

## FACT SHEET: Environmental Approvals and Licences

This fact sheet is intended to provide answers to common questions that members of the public may have about providing input on certain approvals and licences issued by Alberta Environment. This fact sheet focuses on approvals issued under Alberta's *Environmental Protection and Enhancement Act (EPEA)*, and approvals and licences issued under Alberta's *Water Act*.

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### What is an approval?

An approval is the most detailed form of government authorization issued before certain activities can be carried out. An environmental approval is reserved for activities that are likely to have a significant impact on the environment.

For the purposes of this fact sheet, “approvals” refer to approvals issued under Alberta’s *Environmental Protection and Enhancement Act (EPEA)* and Alberta’s *Water Act*.

## **What is a licence?**

A licence is another form of government authorization. For the purposes of this fact sheet, a “licence” refers to a licence issued under Alberta’s *Water Act*.

## **Who issues approvals and licences?**

The Director issues approvals and licences under *EPEA* and the *Water Act*. The Director is a government officer with Alberta Environment. There is currently one Director for each of the three regions of Alberta: the northern region, the central region and the southern region.

## **When is an approval required under *EPEA*?**

*EPEA* is the main environmental statute in Alberta. *EPEA* prohibits anyone from carrying on certain activities that affect the environment unless the person obtains an approval.

Some large industrial activities require an approval under *EPEA*. These activities are listed in Schedule 1 of the *Activities Designation Regulation, Alta. Reg. 276/2003*. For example, *EPEA* approvals are required for the construction, operation or reclamation of:

- facilities that treat specified amounts of waste;
- plants involved in chemical, fertilizer, pesticide, or explosive manufacturing;
- some food or food by-product related plants;
- metal related plants, including foundries, lead smelters and metal manufacturing plants;
- power plants;
- oil refineries, sour gas processing plants, and oil sands plants;

- wood treatment plants and pulp and paper manufacturing plants; and
- wastewater treatment plants meeting specific criteria.

## **When is an approval required under the *Water Act*?**

The *Water Act* regulates water rights, activities that disturb water, and water planning and management in Alberta. The *Water Act* establishes that all water in the province is owned by the Crown (the provincial government), and establishes processes to allow others to use and disturb water by issuing approvals and licences.

An approval under the *Water Act* is required before constructing works or undertaking an “activity” within a water body. An “activity” is anything that alters the flow of water or impacts the aquatic environment. This can include the construction of structures such as dams or ditches that interfere with water.

Some activities do not require an approval under the *Water Act*. For example, an approval is not required for placing fences in water bodies or constructing water wells for household purposes. A complete list of exemptions is included under Schedule 1 of the *Water Ministerial Regulation*, Alta. Reg. 205/98.

## **When is a licence required under the *Water Act*?**

As noted above, the *Water Act* establishes that all water in the province is owned by the Crown (the provincial government), and establishes processes to allow others to use and disturb water by issuing approvals and licences.

A licence under the *Water Act* is required for any diversion or use of surface water or groundwater. Some activities do not require a licence under the *Water Act*. For example, a licence is not required for household uses of water (up to a 1250 cubic metres per year), for water wells equipped with a hand pump, and for fire-fighting activities. A complete list of exemptions is included under Schedule 3 of the *Water Ministerial Regulation*.

## **Are there other approvals or licences issued for environmental activities?**

This fact sheet focuses on approvals issued under *EPEA*, and approvals and licences issued under the *Water Act*. However, there are other types of authorizations granted by Alberta Environment for activities that affect the environment. For example, *EPEA* sets out processes for issuing registrations, notices, and certificates for certain activities. The *Water Act* sets out processes for issuing preliminary certificates and transfers of water allocations. These authorizations are not covered in this fact sheet, but you can contact the Environmental Law Centre for further information on these topics.

Additionally, there are activities which impact the environment that require authorizations from other government departments or agencies. For example, energy projects in Alberta, such as oil and gas operations, must be approved by the Alberta Energy and Utilities Board. For more information on this topic, please see the Environmental Law Centre's fact sheet on the Alberta Energy and Utilities Board.


Confined feeding operations in Alberta must be approved by an approval officer with the Natural Resources Conservation Board (NRCB). For more information on this topic, please see the Environmental Law Centre's fact sheet on Confined Feeding Operations. The NRCB also reviews activities that affect Alberta's non-energy natural resources such as forestry projects, recreational or tourism projects, metallic or mineral projects, and water management projects.

