

ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – December 4, 2017

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 and 1350774 Alberta Ltd. with respect to Administrative Penalty No. WA-17/06-AP-SSR-17/06 issued to the Alberta Whitewater Association and 1350774 Alberta Ltd., under the *Water Act*, by the Director, South Saskatchewan Region, Alberta Environment and Parks.

Cite as: *Alberta Whitewater Association and 1350774 Alberta Ltd. v. Director, South Saskatchewan Region, Alberta Environment and Parks* (04 December 2017), Appeal Nos. 17-042-044-D (A.E.A.B.).

BEFORE:

Mr. Alex MacWilliam, Board Chair.

SUBMISSIONS BY:

Appellants: Alberta Whitewater Association, represented by Mr. Kurtis Broda, President, Alberta Whitewater Association, and 1350774 Alberta Ltd., represented by Mr. Chuck Lee, Officer of the Corporation.

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 \$20,000.00 to the Alberta Whitewater Association and 1350774 Alberta Ltd. (the Appellants) for contravening the *Water Act*. AEP alleges the Appellants contravened Approval No. 00354600-00-00 (the Approval) by (1) failing to immediately report to the Director the contravention of clauses 3.2, 3.3, and 3.7 of the Approval; (2) importing and using silt-laden material in the River Walk area in a manner that can cause siltation in contravention of clause 3.2 of the Approval; (3) releasing of water that was not equal or better quality than the quality of water in the receiving waterbody in contravention of clause 3.3 of the Approval; (4) failing to notify the Director when the Total Suspended Solids or Turbidity Limits in an approved plan were exceeded in contravention of clause 3.7 of the Approval; (5) failing to implement the Siltation and Erosion Control Plan in contravention of clause 4.1 of the Approval; and (6) the construction of unapproved structures (instream Boulders and rock slab "kick plate") at Green Tongue.

The Board received a Notice of Appeal from the Appellants 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 Counts 2, 4, 5 and 6; amending Count 1 to be moderate (Type of Contravention) and minor (Potential for Adverse Effect) for a penalty amount of \$1500; and setting assessment factors as follows: (a) \$1000, (e) \$500, and (b), (c), (d), and (f) at neutral. The recommendation resulted in the amount of the Administrative Penalty being reduced to \$5500.00.

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

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I. BACKGROUND

[1] On May 10, 2017, the Director, South Saskatchewan Region, Alberta Environment and Parks (the “Director”), issued Administrative Penalty No. WA-17/06-AP-SSR-17/06 (the “Administrative Penalty”) to the Alberta Whitewater Association and 1350774 Alberta Ltd. (the “Appellants”), for contraventions of section 36(1), 142(1)(e) and 142(1)(h) 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 \$20,000.00 based on the following six counts:

1. Count 1: the Appellant failed to immediately report to the Director of Alberta Environment and Parks the contravention of Clauses 3.2, 3.3, and 3.7 of Approval No. 00345600-00-00, being contrary to section 142(1)(e) of the *Water Act*; and
2. Count 2: the Appellant contravened Clause 3.2 of Approval No. 00354600-00-00 the importation and usage of silt-laden pit run material in the River Walk area in a manner that can cause siltation, being contrary to section 142(1)(e) of the *Water Act*; and
3. Count 3: the Appellant contravened Clause 3.3 of Approval No. 00354600-00-00, for the release of water that was not equal or better quality than the quality of water in the receiving waterbody, being contrary to section 142(1)(e) of the *Water Act*; and
4. Count 4: the Appellant failed to notify the Director if the Total Suspended Solids or Turbidity Limits specified in an approved plan are exceeded, being a contravention of Clause 3.7 of Approval No. 00354600-00-00, being contrary to section 142(1)(e) of the *Water Act*; and

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.”

5. Count 5: the Appellant contravened Clause 4.1(b) of Approval No. 00354600-00-00 for the failure to implement the Siltation and Erosion Control Plan, being contrary to section 142(1)(e) of the *Water Act*; and
6. Count 6: the Appellant contravened Section 36(1) of the *Water Act* for the unauthorized construction of unapproved structures (instream Boulders and rock slab "kick plate") at Green Tongue, being contrary to section 142(1)(h) of the *Water Act*.

[3] The Director determined the Factors (a through g) were properly assessed and remained unchanged.

[4] On June 9, 2017, the Environmental Appeals Board (the "Board") received Notices of Appeal from the Appellants. The Board acknowledged receipt of the appeals and notified the Director of the appeals.

[5] A mediation meeting was held on October 17, 2017, in Edmonton. Productive discussions at the mediation meeting resulted in a resolution of the appeals.

II. DISCUSSION

[6] The mediated agreement resulted in the Appellant and Director (the "Parties") agreeing to recommend the Board:

- (1) amend Count 1 to be moderate (Type of Contravention) and minor (Potential for Adverse Effect) for a penalty amount of \$1,500;
- (2) confirm Count 3 at moderate (Type of Contravention) and moderate (Potential for Adverse Effect) for a penalty amount of \$2,500;
- (3) withdraw Counts 2, 4, 5 and 6; and
- (4) set assessment factors at (a) \$1,000, (e) \$500, and (b), (c), (d), and (f) at neutral.

[7] The Parties recommended the Administrative Penalty be reduced to \$5,500.00.

III. DECISION

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

1. Counts 2, 4, 5 and 6 of the Administrative Penalty will be deleted;
2. Count 1 will be amended to be moderate (Type of Contravention) and minor (Potential for Adverse Effect) for a penalty amount of \$1,500;
3. Count 3 will be confirmed at moderate (Type of Contravention) and moderate (Potential for Adverse Effect) for a penalty amount of \$2,500;
4. Adjustment Factor (a) is assessed to be \$1,000;
5. Adjustment Factor (e) is assessed to be \$500;
6. Adjustment Factors (b), (c), (d), and (f) are assessed to be neutral; and
7. The total amount of the Administrative Penalty is \$5,500.00.

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

1. Mr. Kurtis Broda, on behalf of the Alberta Whitewater Association and Mr. Chuck Lee on behalf of 1350774 Alberta Ltd.; and
2. Ms. Erika Gerlock, Alberta Justice and Solicitor General, on behalf of the Director, South Saskatchewan Region, Alberta Environment and Parks.

IV. ORDER OF THE BOARD

[10] 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.³ Therefore, with respect to the decision of the Director to issue Administrative Penalty No. WA-17/06-AP-SSR-17/06 to the Alberta Whitewater Association and 1350774 Alberta Ltd. for contravention of sections 36(1), 142(1)(e) and 142(1)(h) of the *Water Act*, the Board orders the decision of the Director be varied as follows:

1. Counts 2, 4, 5 and 6 of the Administrative Penalty are deleted;
2. Count 1 is amended to be moderate (Type of Contravention) and minor (Potential for Adverse Effect) for a penalty amount of \$1,500;
3. Count 3 is confirmed as moderate (Type of Contravention) and moderate (Potential for Adverse Effect) for a penalty amount of \$2,500;

³ 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”

4. adjustment Factor (a) is assessed to be \$1,000;
5. adjustment Factor (e) is assessed to be \$500.00;
6. adjustment Factors (b), (c), (d), and (f) are assessed to be neutral; and
7. the total amount of the Administrative Penalty is assessed to be \$5,500.00.

Dated on December 4, 2017, at Edmonton, Alberta.

A handwritten signature in black ink, appearing to read 'AMW', written over a horizontal line.

Alex MacWilliam
Board Chair