Environmental Appeals Board

Presentation to ESAA Regulatory Forum

Edmonton – February 11, 2016

Calgary – March 16, 2016

Presented by – Alex MacWilliam, Board Chair
Environmental Appeals Board

Core business is to resolve appeals taken by affected parties from decisions made by Alberta Environment and Parks (AEP) regarding environmental approvals, water related approvals, enforcement actions, and other matters.
- Mediation is the Board's preferred method of resolving appeals.

- The alternative method of resolving appeals, if mediation is not successful, is the Board's hearing process.

- Success Rate 80% over 20 years.
BOARD’S JURISDICTION

Environmental Protection and Enhancement Act, R.S.A. 2000, c. E-12, s. 91(1).

- an approval dealing with release of substances, or an amendment to such an approval, can be appealed by the applicant or by a person who is directly affected. Refusal to issue an approval or amendment can also be appealed by the applicant.
- Cancellation or suspension of an Approval can be appealed by the holder of the Approval.

- Enforcement Order or Environmental Protection Order (EPO) can be appealed by the person to whom the order was issued.

- Designation of a contaminated site or an EPO relating to a designated contaminated site can be appealed by the person to whom the designation or EPO is directed and by the person who is directly affected.
- A reclamation certificate can be appealed by any person who gets notice of issuance of the certificate. Refusal to issue reclamation certificate or cancellation of reclamation certificate can be appealed by applicant (Note: certificates in respect of energy resource activities no longer dealt with by EAB)

- A remediation certificate can be appealed by any person who gets notice of issuance of the certificate. Refusal to issue a remediation certificate or cancellation of remediation certificate can be appealed by the applicant.
Water Act, R.S.A. 2000, c. W-3, s. 115(1).

1. An approval, preliminary certificate, licence, and an amendment to such an approval, preliminary certificate, or licence may be appealed by the applicant or a person who is directly affected. The refusal to issue an approval, preliminary certificate, licence, or an amendment to such an approval, preliminary certificate, or licence can be appealed by the applicant. The refusal to renew a licence can also be appealed by the applicant.
2. The cancellation or suspension of an approval, preliminary certificate, or licence can be appealed to the holder of the approval, preliminary certificate, or licence.

3. A water management order or enforcement order can be appealed by the person to whom the order is directed. If the water management order relates to the administration of priority, the order can also be appealed by a person whose right to divert water may be affected by the order.
Climate Change and Emissions Management Act, S.A. 2003, c. C-16.7, s. 42(1).

Government Organization Act, R.S.A. 2000, c. G-10, Schedule 5, s. 6(1).
Board Members (current)

Chair – Mr. Alex MacWilliam — Calgary
    Law, Administration, Alternate Dispute Resolution

Mr. Eric McAvity Q.C. — Canmore
    Law, Alternate Dispute Resolution

Ms. A.J. Fox — Lloydminster
    Law, Alternate Dispute Resolution
- Board in midst of process to add new members

- Hope to complete by end of April
Principles of Administrative Law

Every thing Board does is driven by the principles of administrative law, particularly the rules of natural justice and procedural fairness.
Two fundamental rules of administrative law are:

1. The right to know the case against you.
2. The right to defend yourself.

Mediation

Mediation is the Board's preferred method of resolving appeals.

The alternative method of resolving appeals, if mediation is not successful, is the Board's hearing process.
- Board Member who mediates will not serve on hearing panel and "firewall" is established around the hearing panel.

- Participants' Agreement to Mediate is signed to ensure participants understand their rights and responsibilities.

- Ground rules promote open and full discussion.

- Mediation discussions are confidential. This is sometimes a challenge if there are external stakeholders involved.

- Agreements can contain both regulatory and contractual clauses. Regulatory clauses must be public, but contractual clauses can be private.
Benefits of mediation program include:

- reduced administrative and legal costs for all parties
- reduced time to process and resolve appeals
- promotes dialogue between regulated industry and public so that affected parties reach a mutually agreeable, frequently very creative, solution themselves (consensus building)

- promote on-going working relationships between industry and stakeholders
Changes to Board’s Jurisdiction
- challenges to AEP decisions relating to an “energy resource activity” must be made to Alberta Energy Regulator and not to EAB
- covers oil and gas, oil sands, coal and pipelines – including reclamation certificates
Changes to Board’s Jurisdiction
- Board members authorized by Cabinet to mediate and hear appeals in respect of decisions made under *Public Lands Act* and *Public Lands Act Regulations*
- sitting as *ad hoc* members of Public Lands Appeal Board
- more informal and flexible - a greater range of issues can be discussed and discussions are generally more frank and open

- even if mediation is not successful, it sets stage for more focused and efficient hearing process.
Environmental Consultants and the EAB
- appeals frequently involve technical reports and expert opinions
- experts can play important role in both mediations and hearings