Some activities with environmental impacts require federal authorizations in the form of approvals, licences or other permits. For more information on federal authorizations, please contact the Environmental Law Centre.

## **What are the general steps in the approval or licensing process?**

The approval and licensing processes under *EPEA* and the *Water Act* consists of six general steps:

- (1) The person or company files an application for an approval or licence.

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- (2) The Director issues a public notice of the application.
  - (3) Interested or affected members of the public submit “statements of concern” about the application.
  - (4) The Director reviews the application and statements of concern of those persons found to be “directly affected.”
  - (5) The Director makes a decision whether to issue the approval or licence and what conditions to attach to the approval or licence. Directly affected persons are notified of the Director’s decision.
  - (6) Interested or affected members of the public who have submitted a statement of concern can appeal the Director’s decision to the Environmental Appeals Board (EAB).

## **How do I know if someone has applied for an approval or licence?**

When a person or company applies for an approval or licence under *EPEA* or the *Water Act*, the Director usually provides public notice of the application. Notice is usually given in the local newspaper. The notice will advise people who have concerns with the proposed application to submit a “statement of concern” to the Director.

## **How do I provide input on an approval or licence?**

A “statement of concern” is a written objection to an approval or licence being issued under *EPEA* or the *Water Act*. It is very important to submit a statement of concern because this is a pre-condition if you later decide to appeal the approval or licence to the Environmental Appeals Board (EAB). The notice of the application will indicate if a statement of concern is required and the timelines for submitting it.

Your statement of concern must indicate how you will be “directly affected” if the approval or licence is issued. The reason why being directly affected is

important is because only those persons who meet this criterion have their statements of concern considered by Director before an approval or licence is issued.

Alberta Environment has a policy that outlines what you must demonstrate in order to be considered directly affected. The policy states that anyone living in the geographic vicinity of the activity will be considered directly affected. For small facilities with minimum potential for off-site impacts, the geographic vicinity may be a small radius around the site. For larger activities, the area may be much larger but this is assessed on a case-by-case basis.

Property ownership, living next to or close to, the area subject to the approval or licence is an important factor in being considered directly affected by the Director. You may also be considered directly affected if the approval or licence would negatively impact your livelihood, such as your farming operation, or your health. You are less likely to be considered directly affected if your concerns are limited to recreational interests, nature appreciation, wildlife viewing or general environmental concerns that are not tied to property ownership or livelihood.

## **Can groups provide input on an approval or licence?**

Groups, such as community leagues or environmental organizations, can also submit statements of concern to the Director. Groups must submit a statement of concern on behalf of the group and each group member must also submit their own individual statement of concern.

As mentioned above, statements of concern must indicate how the group and individual members will be directly affected if the approval or licence is issued. Alberta Environment has a policy that outlines what a group must demonstrate in order to be considered directly affected. The policy states that any group that has a portion of its members living in the geographic vicinity of the activity will be considered directly affected. Although the policy refers to “a portion of its members” the Director usually requires more than half the group members to be directly affected by the approval or licence.

Generally speaking, groups representing the general public or people who just periodically visit the geographic vicinity of the area subject to the approval or licence will not be considered directly affected. In these cases, consider forming a separate group of more clearly directly affected persons to submit a statement of concern to the Director.

## **What are the timelines for submitting a statement of concern?**

The timelines for submitting a statement of concern to the Director vary depending on the type of approval or licence. The timelines for submitting statements of concern are usually:

- 30 days for an approval under *EPEA*;
- 7 days for an approval under the *Water Act*; and
- 30 days for a licence under the *Water Act*.

The time period begins to run from the date of the notice.

## **What happens if I filed my statement of concern late?**

The Director has a policy not to accept late filed statements of concern. The filer can request a time extension before the time period expires but it is up to the Director to decide whether an extension is given. It is therefore very important that you obey the timelines set out in the public notice. If you cannot submit a statement of concern within the required timelines, you should contact the Director for a time extension before the deadline passes.

## **What if there are multiple approvals advertised in the same notice?**

Some large projects require approvals under *EPEA* and the *Water Act*. Likewise, some projects affecting water can require both an approval and a licence under the *Water Act*. Multiple approvals or licences may appear in a single notice in the newspaper if they are for the same project. If there are multiple approvals or licences involved, you must file separate statements of concern for each one. If

there are different timelines for submitting each statement of concern, make sure that you obey each timeline.

