



Environmental Appeal Board

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DECISION NOS. EAB-EMA-22-A001(a), EAB-EMA-22-A003(a), EAB-EMA-22-A004(a) [Group Appeal File: EAB-EMA-22-G001]

In the matter of three appeals under section 100 of the *Environmental Management Act*, S.B.C. 2003, c. 53.

BETWEEN: Stephen James Lewis **APPELLANT**

AND: Director, *Environmental Management Act* **RESPONDENT**

BEFORE: A Panel of the Environmental Appeal Board
Daphne Stancil, Panel Chair

DATE: Conducted by written submissions concluding
June 24, 2022

APPEARING:

For the Appellant:	Self-represented with assistance from Emily Karger
For the Respondent:	Ben Naylor, Counsel Julia Roe, Articled Student

Preliminary Issue of Jurisdiction

[1] A preliminary matter arises from three appeals filed by Stephen James Lewis (the "Appellant"), regarding three separate determinations of administrative penalty (the "Determinations"). Leslie Payette, a delegate of the Director, *Environmental Management Act* (the "Director"), in the Ministry of Environment and Climate Change Strategy (the "Ministry") issued the Determinations October 6, 2021.

[2] In the Determinations, the Director concluded that the Appellant contravened sections 6(2) and (3) of the *Environmental Management Act* (the "EMA") and failed to comply with a pollution abatement order. In each Determination, the Director imposed an administrative penalty under section 115 of the *EMA* and the *Administrative Penalties (Environmental Management Act) Regulation* (the "Regulation"). The penalties total \$54,000.

[3] Under section 101 of the *EMA*, an appeal must be filed no more than 30 days after notice of the appealed decision is given. The Environmental Appeal Board (the "Board") received the Appellant's notice of appeal on February 15, 2022. The notice of appeal indicates that the Appellant received the decisions that he seeks to appeal on January 31, 2022. With his notice of appeal, the Appellant provided copies of an

invoice dated January 31, 2022, and cover letters dated October 6, 2021, that accompanied the three Determinations.

[4] After receiving the Appellant's notice of appeal, the Board requested submissions from the parties on the preliminary issue of whether the appeals were filed before the expiry of the 30-day time limit established by section 101 of the *EMA*.

[5] This decision addresses whether the appeals were filed within the 30-day appeal period, and if not, whether they should be summarily dismissed.

BACKGROUND

Summary of History of Events Leading to Hearing

[6] The Appellant is the owner of property on Fore Bay Road, located in the western portion of the community of Shirley-Jordan River and Renfrew land district (the "Property"). The Appellant's mailing address is a residential address located in Victoria, BC. Emily Karger is the Appellant's daughter. The Appellant and Ms. Karger are both officers of a company incorporated in BC, which is in the business of waste recycling and disposal. Ms. Karger is also a director of the company. The Appellant and the company have the same mailing address.

[7] During August 2020, the Ministry attended and inspected the Property. After observing municipal type waste and demolition waste on the Property, a Ministry enforcement officer telephoned the Appellant on August 7, 2020, to get more information. She discussed the Ministry's observations and advised the Appellant that his activities on the Property with respect to landfilling contravened the *EMA*, and the Ministry planned to issue an order directing him to stop.

[8] Later in August 2020, the Ministry issued pollution prevention order 110488 (the "PPO") and delivered it to the Appellant in person. The PPO directed the Appellant to take measures to prevent pollution, remove waste, and provide a qualified professional's confirmation that the Appellant had complied with the directions.

[9] In September 2020, the Ministry attended the Property and determined the Appellant had not met some of the requirements of the PPO. In October 2020, the Ministry attended the Property again and observed the Appellant and other people who were burning painted wood and plywood.

[10] On July 21, 2021, the Director issued three Notices Prior to the Determination of Administrative Penalty ("Notices Prior to Penalty") to the Appellant. The same day, the Director sent the Notices Prior to Penalty to an email address that the Appellant provided Ministry staff during the August 7, 2020 telephone call.

