

# ALBERTA ENVIRONMENTAL APPEALS BOARD

## Decision

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Date of Decision – April 24, 2014

**IN THE MATTER OF** sections 91, 92, 95, and 98 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, and section 115 of the *Water Act*, R.S.A. 2000, c. W-3;

**-and-**

**IN THE MATTER OF** a notice of appeal filed by McAvoy Tankers Ltd. with respect to the issuance of Administrative Penalty No. WA-13/20-AP-NR-13/20 under the *Water Act* by the Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development.

Cite as: *McAvoy Tankers Ltd. v. Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development* (24 April 2014), Appeal No. 13-015-D (A.E.A.B.).

**BEFORE:**

Justice Delmar Perras (Retired), Board Chair.

**PARTIES:**

**Appellants:** McAvoy Tankers Ltd., represented by Ms. Denise Dirk Feininger.

**Director:** Mr. Michael Aiton, Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development, represented by Ms. Vivienne Ball, Alberta Justice and Solicitor General.

## EXECUTIVE SUMMARY

Alberta Environment and Sustainable Resource Development (AESRD) issued an Administrative Penalty to McAvoy Tankers Ltd. under the *Water Act*. The Administrative Penalty was issued for failing to check the location where the water was being hauled from was properly licenced. McAvoy Tankers Ltd. appealed the Administrative Penalty.

A mediation meeting was held in which an interim resolution was reached. McAvoy Tankers Ltd. was to provide additional information to AESRD.

In response to the additional information provided by McAvoy Tankers Ltd., AESRD requested the Board reverse the administrative penalty. Based on the request from AESRD and reviewing the information from the mediation that was made public, the Board reversed the Administrative Penalty.

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## **I. INTRODUCTION**

[1] This is the Environmental Appeals Board's decision in relation to an appeal filed by McAvoy Tankers Ltd. (the "Appellant"). Alberta Environment and Sustainable Resource Development ("AESRD") issued Administrative Penalty No. WA-13/20-AP-NR-13/20 (the "Penalty") to the Appellant for failing to ensure the location where the Appellant was hauling water from, on behalf of another company, was properly licenced. The Appellant appealed the Penalty.

[2] The Environmental Appeals Board (the "Board") held a mediation meeting at which an interim resolution was reached.

[3] After receiving additional information from the Appellant, AESRD requested the Board reverse the Penalty. The Board considered the information provided by the Appellant and AESRD, and reversed the Penalty.

## **II. BACKGROUND**

[4] On August 16, 2013, the Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development (the "Director"), issued the Penalty under the *Water Act*, R.S.A. 2000, c. W-3, to the Appellant. The Penalty totaled \$5,000.00. The Penalty was issued for failing to exercise appropriate due diligence by failing to ensure the location where the Appellant was hauling water from was properly licenced. The Appellant was hauling the water for Cenovus Energy Inc. in the area of the Steepbank River in the Municipality of Wood Buffalo, Alberta.

[5] On September 16, 2013, the Board received a Notice of Appeal from the Appellant.

[6] On September 20, 2013, the Board wrote to the Appellant and the Director (collectively the "Parties") acknowledging receipt of the Notice of Appeal and notifying the Director of the appeal. The Board requested the Director provide the Board with a copy of the records (the "Record") relating to the appeal.

[7] On October 10, 2013, the Board notified the Parties that, based on the available dates provided by the Parties, the mediation meeting would be held on January 10, 2014, in Lloydminster.

[8] On November 29, 2013, the Board received a copy of the Record, and copies were provided to the Appellant on December 10, 2013.

[9] The mediation meeting was held on January 10, 2014. As a result of productive discussions, an interim resolution was reached.

[10] On April 11, 2014, the Director notified the Board that he accepted the information provided by the Appellant and requested the Board reverse the Penalty.

### **III. ANALYSIS**

[11] As part of the interim resolution reached during mediation, the Appellant provided additional information regarding the effects of the Penalty on its business. The Appellant, in its Notice of Appeal, stated the Penalty could impact its ability to secure contracts from companies that consider environmental issues as a priority. The Appellants explained its reputation could be impacted if the Penalty was allowed to stand, and the Appellants noted it had 27 years without any workers compensation claims, environmental, or staffing concerns. According to the Appellants, the Penalty could impact its relationships and employment opportunities with hiring companies.

[12] The Appellant explained many hiring companies have forms that must be completed that require a job applicant to disclose any environmental incidences. The Appellant explained its reputation and history are often the basis on which it is hired in a competitive business.

[13] The Director, in his April 11, 2014 letter, determined a warning letter was an appropriate response in this case, and requested the Board reverse the Penalty and dismiss the appeal.

[14] Under section 98 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”), the Board has the jurisdiction to confirm, reverse, or vary the Director’s decision to issue an administrative penalty.<sup>1</sup>

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<sup>1</sup> Section 98 of EPEA provides:

[15] Based on the information provided by the Appellants regarding the potential impacts that were not anticipated as a result of the issuance of the Penalty, and the Director's reconsideration of his decision given this additional information, the Board reverses the Director's decision to issue the Penalty. The unanticipated consequences of the Penalty were more than monetary costs associated with the specific incident investigated by the Director.

[16] The Appellant was advised that a warning letter is not appealable.

#### **IV. DECISION**

[17] The Board reverses the Penalty, and the appeal is dismissed. As the Penalty has already been paid, the Board directs that AESRD refund the monies to the Appellant.

[18] With respect to section 98(3) of EPEA, the Board shall provide copies of this decision to the following:

1. Ms. Denise Dirk Feininger, on behalf of McAvoy Tankers Ltd. and;
2. Ms. Vivienne Ball, Alberta Justice and Solicitor General, on behalf of the Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development

Dated on April 24, 2014, at Edmonton, Alberta.

"original signed by"  
Delmar Perras  
Board Chair

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- "(1) In the case of a notice of appeal submitted under section 91(1)(n) or (o) of this Act or a notice of appeal submitted under section 115(1)(j), (l) or (q) of the *Water Act*, the Board shall, within 30 days after the completion of the hearing of the appeal, make a written decision on the matter.
  - (2) In its decision, the Board may
    - (a) confirm, reverse or vary the decision appealed and make any decision that the Director whose decision was appealed could make, and
    - (b) make any further order the Board considers necessary for the purposes of carrying out the decision.
  - (3) On making its decision, the Board shall immediately
    - (a) give notice of the decision to all persons who submitted notices of appeal or made representations to the Board and to all other persons who the Board considers should receive notice of the decision, and
    - (b) make the written decision available in accordance with the regulations."