
ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – May 5, 2019

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-

IN THE MATTER OF an appeal filed by TELUS Communications Inc. with respect to Administrative Penalty No. EPEA-16/12-AP-UAR-16/12 issued to TELUS Communications Inc. under the *Environmental Protection and Enhancement Act*, by the Director, Upper Athabasca Region, Alberta Environment and Parks.

Cite as: *TELUS Communications Inc. v. Director, Upper Athabasca Region, Alberta Environment and Parks* (5 May 2019), Appeal No. 16-042-D (A.E.A.B.), 2019 AEAB 12.

BEFORE:

Mr. Alex MacWilliam, Board Chair.

PARTIES:

Appellant: TELUS Communications Inc., represented by Mr. Brad Gilmour, Bennett Jones LLP.

Director: Mr. Todd Letwin, Director, Upper Athabasca 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 amount of \$634,315.00 to TELUS Communications Inc. (the Appellant) for contravening the *Environmental Protection and Enhancement Act*. AEP determined the Appellant disposed of waste at a location other than an approved waste management facility without authorization. The Administrative Penalty consisted of two components: a penalty of \$4,500.00 for contravening the Act and a further assessment of \$629,815.00 based on the economic benefit the Appellant derived from the contravention.

The Board received a Notice of Appeal from the Appellant appealing the Administrative Penalty. A mediation meeting was held with the parties and a Board-appointed mediator and discussions between AEP and the Appellant continued until a resolution was reached. The resolution resulted in the parties jointly recommending to the Board the Administrative Penalty be varied by reducing the economic benefit assessment, thereby reducing the total of the Administrative Penalty to \$276,223.00. The Board accepted the resolution reached between the parties and varied the Administrative Penalty accordingly.

TABLE OF CONTENTS

I. BACKGROUND	1
II. DISCUSSION.....	2
III. DECISION.....	2
IV. ORDER OF THE BOARD.....	3

I. BACKGROUND

[1] On October 28, 2016, the Director, Upper Athabasca Region, Alberta Environment and Parks (the “Director”), issued Administrative Penalty No. EPEA-16/12-AP-UAR-16/12 (the “Administrative Penalty”) to TELUS Communications Inc. (the “Appellant”), for contravention of section 176 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, E-12 (“EPEA”).¹ The Director has the authority to issue an administrative penalty under section 237 of EPEA.²

[2] The Director issued the Administrative Penalty to the Appellant for disposing of waste at a location other than an approved waste management facility without authorization under EPEA (“Count 1”). The Administrative Penalty was in the amount of \$634,315.00, comprising a penalty of \$4,500.00 for Count 1 and an additional amount based on the economic benefit of \$629,815.00 received by the Appellant as a result of the contravention.

[3] On November 25, 2016, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from the Appellant. The Board acknowledged receipt of the appeal and

¹ Section 176 of EPEA states:

“No person shall dispose of waste except

- (a) at a waste management facility, or in a container the contents of which will be taken to a waste management facility, that is the subject of the appropriate approval, registration or notice required under this Act, or
- (b) in accordance with the written authorization of the Director.”

² Section 237 of EPEA provides:

- “(1) Where 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 contravention.
- (2) A notice of administrative penalty may require the person to whom it is directed to pay either or both of the following:
 - (a) a daily amount for each day or part of a day on which the contravention occurs and continues;
 - (b) a one-time amount to address economic benefit where the Director is of the opinion that the person has derived an economic benefit directly or indirectly as a result of the contravention.”

notified the Director of the appeal. The Board also requested the Appellant and Director (collectively, the “Parties”) provide available dates for a mediation meeting.

[4] A mediation meeting involving the Parties and a member of the Board acting as mediator was held on November 15, 2018, in Edmonton. Discussions continued after the mediation meeting, which resulted in a resolution between the Parties leading them to jointly recommend to the Board that it accept the terms of the mediated agreement.

II. DISCUSSION

[5] The mediated agreement resulted in the Parties recommending to the Board the Administrative Penalty be varied by reducing the total assessment from \$634,315.00 to \$276,233.00. The Parties recommended the assessment of Count 1 remain at \$4,500.00, but the amount of the economic assessment be reduced to \$271,723.00 based on information provided by the Appellant to the Director during the mediation discussions. The Parties recommended the date for payment be varied from November 28, 2016 to May 31, 2019.

[6] The Board considers the terms of the mediated agreement reasonable and will vary the Administrative Penalty accordingly.

III. DECISION

[7] Based on the mediated agreement, the Board varies the Administrative Penalty as follows:

1. The total of the Administrative Penalty is reduced to \$276,223.00 by reducing the economic benefit assessment from \$629,815.00 to \$271,723.00 and leaving the assessment under Count 1 at \$4,500.00.; and
2. The Administrative Penalty is to be paid by TELUS to the Government of Alberta by May 31, 2019. No interest will be payable on this amount up to May 31, 2019.

[8] Pursuant to section 98(3) of EPEA,³ a copy of this decision is to be provided to:

³ Section 98(3) of EPEA states:

“On making its decision, the Board shall immediately

1. Mr. Brad Gilmour, Bennett Jones LLP, on behalf of TELUS Communications Inc.; and
3. Ms. Erika Gerlock, Alberta Justice and Solicitor General, on behalf of the Director, Upper Athabasca Region, Alberta Environment and Parks.

IV. ORDER OF THE BOARD

[9] In accordance with sections 98 (1) and (2) of the *Environmental Protection and Enhancement Act*, 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. EPEA-16/12-AP-UAR-16/12 to TELUS Communications Inc. for contravention of section 176 of the *Environmental Protection and Enhancement Act*, the Board orders the decision of the Director to issue the Administrative Penalty is varied as follows:

1. Count 1 in the October 28, 2016 assessment shall remain at \$4,500.00.
2. The October 26, 2016 economic benefit assessment is reduced from \$629,815.00 to \$271,723.00; and
3. The Administrative Penalty, totaling \$276,223.00 is to be paid by TELUS Communications Inc. to the Government of Alberta by May 31, 2019. No interest is payable on this amount up to May 31, 2019.

Dated on May 5, 2019, at Edmonton, Alberta.

“original signed by”
Alex MacWilliam
Board Chair

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- (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.”

⁴ Sections 98(1) and (2) of EPEA provide:

- “(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”