

ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – July 13, 2016

IN THE MATTER OF sections 91, 92, 94, 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 an appeal filed by the Alberta Whitewater Association with respect to Administrative Penalty No. WA-16/01-AP-SSR-16/01 issued to the Alberta Whitewater Association, under the *Water Act*, by the Director, South Saskatchewan Region, Alberta Environment and Parks.

Cite as: *Alberta Whitewater Association v. Director, South Saskatchewan Region, Alberta Environment and Parks* (13 July 2016), Appeal No. 16-002-D (A.E.A.B.).

BEFORE:

Mr. Alex MacWilliam, Board Chair.

SUBMISSIONS BY:

Appellants: Alberta Whitewater Association, represented by Mr. Chuck Lee, Executive Director, Alberta Whitewater Association.

Director: Mr. Craig Knaus, Director, South Saskatchewan Region, Alberta Environment and Parks, represented by Ms. Erika Gerlock, Alberta Justice and Solicitor General.

EXECUTIVE SUMMARY

Alberta Environment and Parks (AEP) issued an Administrative Penalty in the total amount of \$5,000.00 to the Alberta Whitewater Association (the Appellant) for contravening the *Water Act*. AEP broke the penalty down by contraventions and assessed the following amounts based on its determination the Appellant: (1) used pre-cast concrete boulders without proper authorization (\$1,500.00); (2) failed to develop and implement a Siltation and Erosion Control Plan required by its Approval and failed to take adequate siltation and erosion control measures during the construction activities (\$1,500.00); and (3) failed to report contraventions (1) and (2) (\$1,500.00). AEP varied the assessment based on applicable factors by increasing the assessment by \$500.00 for failing to report the contravention and by \$1,000.00 because of wilfulness or negligence. AEP reduced the assessment by \$500.00 as the Appellant did not have any prior history of non-compliance.*

The Board received a Notice of Appeal from the Appellant appealing the Administrative Penalty. A mediation meeting was held and a resolution was reached whereby the parties recommended to the Board that the Administrative Penalty be varied by deleting Count 3, setting the applicable factors regarding reporting of the contraventions and the degree of wilfulness to neutral, and giving a credit of \$500.00 to the Appellant since it had no previous history of non-compliance. The recommendation resulted in the amount of the Administrative Penalty being reduced to \$2,500.00, and the deadline for payment being varied to October 15, 2016.

The Board accepted the mediated agreement and varied the Administrative Penalty accordingly.

* The Board notes there was a computation error in the assessment. However, the value of the Administrative Penalty was specified by AEP as \$5000.00.

TABLE OF CONTENTS

I. BACKGROUND..... 1

II. DISCUSSION..... 2

III. DECISION..... 2

IV. ORDER OF THE BOARD..... 3

I. BACKGROUND

[1] On April 15, 2016, the Director, South Saskatchewan Region, Alberta Environment and Parks (the “Director”), issued Administrative Penalty No. WA-16/01-AP-SSR-16/01 (the “Administrative Penalty”) to the Alberta Whitewater Association (the “Appellant”), for contraventions of section 142(1)(e) of the *Water Act*, R.S.A. 2000, W-3.¹ The Director has the authority to issue an administrative penalty under section 152 of the *Water Act*.²

[2] The Director issued the Administrative Penalty in the total amount of \$5,000.00 based on the following three counts:

1. Count 1: the Appellant failed to comply with Approval No. 00320828-00-00 (the “Approval”) by using construction materials (pre-cast concrete blocks) that were not authorized (\$1,500.00);
2. Count 2: the Appellant failed to develop and implement a Siltation and Erosion Control Plan to undertake the works authorized by the Approval (\$1,500.00); and
3. Count 3: the Appellant failed to report the contravention of the Approval (\$1,500.00).

The Director varied the assessment based on applicable factors by increasing the assessment by \$500.00 for failing to report the contravention and \$1,000.00 for wilfully or negligently contravening the Approval. The Director decreased the assessed amount by \$500.00 since the Appellant did not have a history of non-compliance.³

¹ Section 142(1)(e) of the *Water Act* states:

“A person who...

(e) contravenes a term or condition of the approval, preliminary certificate or licence that has been issued to that person...

is guilty of an offence.”

² Section 152 of the *Water Act* provides:

“If the Director is of the opinion that a person has contravened a provision of this Act that is specified for the purposes of this section in the regulations, the Director may, subject to the regulations, by notice in writing given to that person, require that person to pay to the Government an administrative penalty in the amount set out in the notice for each day or part of a day the contravention occurs or continues.”

³ The Board notes there was a computation error in the assessment. However, the value of the Administrative Penalty was specified by the Director as \$5000.00.

[3] On April 22, 2016, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from the Appellant. The Board acknowledged receipt of the appeal and notified the Director of the appeal.

[4] A mediation meeting was held on June 28, 2016, in Edmonton. Productive discussions at the mediation meeting resulted in a resolution of the appeal.

II. DISCUSSION

[5] The mediated agreement resulted in the Appellant and Director (the “Parties”) recommending to the Board that Count 3 should be deleted, resulting in a decrease of the amount of the Administrative Penalty of \$1,500.00. In addition, the Parties agreed to recommend the Board:

- (1) vary Adjustment Factor (a) relating to the failure to report the contravention from +\$500.00 to neutral;
- (2) vary Adjustment Factor (b) for willfully or negligently contravening the Approval from +\$1,000.00 to neutral;
- (3) confirm Adjustment Factor (e) for no history of non-compliance to remain at -\$500.00;
- (4) confirm the remaining Adjustment Factors remain at neutral; and
- (5) vary the total amount of the Administrative Penalty to incorporate the above changes, resulting in an Administrative Penalty in the total amount of \$2,500.00.

[6] The Parties also recommended the date for payment of the Administrative Penalty be varied to October 14, 2016.

III. DECISION

[7] The Board considers the mediated agreement as reasonable and will vary the Administrative Penalty as follows:

1. Count 3 of the Administrative Penalty will be deleted;
2. Adjustment Factor (a) is assessed to be neutral;
3. Adjustment Factor (b) is assessed to be neutral;
4. Adjustment Factor (e) is assessed to be -\$500.00;

5. the total amount of the Administrative Penalty is \$2,500.00; and
6. the Administrative Penalty is to be paid by October 14, 2016.

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

1. Mr. Chuck Lee, on behalf of the Alberta Whitewater Association; and
2. Ms. Erika Gerlock, Alberta Justice and Solicitor General, on behalf of the Director, Southern Region, Alberta Environment and Parks.

IV. ORDER OF THE BOARD

[9] In accordance with section 98(2) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, the Board has the authority to confirm, reverse or vary the decision of the Director.⁴ Therefore, with respect to the decision of the Director to issue Administrative Penalty No. WA-16/01-AP-SSR-16/01 to the Alberta Whitewater Association for contravention of section 142(1)(e) of the *Water Act*, the Board orders the decision of the Director be varied as follows:

1. Count 3 of the Administrative Penalty is deleted;
2. Adjustment Factor (a) is assessed to be neutral;
3. Adjustment Factor (b) is assessed to be neutral;
4. Adjustment Factor (e) is assessed to be -\$500.00;
5. the total amount of the Administrative Penalty is assessed to be \$2,500.00;
and
6. the Administrative Penalty is to be paid by October 14, 2016.

Dated on July 13, 2016, at Edmonton, Alberta.

“original signed by”

Alex MacWilliam
Board Chair

⁴ Section 98(2) of the Act provides:

“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”