



Environmental Appeal Board

Citation: *TRLG Enterprise Ltd. v. Director, Environmental Management Act*, 2025 BCEAB 16

Decision No.: EAB-EMA-24-A011(a)

Decision Date: 2025-04-15

Method of Hearing: Conducted by way of written submissions concluding on July 15, 2024

Decision Type: Preliminary Decision

Panel: Norman M. Tarnow, Panel Chair

Appealed Under: *Environmental Management Act*, S.B.C. 2003, c. 53

Between:

TRLG Enterprise Ltd.

Appellant

And:

Director, *Environmental Management Act*

Respondent

Appearing on Behalf of the Parties:

For the Appellant: Andrew S. Grant

For the Respondent: Eugen Klein
Craig Regier

PRELIMINARY DECISION REGARDING AN APPLICATION TO AMEND NOTICE OF APPEAL

INTRODUCTION

[1] On April 3, 2024, TRLG Enterprise (the "Appellant") filed a Notice of Appeal with the Environmental Appeal Board (the "Board") of a Determination of Administrative Penalty, File 2023-41 (the "2023-41 Final Determination"), issued by the Director, *Environmental Management Act*, S.B.C. 2003, c. 53 ("EMA") (the "Respondent"). On June 28, 2024, the Appellant requested that the Board consider an amendment to their April 3, 2024, Notice of Appeal, to also appeal a Determination of Administrative Penalty, File 2023-42 (the "2023-42 Final Determination").

[2] This decision addresses whether the Board should accept the appeal of the 2023-42 Final Determination by way of amendment to the Appellant's Notice of Appeal.

BACKGROUND

[3] The Appellant operates Cedar Springs Mobile Home Park in Langley, British Columbia, a mobile home and recreational vehicle park. The provincial regulatory authorization governing the discharge of effluent from the Appellant's septic system to the land is Permit 14338 (the "Permit"), issued under the *EMA*.

[4] On December 12, 2023, the Respondent provided to the Appellant:

- a. for File: 2023-41, a Notice Prior to Determination of Administrative Penalty and Penalty Assessment Form, along with supporting documents, issued in association with the alleged contravention of Sections 1.1.2, 2.1, and 2.10 of the Permit (the "2023-41 Notice"); and
- b. for File: 2023-42, a Notice Prior to Determination of Administrative Penalty and Penalty Assessment Form, along with supporting documents, issued in association with the alleged contravention of Sections 3.1.1, 3.2.1, 3.2.2, and 3.4 of the Permit (the "2023-42 Notice").

[5] On January 17, 2024, the Appellant, through its agent, requested an opportunity to be heard with respect to the two notices.

[6] On January 17, 2024, the Respondent agreed to provide a written opportunity to be heard.

[7] On March 1, 2024, the Appellant provided a written opportunity to be heard submission respecting the alleged contraventions, dated February 27, 2024. The

opportunity to be heard submission was made with respect to both the 2023-41 Notice and the 2023-42 Notice and addressed each specifically.

[8] On March 12, 2024, the Respondent issued the 2023-41 Final Determination for the contravention of Sections 1.1.2, 2.1, and 2.10 of the Permit, amounting to an administrative penalty of \$54,348.

[9] On March 12, 2024, the Respondent issued the 2023-42 Final Determination for the contravention of sections 3.1.1, 3.2.1, 3.2.2, and 3.4 of the Permit, amounting to an administrative penalty of \$23,351.

[10] On March 12, 2024, the Appellant confirmed receipt of the 2023-41 Final Determination and of the 2023-42 Final Determination.

[11] On April 3, 2024, the Board received a Notice of Appeal filed by the Appellant appealing the 2023-41 Final Determination; however, the 2023-42 Final Determination was not appealed by the Appellant.

[12] On June 28, 2024, the Board received a request on behalf of the Appellant from the Appellant's Agent for the Board's consideration of an amendment of the Appellant's Notice of Appeal, stating:

We make this request to the [B]oard because it was unknown to us at the time of making the appeal that the file numbers, differing by one digit, were different. Both Determinations of Administrative Penalties are related to the same property, under the same permit, related to similar issues, and were issued on the same day by the [Respondent] to the Appellant. This was a clerical error on our part to unknowingly omit the other file, and definitely not intentional.

[13] The Respondent does not consent to the Appellant's application to amend the Notice of Appeal and submits that the application should be dismissed.

ISSUE

[14] The issue in this appeal is whether to allow an appeal of the 2023-42 Final Determination through an amendment of the Appellant's Notice of Appeal.

RELEVANT LAW

[15] Section 100(1) of the *EMA* provides that: "A person aggrieved by a decision of a director or a district director may appeal the decision to the appeal board in accordance with this Division."

[16] 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:

Division 2 — Appeals from Decisions under this Act

Definition of "decision"

99 For the purpose of this Division, "**decision**" means....

f) determining to impose an administrative penalty...

[17] Section 101 of the *EMA* provides that: "The time limit for commencing an appeal of a decision is 30 days after notice of the decision is given."

[18] Section 93.1 of the *EMA* provides for the application of certain provisions of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 ("*ATA*") to the Board. Section 93.1(1)(d)(ii) of the *EMA* specifically provides 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.