[11] The Notices Prior to Penalty alleged that the Appellant contravened sections 6(2) and (3) of the *EMA* and the PPO, and made preliminary assessments of penalties for each contravention, which I have summarized as follows:

- Ministry file 2020-53 – the Director alleged that the Appellant had contravened sections 6(2) and (3) of the *EMA* through the unauthorized discharge of waste on the Property while conducting a waste disposal business (a prescribed business under the *Waste Discharge Regulation*), and she proposed a penalty of \$13,000;
- Ministry file 2020-69 – the Director alleged that the Appellant had failed to comply with two requirements in the PPO, and she proposed a penalty of \$28,000; and,
- Ministry file 2020-71 – the Director alleged that the Appellant had contravened section 6(3) of the *EMA* by burning prohibited material (painted wood and plywood, prescribed under the *Waste Discharge Regulation*) without authorization, and she proposed a penalty of \$13,000.

[12] On July 27, 2021, the Appellant sent an email to the Director confirming his receipt of the Director's July 21, 2021 email which provided him the Notices Prior to Penalty. The Appellant used the email address that he provided Ministry staff during the August 7, 2020 telephone call.

[13] On July 28, 2021, the Director provided the Appellant with information on how to make written submissions in response to the Notices Prior to Penalty. The Director sent that information to the Appellant via email, to the same address he used on July 27, 2021.

[14] On August 30, 2021, the Appellant sent an email to the Director from the same email address he used on July 27, 2021, to provide his written submissions in response to the three Notices Prior to Penalty. The Appellant's submissions stated that he did not dump waste on the Property; rather, he found garbage, drywall, and other materials dumped on the Property. He said there was a history of people dumping unwanted garbage in the area. He explained that he was cleaning up the waste, primarily by removing it from the Property at his own expense, and he requested that no fines be imposed.

[15] On October 6, 2021, the Director sent the Determinations to the Appellant via email, using the same email address that the Appellant had used to correspond with the Director on July 27 and August 30, 2021.

[16] In the Determinations, the Director set the penalties as indicated in the Notices Prior to Penalty. The Determinations also advised the Appellant of his right of appeal to the Board "no later than 30 calendar days after the date you receive this Determination of Administrative Penalty".

[17] On October 28, 2021, the Ministry sent the Determinations to the Appellant's residential mailing address via registered mail with Canada Post. Canada Post left cards at the Appellant's address on November 2 and November 8, 2021. The cards explained how to retrieve the mail. No one retrieved the mail and Canada Post returned it to the Ministry on November 23, 2021.

[18] On January 27, 2022, Ministry staff delivered the Determinations to the Appellant in person at the same residential address the Ministry used to send the Determinations via registered mail. The Ministry mailed an invoice dated January

31, 2022 (“EMI484094”) on or before January 31, 2022, through Canada Post to the Appellant’s mailing address.

Appeals

[19] The Board received the Appellant’s notice of appeal referring to the Determinations on February 15, 2022. The Appellant attached invoice EMI484094 and the three cover letters that accompanied the Determinations to the notice of appeal. He indicated that he received the decisions that he intended to appeal on January 31, 2022.

[20] On April 20, 2022, the Board held a pre-hearing teleconference with the parties. In consultation with the parties, the Board scheduled a half-day oral hearing on May 25, 2022, to address the preliminary issue of whether the appeals were filed within the 30-day appeal period, and if not, whether they should be dismissed.

[21] After further communications with the parties, and at the request of the Appellant, the Board changed the method of hearing from oral to written. The written hearing closed on June 24, 2022.

[22] If I determine that the Appellant did not file the notice of appeal in time, section 31(1)(a) of the *Administrative Tribunals Act*¹ (“ATA”) authorizes the Board to summarily dismiss the appeals if they are not within the Board’s jurisdiction. In addition, section 31(1)(b) of the ATA authorizes the Board to summarily dismiss the appeals if they were not filed within the applicable time limit.

ISSUE

[23] The issue to be decided in this preliminary decision is:

Did the Appellant file the notice of appeal with the Board within the statutory time limit of 30 days?

[24] In order to answer this question, I must first identify which decisions are under appeal to the Board. Next, I must determine when the Appellant received notice of those decisions.

DISCUSSION AND ANALYSIS

Did the Appellant file the notice of appeal with the Board within the statutory time limit of 30 days?

a. Which decisions are under appeal to the Board?

