The Environmental Appeals Board

(The EAB)

Dr. Steve Hrudey, Chair

May 3, 2006
Alberta Environmental Appeals Board

The creation and jurisdiction of the EAB.

Types of decisions that can be appealed.

Filing an appeal with the EAB.

Processing an appeal: preliminary meetings, hearings, and mediation meetings.

EAB decisions.

Costs.

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Creation and Jurisdiction of the Board

➢ The EAB was created in September 1993 with proclamation of the *Environmental Protection and Enhancement Act* (EPEA).
➢ The EAB is separate and distinct from Alberta Environment.
➢ Cases heard by the EAB include decisions regarding approvals, water licenses, enforcement actions, administrative penalties, reclamation certificates, and other matters under section 91 of EPEA and section 115 of the *Water Act.*
Board Members

- 11 Board Members (includes Chair and Vice-Chair).
- Appointed by the Provincial Cabinet based on specialized expertise and technical competence.
- Collectively offer a variety of expertise, knowledge, and experience in environmental matters.
Filing an Appeal with the Board

➤ Anyone who is directly affected by a potential decision of Alberta Environment can submit a statement of concern once the project has been advertised.

➤ A person who is directly affected by a decision and who has filed a statement of concern can file a Notice of Appeal with the EAB. (Usually you will receive notice of the decision from Alberta Environment.)

➤ Filing an appeal does not Stay Alberta Environment’s decision.

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Filing an Appeal with the Board

- Important for the appellant to provide substance in their Notice of Appeal.
  - What specifically is being appealed?
  - How is the appellant directly affected?
  - What elements of the Alberta Environment decision are questioned?
  - Why are these elements questioned?
  - What remedies are requested?
Preliminary Matters

➤ Strict timelines for filing an appeal (from 7 days to 1 year day depending on decision type) are specified. Most are 30 days.

➤ Valid statement of concern must be filed with Alberta Environment.

➤ Appellant must be “directly affected” by Alberta Environment’s decision (affected beyond the ordinary Albertan).

➤ Concurrent jurisdiction between the Natural Resources Conservation Board (NRCB) and the Alberta Energy and Utilities Board (AEUB) and the EAB.

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Groups Filing an Appeal

- The "directly affected" test is required by the EAB’s legislation and is difficult to apply to a group as a whole.
- Individual members who are directly affected should file an appeal, in addition to the group that they may belong to.
- Group can represent the appellants in the appeal process.
- Provided one or more persons who are directly affected to establish an appeal right, a relevant group then can make an application for intervenor status to participate on its own behalf.
Mediation

➢ The EAB uses a voluntary mediation program.
➢ The mediator is a Board Member who has been trained as a mediator.
➢ Participants’ Agreement to Mediate signed to ensure the participants understand their rights and responsibilities.
➢ Mediation discussions are confidential.
➢ Mediator will not serve on a hearing panel and is isolated from any other Board Members on the file.
➢ Ground rules promote open and full discussion.

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Why Mediate?

- Reduces administrative and legal costs for all parties.
- Reduces time to process and resolve appeals.
- Promotes a dialogue between industry, citizens, and Alberta Environment.
- Often helps to restore relationships.
- Promotes creative results through an informal and flexible dialogue.
Hearing Process

- The parties to the hearing are: the appellant, the director, the approval or license holder (if not the appellant).
- Preliminary meetings and hearings can be conducted via written submissions or orally as determined by the Board.
- Written submissions are required for all preliminary meetings and hearings.
- Legal representation is not required, but experienced advice on presenting a case is often helpful.
- Each party presents opening remarks.
- Each party presents their evidence.
Hearing Process

- Appellant who bears the burden of proof goes first, followed by cross examination.
- Alberta Environment and approval (or license) holder present evidence each followed by cross examination.
- The Board Members may ask questions of each party after cross examination.
- Each party has a closing statement (appellant first), with the last word offered to the appellant.
- Timelines are strictly imposed.
Board Decisions

Board makes final decision on preliminary matters.

Appellants must be realistic about the decisions they seek from the Board; absolute positions will require compelling evidence to be sustained.

On the substantive issues, the Board recommends to the Minister to reverse, confirm, or vary Alberta Environment's decision.

Acting in the public interest is always implicit in the Board's decision-making.
Costs

➢ A party to an appeal can apply for costs.
➢ Costs are not based on loser pay principle of the courts.
➢ Board reviews whether the costs are associated with the preparation and presentation of submissions, and whether the evidence materially assisted the Board.
Summary

➢ The EAB provides a mechanism for those who are directly affected by various decisions of Alberta Environment to appeal.
➢ The EAB must adhere to the jurisdiction provided by EPEA and the Water Act.
➢ The EAB must follow rules of administrative fairness and natural justice.
➢ The EAB must seek the inherent balancing required by its enabling legislation.