phone with Ms. Gionet at the time the documents were served, and he said she had the authority to accept the documents on behalf of the corporations. It was reasonable for the Environmental Protection Officer to conclude Ms. Gionet had management or control responsibilities with respect to the corporations to effect service;
2. Mr. Gionet personally received the documents on September 1, 2017; and
3. the documents were received through registered mail on September 6, 2017.

[54] The Director stated it was irrelevant when the Appellants chose to inform themselves of the significance of the documents. The Director stated he satisfied his obligations under the PLA to personally serve each of the Appellants on August 31, 2017, September 1, 2017, and September 6, 2017.

[55] The Appellants stated it was proper and reasonable for them to respond in the rebuttal submission to new evidence presented by the Director in his response submission.