Summary of the Parties’ Submissions

[25] The Appellant indicates in his notice of appeal filed with the Board on February 15, 2022, that he received the decisions that he wishes to appeal on January 31, 2022. The Appellant included invoice EMI484094, addressed to him and

¹ Section 31 of the ATA applies to the Board pursuant to section 93.1(1)(d) of the EMA.

dated January 31, 2022, with his notice of appeal. EMI484094 lists two administrative penalties (AMP #2020-53 and AMP #2020-71), each in the amount of \$13,000, for a total of \$26,000. EMI484094 indicates that the due date for payment is March 2, 2022. The Appellant made no submission regarding the purpose of invoice EMI484094, other than to refer to it as providing the date that he was given notice of the decisions he intends to appeal.

[26] The Appellant also included with his notice of appeal, copies of three cover letters from the Director dated October 6, 2021, briefly explaining her decisions and attaching the three Determinations. Ms. Karger, on behalf of the Appellant, asks that the Appellant have an opportunity to explain to the Board why the “fines brought forward regarding Stephens (the Appellant) property should be dismissed”. I understand from the Appellant’s notice of appeal and submissions, that a reference to “fines” is a reference to the administrative penalties established in the Determinations. Ms. Karger requests that the Board eliminate or reverse the penalties established by the Determinations.

[27] The Director’s submissions advance the position that the Appellant’s notice of appeal pertains to the three Determinations; they are the decisions under appeal. The Director does not specifically address invoice EMI484094 in the context of which decisions provide the basis for the appeal. However, the Director supplied a copy of invoice EMI484095, dated January 31, 2022, which lists a penalty of \$28,000 for the contravention determined in Ministry file 2020-69, and establishes a payment due date of March 2, 2022. Counsel for the Director, in answering a question from the panel, advised: “Invoices EMI484094 and EMI484095 were cancelled when Mr. Lewis’s notice of appeal was received. Mr. Lewis will be re-invoiced for the penalties included in both invoices if his appeals are dismissed.”

[28] The Director submitted that invoice EMI484094 (matters 2020-53 and 2020-71), and invoice EMI484095 (matter 2020-69) were sent to the Appellant for the purpose of facilitating penalty payment. The Director advises that mailing invoices seeking payment of penalties is consistent with the Ministry’s “Administrative Penalties Handbook: Environmental Management Act and Integrated Pest Management Act.”

Panel’s Findings

[29] I find that the Appellant appeals the three Determinations (Ministry files 2020-53, 2020-69 and 2020-71), which are appealable “decisions” within the meaning of the *EMA*. I also find that invoice EMI484094 does not provide the basis for the Appellant to appeal the penalties established by the three Determinations. I find that it does not contain a director’s decision that is appealable to the Board in this case. As a consequence, I find that the date the Appellant was given notice of EMI484094 is not relevant to a determination of whether the Appellant filed his appeal in time. The date that he was given notice of the Determinations is the critical date.

[30] I base the above findings on the following discussion. To answer the main question in this preliminary matter regarding the timeliness of the filing of the notice of appeal, I have determined that I must first identify the decisions that are under appeal. This is necessary because the Appellant indicates that January 31,

2022, is the date he was given notice of the decisions. This is the date of EMI484094. As indicated previously, and advanced by the Director, there are several dates on which the Appellant was given notice of the Determinations: October 6, 2021; October 28, 2021; and, January 27, 2022. I consider which of these is the effective date later in this decision, but raise them now because January 31, 2022, is not one of them.

[31] To identify the decisions under appeal, I undertake:

- an assessment of EMI484094 and the Determinations to establish if they are director's decisions within the meaning of the *EMA*, as required for the Board to hear appeals arising from them; and
- an analysis of the purposes of EMI484094 and the Determinations to establish which forms the basis of the Appellant's appeals.

