

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Decision

Date of Decision: May 10, 2001

IN THE MATTER OF Sections 84, 85 and 87 of the *Environmental Protection and Enhancement Act*, S.A. c. E-13.3 and section 115 of the *Water Act*, S.A. 1996, c. W-3.5.

-and-

IN THE MATTER OF an appeal filed on April 19, 2001 by Mr. L. Patten with respect to Enforcement Order No. 2001-WA-02 issued under the *Water Act*, by the Director, Red Deer Management Area, Parkland Region, Alberta Environment, to Petro-Canada and Enerplus Resources Corporation to restore natural drainage flows on the Patten and Szkaluba properties.

Cite as: *Patten v. Director, Red Deer Management Area, Parkland Region, Alberta Environment, re: Petro-Canada and Enerplus Resources Corporation.*

TABLE OF CONTENTS

BACKGROUND 1

DECISION 2

BACKGROUND

[1] On March 19, 2001 the Director, Red Deer Management Area, Parkland Region, Alberta Environment (the “Director”) issued Enforcement Order No. 2001-WA-02 (the “Order”), under the *Water Act*, S.A. 1996, c. W-3.5, to Petro-Canada and Enerplus Resources Corporation, authorizing the restoration of natural drainage flows on the Patten and Szkaluba properties.

[2] On April 19, 2001 the Environmental Appeal Board (the “Board”) received a Notice of Appeal from Mr. L. Patten (the “Appellant”), undated, appealing the Order. Board staff spoke with the Appellant also on April 19, 2001 at which time he informed Board staff that construction work was being undertaken on his land without his consent. Board staff proceeded to contact appropriate personnel in the Department of Environment and requested, as a matter of courtesy, that they address his concerns.

[3] On April 24, 2001, the Board, upon review of the Notice of Appeal, forwarded a letter to the Appellant stating that:

“...the Board notes that under section 115(1)(p) of the *Water Act*, it states that only the person to whom the enforcement order is directed may file an appeal...The Board further notes that there are strict time limits for filing an appeal as stated in section 116(1) of the *Water Act*. An appeal of an enforcement order must be filed no later than 7 days after receipt of a copy of an enforcement order.”

The letter further requested that the Appellant comment on these issues before the Board proceeded to make a decision respecting the appeal.

[4] On May 8, 2001, the Appellant responded to the Board’s letter by indicating that:

“Order states natural drainage many times If natural drainage is installed, you will have no problem with me as the work done is pretty sad. Hoping to have a meeting with the Environment Board I do not agree with what has gone on.”

DECISION

[5] In the Board's letter of April 24, 2001, the Appellant was informed that only the recipient of an Enforcement Order has the right of appeal¹. In addition, the Appellant was also informed of the statutory timelines for the filing of an appeal concerning the issuance of an Enforcement Order under the *Water Act*².

[6] The section 115(1)(p) of the *Water Act* clearly states that it is only the recipient of an Enforcement Order that has the right of appeal. In this case, although the Appellant is the landowner, the Enforcement Order was not issued to him. Petro-Canada and Enerplus Resources Corporation were issued the Enforcement Order to undertake works, as it turns out, on and/or adjacent to the Appellant's land. As a result, the appeal is not properly before the Board. The Board therefore dismisses Appeal 01-039 pursuant to section 115(1)(p) of the *Water Act*. Whether or not there should be appeals from landowners whose property is affected by Enforcement Orders is a matter for legislators to address.

[7] As the Board has determined that the appeal is not properly before the Board, the matter of timeliness as raised in the Board's letter of April 24, 2001 is therefore moot.

[8] The Board notes several concerns raised by the Appellant concerning the restoration of natural drainage on his property. While the Board does not have the jurisdiction to address the quality or type of works contemplated under Enforcement Order 2001-WA-02, the Board expects that, as a courtesy, the Director will work with the Appellant to address these concerns.

Dated on May 10, 2001, at Edmonton, Alberta.

William A. Tilleman, Q.C.
Chairman

¹ Section 115(1)(p) of the *Water Act* states:

115(1) A notice of objection under this Act may be submitted to the Environmental Appeal Board by the following persons in the following circumstances:

(p) the person to whom an enforcement order is directed, if the Director issues an enforcement order directing

- (i) the suspension or cancellation of an approval or licence or the cancellation of a preliminary certificate,
- (ii) the stopping or shutting down of any activity, diversion of water or operation of a works if the activity, diversion or operation is the subject-matter of an approval or licence,
- (iii) the ceasing of construction, operation, maintenance, repair, control, replacement or removal of any works or the carrying out of an undertaking, if the works or undertaking is the subject of an approval, or
- (iv) the removal or otherwise rendering ineffective of any works or obstruction.

² Section 116(1)(a) of the *Water Act* states:

116(1) A notice of objection must be submitted to the Environmental Appeal Board

(a) not later than 7 days after

- (i) receipt of a copy of a water management order or enforcement order
- (ii) in the case of an approval, receipt of notice of the decision that is objected to or the last provision of notice of the decision that is objected to.