[19] As stated in *Donald Steven (Steve) Graham v. Director, Waste Management Act*, 2006 BCEAB 3, at page 10:

Statutory bodies, such as the Board, receive their jurisdiction from their enabling statutes. Neither the *Act* [*EMA*] nor the *Regulation* [*The Environmental Appeal Board Procedure Regulation*, BC Reg 1/82] expressly provide the Board with the power or discretion to extend the time for filing an appeal under the *Act* [*EMA*]. In addition, the legislation uses imperative language when describing time limits within which a person must file an appeal to the Board. Given that the Board is a creature of statute, filing an appeal within the prescribed time limit is a condition precedent to the Board having jurisdiction over an appeal. As such, the Panel finds that the Board has no jurisdiction to hear this Appeal as the Notice of Appeal was filed after the statutory appeal period had expired.

[20] In *Stephen James Lewis v. Director, Environmental Management Act*, 2022 BCEAB 25, at para. 44, the Board held that it had no discretion to extend the time limit within which to file an appeal:

[44] One finding that is consistent to all those decisions [*Graham v. Director of Waste Management*, Decision No. 2005-EMA-010(a), January 24, 2006, *Patricia Rush et al v. District Director* (Decision Nos. 2018-EMA-003(a), 004(a), and 012(a) to 016(a), August 20, 2018), and *P.N.D. Construction Ltd. v. Director, Environmental Management Act* (Decision No. EAB-EMA-21-A012(a), May 3, 2022)] 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.

[21] As well, Rule 5 (3) of the Environmental Appeal Board Rules (the "Rules") reflects the fact that the Board does not have authority to extend the statutory time period to appeal:

3. A notice of appeal must be filed within the appeal period specified in the particular statute. The Board has no power to extend the statutory time period to appeal.

[22] Pursuant to Section 37 of the ATA and the Board's Rule 12, if two or more appeals before the Board involve the same parties, the Board may direct, upon such terms as it considers appropriate, that the appeals be combined, heard together with any other appeal:

Applications involving similar questions

37 (1) If 2 or more applications before the tribunal involve the same or similar questions, the tribunal may

- (a) combine the applications or any part of them,
- (b) hear the applications at the same time,....

Rule 12 – Joining or consolidating appeal

1. In addition to the powers under section 37 of the Administrative Tribunals Act, if two or more appeals before the Board involve the same parties, the Board may direct, upon such terms as it considers appropriate, that the appeals be consolidated (combined), heard together with any other appeal before the Board, or the Board may direct that one appeal be heard immediately after the other.

[Emphasis added]

DISCUSSION AND ANALYSIS

[23] The 2023-41 Final Determination and the 2023-42 Final Determination were provided to the Appellant by electronic means on March 12, 2024, and the Appellant confirmed receipt on the same day.

[24] The 2023-41 Final Determination and the 2023-42 Final Determination both arise from the contravention of the Permit. However, the 2023-41 Final Determination was issued for the contravention of Sections 1.1.2, 2.1, and 2.10 of the Permit, and the 2023-42 Final Determination was issued for the contravention of Sections 3.1.1, 3.2.1, 3.2.2, and 3.4 of the Permit.

[25] Section 99(f) of the EMA provides that each determination to impose an administrative penalty represents a separate decision that may be appealed to the Board.

[26] Section 101 of the *EMA* provides that the time limit for commencing an appeal of a decision is 30 days after notice of the decision is given.

[27] The Appellant confirmed receipt of the 2023-41 Final Determination and of the 2023-42 Final Determination on March 12, 2024. Therefore, notice of both decisions was given on March 12, 2024.

[28] As notice of both decisions was given to the Appellant, an appeal of either the 2023-41 Final Determination or the 2023-42 Final Determination, or both, was required to be commenced on or before April 11, 2024.

[29] In the Appellant's April 4, 2024, Notice of Appeal, only the 2023-41 Final Determination was appealed. There was no Notice of Appeal with respect to the 2023-42 Final Determination.

[30] Section 93.1(1)(d)(ii) of the *EMA* specifically provides that section 24 of the *ATA*, which would give the Board discretion in special circumstances to extend the time for filing an appeal, does not apply to the Board. Accordingly, the Board has no jurisdiction to accept an appeal of the 2023-42 Final Determination outside of the statutorily prescribed time limit.

[31] The Appellant has applied to amend the Notice of Appeal to allow the appeal of the 2023-42 Final Determination.

[32] However, each of the 2023-41 Final Determination and the 2023-42 Final Determination are separate decisions and each must be appealed to the Board. While the Board has authority to combine appeals pursuant to Section 37 of the *ATA* and the Board's Rule 12, that requires that two or more appeals be before the Board. Here, there is only one single appeal of the 2023-41 Final Determination before the Board.

[33] Filing an appeal within the prescribed time limit is a condition precedent to the Board having jurisdiction over an appeal and that condition has not been satisfied with respect to the 2023-42 Final Determination. Accordingly, the Board does not have jurisdiction to accept an appeal of the 2023-42 Final Determination through amendment of the Notice of Appeal or otherwise.

[34] Section 31(1)(a) of the *ATA* allows the Board to summarily dismiss an application that is not within its jurisdiction. Section 31(1)(b) of the *ATA* allows the Board to summarily dismiss an application that was not filed within the applicable time limit. I find both of these sections are applicable to this decision, as the appeal of the 2023-42 Final Determination was not filed within the 30-day statutory time limit and the Board does not have the jurisdiction to extend that time limit.

DECISION

[35] In view of all of the above, the Appellant's application to appeal the 2023-42 Final Determination by way of amending the Notice of Appeal is hereby dismissed under

section 31(1)(a) and (b) of the ATA, as the 2023-42 Final Determination was not appealed within the 30-day statutory limitation period and the Board does not have the jurisdiction to extend that time limit.

[36] 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.

“Norman M. Tarnow”

Norman M. Tarnow, Panel Chair
Environmental Appeal Board