[32] Section 100(1) of the *EMA* provides that "A person aggrieved by a decision of a director ... may appeal the decision to the appeal board in accordance with this Division" [emphasis added]. Section 99 of the *EMA* defines the types of director's decisions made under the *EMA* that may be appealed to the Board. Section 99(f) states that "determining to impose an administrative penalty" is a decision that may be appealed to the Board. Although I am not bound by the Board's previous decisions, I note that the Board found in *Graham v. Director of Waste Management*, Decision No. 2005-EMA-010(a), January 24, 2006 [*Graham*] that the definition of "decision" in section 99 is exhaustive, and the Board's jurisdiction over appeals under the *EMA* is established by the types of decisions listed in section 99. The Board in *Graham* also held that the specific wording of paragraph (f) applied to director's determinations of administrative penalty. In this case, the Determinations are clearly issued by a director. I adopt the reasoning of *Graham* and find that the three Determinations are director's decisions as required by section 100. I also find that these decisions, as director's determinations of administrative penalty, come within the category of appealable decisions defined by section 99(f) of the *EMA*. Consequently, the Board may hear appeals with respect to the Determinations, if the appeals were filed in time.

[33] Applying the same form of analysis to EMI484094, I have considered whether it is a director's decision. EMI484094 does not indicate who issued it, other than to disclose its source as the Financial Services Branch of the Ministry of Forests, Lands, Natural Resource Operations and Rural Development. This is not the administrative location of the Director, which is the Ministry as shown in the Director's address given on the Determinations and transmitting correspondence. I find that the available information supports a finding that EMI484094 does not contain a decision of a director under the *EMA*. This finding alone means that invoice EMI484094 cannot be appealed to the Board.

[34] If I had found that EMI484094 contained a director's decision, I would also find that the primary purpose of EMI484094 is to notify the Appellant of a specific date for payment. I agree with the Director's submission that invoice EMI484094 "facilitates payment" of the penalties established by the Determinations in matters 2020-53 and 2020-71. As such, any appeal of EMI484094 would be limited to that substantive element, the due date for payment, and would not extend to the

amount to be paid. However, this is of no consequence, because I have found that EMI484094 is not a director's decision under the *EMA*.

[35] I next consider if the Appellant's grounds for appeal relate to the substance of the Determinations, or alternatively, the substance of invoice EMI484094 which is the establishment of a specific due date for paying penalties. The Appellant indicated in the notice of appeal that "we did not dump on our property! We are cleaning up our property, garbage that someone else dumped!". He seeks "no fine" as an outcome of the appeal. The Appellant also submits that others had dumped garbage on his property, not him; and, people use the area to dump garbage "all the time". He maintains that it does not make sense that he is being punished for the actions of others, states he has done nothing wrong, and asks: "please stop harassing me".

[36] I find that these grounds of appeal pertain to the allegations of mismanagement of waste material or contraventions under the *EMA*, which provide a basis for the Director's decisions and her Determinations of administrative penalty. These grounds do not pertain to the facilitation of the payment of penalties which I have determined to be the substantive element of the invoices. EMI484094 does not provide the basis for the penalties, the rationale for them, or establish the amounts of the penalties. These are the matters the Appellant seeks to appeal. After comparing the Appellant's notice of appeal and submissions to the purposes and content of EMI484094 and the Determinations, I find that the Appellant seeks to appeal the Determinations, including the administrative penalties they establish, not the date on which payment of the penalties is due as provided by EMI484094.

[37] In support, I note that invoice EMI484094 does not refer to Ministry file 2020-69. It is the subject of a different invoice, EMI484095, a copy of which the Director provided. The Appellant's appeal pertains to all three Ministry files: 2020-53, 2020-69 and 2020-71. Since I find that the Appellant is seeking to appeal the Determinations, the date he was given notice of the Determinations is the critical date in establishing the timeliness of the filing of the appeals. The date when he was given notice of EMI484094, January 31, 2022, does not determine when he received notice of the Determinations. I next consider the dates on which the Appellant received notice of the Determinations.

b. When did the Appellant actually receive the Determinations?

Summary of the Parties' Submissions

[38] As discussed above, the Appellant indicates in his notice of appeal that January 31, 2022, is the date of the decisions he wishes to appeal and is the date when he received them. The notice of appeal is dated February 3, 2022, and the Board received it on February 15, 2022.