For example, a project may require an approval under the *Water Act* to explore for groundwater and a licence under the *Water Act* to divert the groundwater at the same location. In this case, you have to submit two statements of concern. Typically, you have 7 days to submit a statement of concern for the approval under the *Water Act* and 30 days to submit a statement of concern for the licence under the *Water Act*.

## **What happens after I submit a statement of concern?**

Once submitted, the Director reviews the statement of concern and decides if you are directly affected by the approval or licence. As mentioned above, to be considered directly affected you have to live close to the area subject to the approval or licence, or the approval or licence must have a negative impact on your livelihood or health.

If you are considered directly affected, the Director will consider your statement of concern when he or she decides whether to issue the approval or licence. As a directly affected party, you will be notified of the Director's decision and the timelines to appeal that decision.

If you are not considered directly affected, the Director will not notify you of his or her decision. In this case, you will have to contact the Director in order to find out if the approval or licence has been issued and the timelines to appeal the Director's decision.

## **How do I appeal the Director's decision on being "directly affected"?**

There is no way to appeal the Director's decision on determining whether or not you are directly affected. The Director does not have to provide reasons why he or she has rejected your statement of concern or why you are not directly affected.



Even if the Director decides that you are not directly affected, you can still file an appeal of the Director's decision to the Environmental Appeals Board (EAB). The EAB will make its own determination whether you are directly affected during the appeal.

## **How do I appeal the Director's decision on an approval or licence?**

To appeal an approval or licence under *EPEA* and the *Water Act*, you must submit a "notice to appeal" to the Environmental Appeals Board (EAB). For further information on this process, please see the Environmental Law Centre's fact sheet on the Environmental Appeals Board.

## **Where can I get more information?**

For general information about legal rights and processes related to environmental approval and licences, please contact the Environmental Law Centre. Further resources are included below.

### Environmental Law Centre Library Resources and Online Catalogue:

Chiasson, Cindy & Jodie Hierlmeier. *Public Access to Environmental Appeals: A Review and Assessment of Alberta's Environmental Appeals Board* (Edmonton: Environmental Law Centre (Alberta) Society, 2006).

### Online Articles:

Chiasson, Cindy. "Alberta Environment takes a restrictive view of 'directly affected'" (2004) 19:2 *Environmental Law Centre News Brief* 5, online: Environmental Law Centre  
<<http://www.elc.ab.ca/publications/NewsBriefDetails.cfm?ID=807>>.

Mallet, James. "Group standing and the Environmental Appeals Board" (2005) 20:1 *Environmental Law Centre News Brief* 5, online: Environmental Law Centre  
<<http://www.elc.ab.ca/publications/NewsBriefDetails.cfm?ID=862>>.

## Additional Online Resources:

Alberta Environment, approvals, online:

<<http://www3.gov.ab.ca/env/protenf/approvals/factsheets/approv.html>> - this website provides information on approvals under *EPEA*.

Alberta Environment, water approvals and licences, online:

<<http://www3.gov.ab.ca/env/water/Legislation/FactSheets/GeneralInfo.pdf>> - this website provides information on approvals and licences under the *Water Act*.


## **A word of caution about your use of this material**

The information provided in this fact sheet is current to July 31, 2006. While every effort has been made to ensure the accuracy and timeliness of the information, the information provided is of a general nature and is not a substitute for legal advice. The Environmental Law Centre encourages individuals to seek specific advice on matters of concern and not to rely solely on the information in this document.

## **The Environmental Law Centre**

The Environmental Law Centre (Alberta) Society is a registered charitable organization that was incorporated in 1982 to provide Albertans with an objective source of information on environmental and natural resources law. The Centre, which is staffed by four full-time lawyers, a librarian and a small support staff, provides services in environmental law education, assistance, research and law reform. The Centre maintains an extensive library and online catalogue of environmental law materials that is accessible by the public free of charge.

## **ENVIRONMENTAL LAW CENTRE**



Funding for the Environmental Law Centre is provided by the Alberta Law Foundation and through the generous support of the public. The Centre also accepts private and government research contracts for work relevant to and consistent with the Centre's objectives.

## **Alberta LAW FOUNDATION**

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