[39] Ms. Karger submits, on behalf of the Appellant, that in addition to being an officer and director of the waste recycling and disposal company, she is an employee of the company and in that capacity uses the email address the Appellant provided to Ministry staff. She says it is not the Appellant's email address. Consistent with that assertion, the Appellant sent his appeal submissions via another business email address. Ms. Karger submits that the best way to provide information to the Appellant is to send documents to his residential address. As

noted previously, the Appellant received personal service of the Determinations at that address on the January 27, 2022. Ms. Karger submits that the Appellant finds using email challenging. She claims that she sent any responses the Ministry received from the Appellant, and she used the email address that the Appellant provided to the Ministry in 2020 which is her work email address. She says the Appellant was not the person who sent the July 27, 2021 and August 30, 2021 emails to the Director. Ms. Karger advised during the prehearing conference communication for this appeal, that the Appellant "... is unable to communicate through email as he doesn't grasp the technology side of things, this being the reason he is not able to respond to your requests." The Appellant's position represented by Ms. Karger, is that he did not receive notice of the Determinations via email on October 6, 2021.

[40] As noted above, based on evidence from Ministry records, the Director submits she used three methods, at three times, to give the Appellant notice of the Determinations: by emailing the Determinations on October 6, 2021; by sending the Determinations through registered mail on October 14, 2021; and, by serving the Appellant personally with the Determinations on January 27, 2022. The Director explained that the Ministry undertook the personal service "to confirm that Mr. Lewis had copies of the Determinations of Administrative Penalty."

[41] The Director further submits that because she provided notice of her three Determinations, to the Appellant on October 6, 2021 via email, the effective date of notice from which to calculate the 30-day appeal period is October 6, 2021, and the notice of appeal would have to be filed by November 5, 2021 in order for the Board to consider the appeals. The Director points out that the Appellant did not file his notice of appeal until February 15, 2022 and that the Board has no authority to extend the time to file the appeals. Accordingly, the Director submits that the Board has no jurisdiction to hear the appeals in this case. The Director refers to the Board's decision in *Graham* to support her submissions.

[42] The Director seeks an order dismissing the appeals.

Panel's Findings

[43] The Board has previously considered the question of the effective date of notice of a decision. The Board's decisions *Graham*, *Patricia Rush et al v. District Director* (Decision Nos. 2018-EMA-003(a), 004(a), and 012(a) to 016(a), August 20, 2018) [*Rush*], and *P.N.D. Construction Ltd. v. Director, Environmental Management Act* (Decision No. EAB-EMA-21-A012(a), May 3, 2022) [*PND Construction*] are pertinent to the question of the effective date of notice of the decisions in this case. These earlier decisions of the Board do not dictate the outcome of this appeal, in part because the specific circumstances relevant to each decision are unique. However, these past decisions can be used as aids in determining the key elements for consideration in deciding the timeliness of the filing of the Appellant's notice of appeal.

[44] One finding that is consistent to all those decisions is that the Board has no discretion to extend the time limit within which to file an appeal. That finding is based on the Board's enabling legislation. In that regard, section 93.1(1)(d)(ii) of the *EMA* specifically states that section 24 of the *ATA*, which would give the Board

the discretion in special circumstances to extend the time for filing an appeal, does not apply to the Board. I agree with the findings of the three decisions referenced above, and apply those findings to this case, to conclude that the explicit wording of section 93.1(1)(d)(ii) makes it clear that the Board has no authority to extend the time period for filing an appeal.

[45] In considering how notice may be given by the Director under the *EMA*, the Board has determined that section 133(2) of the *EMA* is permissive, since it states that notice “may” (and not “must”) be given by registered mail. This means that registered mail may or may not be selected as a method of giving notice (*Graham*, pages 9 and 10). I adopt the previous conclusion of the Board as enunciated in *Graham*, that notice of decisions issued by a director (in this case the Determinations) may be given in a number of ways. I also adopt the further reasoning of *Graham* at page 10, that methods of service should “abide by principles of procedural fairness, which dictate that notice must be given in a manner that is reasonable to inform those concerned.”

[46] The Board also determined in *Graham*, at page 10, that an inference can be drawn from the “wording of the Act [*EMA*] that the statutory limitation period for appealing a decision begins to run when notice of the decision is first given... whether the mode of delivery is by mail, personal delivery or facsimile transmission.”

[47] I adopt the reasoning of *Graham* and find that a director may use a number of methods, including email, to provide notice of a decision to an affected person, and that the first notice of the decision received by the affected person determines the date for calculating the 30-day appeal period. I find these reasons to be consistent with the wording of section 101 of the *EMA*, which states that “The time limit for commencing an appeal of a decision is 30 days after notice of the decision is given.”

[48] I now turn to the circumstances of this preliminary matter. The Appellant must prove that he filed his notice of appeals on or before the 30th day following the date when he first received notice of the Determinations. The Board received the Appellant’s notice of appeal on February 15, 2022. Therefore, I find that the Appellant must prove, on a balance of probabilities, that he first received notice of the Determinations no earlier than January 16, 2022.

[49] The two events that fall within this time frame are the personal service of the Determinations on January 27, 2022, and the delivery of invoice EMI484094 on or about January 31, 2022, through the Canada Post mail service. I have already found that the date of the Appellant’s receipt of the invoice does not assist him in determining the timeliness of his filing the notice of appeal, because I have found that the invoice does not contain a director’s decision under appeal in this case.

[50] The Appellant would have to rely on January 27, 2022, the date when he was served personally, as the date he was first given notice of the Determinations, for his notice of appeal to be filed in time. The Director submits that the effective date the Appellant received notice of the decisions is October 6, 2021 via email. Since the October date is earlier, than the January date, I will consider it first.

[51] Ms. Karger has submitted on behalf of the Appellant that she sent emails responding to the Director in July and August of 2021. From this, I infer that she may have read the Director's emails sent to the attention of the Appellant and she either acted as his representative in replying to the Director or assisted the Appellant to reply. Ms. Karger provided no evidence, and has not asserted, that she did not receive the emails that the Director sent on October 6, 2021, or that she did not open them on or about that date.

[52] In *Rush* at para. 69, the Board found that sending notice of a decision under the *EMA* to email addresses that were previously used by potential appellants was consistent with the principles of procedural fairness. The circumstances in *Rush* were that a person had replied to email using a particular email address and had not advised of a change from that email address. The Board at para. 72, found it reasonable to expect that the person could be reached again using the same email address, when the person did not advise of a change in that address.

[53] In this case, the Appellant, either directly or through Ms. Karger as his representative, replied to the Director on July 27, 2021 and August 30, 2021, using the same email address he had given to Ministry staff in 2020. The Appellant did not advise the Director not to use that email address for any further communication. I apply the same reasoning the Board used in *Rush* to the circumstances here. Based on the Director's evidence that the Appellant responded to the Director from the email address he had provided to the Ministry, and the absence of any evidence that the Appellant advised the Director of a change in email address, I find it consistent with the principles of procedural fairness for the Director to give notice of the Determinations as she did on October 6, 2021, by email using the email address the Appellant supplied and used.

[54] The Board held in *PND Construction* at para. 78, that if an appellant previously corresponded with the Ministry via email about the subject matter of the decision, the appellant must prove on a balance of probabilities that the appellant did not receive the notice of decision via email. I agree and find that in order for the Appellant to prove that he did not receive the October 6, 2021 transmission from the Director via email, he must provide some evidence in support. I find that he has failed to provide sufficient evidence that either he, or Ms. Karger as his representative, did not receive or did not open the Director's emails that contained notice of the Determinations on or about October 6, 2021. Ms. Karger says the Appellant is not proficient with email. While that may be so, I find this assertion alone does not meet the burden of proof required of the Appellant to prove that he did not receive the October 6, 2021 emails.

[55] Based on the absence of evidence from the Appellant, and the Director's evidence that she and the Appellant communicated via email about the Notices Prior to Penalty on July 27, 2021 and the Appellant made written submissions via email regarding the alleged contraventions on August 30, 2021 using the same email address, I find that the Appellant was given notice of the Determinations via that email address on October 6, 2021. Further I find that even if the Appellant did not receive or open the October 6, 2021 email himself it is more likely than not that Ms. Karger, as his representative, opened the email on or about October 6, 2021. Thirty days after October 6, 2021, is November 5, 2021. November 5, 2021 is

several months before the Board received the Appellant's notice of appeal (February 15, 2022). It is also several months before February 3, 2022, the date next to the Appellant's signature on the notice of appeal. Based on these findings, I conclude that the Appellant filed the notice of appeals after the 30-day time limit had expired. As stated above, the Board has no jurisdiction to extend the appeal period. Therefore, the Board has no jurisdiction to hear the appeals of the Determinations.

c. When was the Appellant deemed to have received the Determinations?

[56] Although I need not consider this question given my findings above, I will consider it out of an abundance of caution.

Summary of the Parties' Submissions

[57] The Director submits that, if necessary and in the alternative, I should find that the Appellant received notice of the Determinations through registered mail after the Director followed the steps articulated in section 133 of the *EMA*. Section 133(2) of the *EMA* provides that any notice under the *EMA* may be given by registered mail sent to the last known address of the person. Section 133(3) states that if a notice is sent by registered mail to the last known address of the person, the notice "is deemed to be served on the person to whom it is addressed on the 14th day after deposit with Canada Post unless the person received actual service before that day."

[58] The Director submits that the Appellant is deemed to have been given notice of the Determinations under this provision. The Director's evidence shows that she deposited the Determinations with Canada Post on October 28, 2021. Based on this evidence, the Director submits that notice by registered mail is deemed to have occurred on November 11, 2022.

[59] The Appellant provides no submissions or evidence regarding whether he is deemed to have received notice of the Determinations under section 133. However, the Appellant does not dispute the Director's evidence of the Determinations being deposited with Canada Post on October 28, 2021, for delivery by registered mail, and the associated tracing information. Ms. Karger claims that the Appellant advised her that he did not remember receiving Canada Post's notification cards on November 2 or November 8, 2021.

Panel's Findings

[60] I agree that the 14th day after deposit with Canada Post is November 11, 2021. Applying the time limit of 30 days for filing the appeal as provided by section 101 of the *EMA*, the Appellant would be required to file a notice of appeal on or before December 11, 2021. December 11, 2021 was a Saturday, which is not a day of regular business hours for the Board. Neither was the next day, Sunday December 12, 2021. Based on section 25.5(2)² of the *Interpretation Act*, I find the

² Section 25.5(2) of the *Interpretation Act* states, "If a day that is specified for doing an act in a business office falls on a day on which the office is not open during regular business hours, the day falls on the next day the office is open during its regular business hours."

date that the Appellant would be required to file a notice of appeal on or before would be the next day the office was open or December 13, 2021. This date is approximately two months before February 15, 2022, when the Appellant filed his notice of appeal. In conclusion, I find that section 133 of the *EMA* deems that the Appellant was given notice of the Determinations by registered mail approximately two months before he submitted his notice of appeal. If relying on the deemed service provision, I find that relying on the service through registered mail of Canada Post, the Appellant filed his notice of appeal after the appeal period had expired.

[61] The Board has no discretion with regard to the outcome of section 133. The provision does not require that a person who is given notice through registered mail actually receive or see that mail. The person is deemed to have received the mail on the 14th day, even if they did not actually retrieve it and open it.

Conclusion

[62] As discussed previously, to determine the effective date on which the Appellant was given notice of the Determinations, I must choose the first date when he received notice. In the case of the actual notice on or about October 6, 2021, or the deemed notice of November 12, 2021, either date would require the Appellant to have filed his notice of appeal several weeks before February 15, 2022. The Appellant did not file his notice of appeal within the 30-day time limit in section 101 of the *EMA*, and the Board has no jurisdiction to extend that time limit. Accordingly, I find that the appeals should be summarily dismissed under either section 31(1)(a) or (b) of the *ATA*.

DECISION

[63] In making this decision, I have considered all the evidence and submissions provided by the parties, whether they are reiterated in this decision or not.

[64] For the reasons I have provided above, I summarily dismiss the appeals under section 31(1) of the *ATA*. The Appellant did not file his notice of appeal in time, and the Board has no jurisdiction to extend that time limit.

“Daphne Stancil”

Daphne Stancil, Panel Chair
Environmental Appeal Board

August 10, 2022