

ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – July 2, 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 Priddis Greens Services Co-op Ltd. with respect to Administrative Penalty No. EPEA-19/04-AP-SSR-19/05 issued to Priddis Greens Services Co-op Ltd., under the *Environmental Protection and Enhancement Act*, by the Director, South Saskatchewan Region, Alberta Environment and Parks.

Cite as: *Priddis Greens Services Co-op Ltd. v. Director, South Saskatchewan Region, Alberta Environment and Parks* (2 July 2019), Appeal No. 18-024-D (A.E.A.B.), 2019 AEAB 22.

BEFORE:

Mr. Alex MacWilliam, Board Chair.

PARTIES:

Appellant: Priddis Greens Services Co-op Ltd.,
represented by Mr. Tom Schultz, General
Manager, Priddis Greens Services Co-op Ltd.

Director: Mr. Craig Knaus, Compliance Manager,
South Saskatchewan Region, Alberta
Environment and Parks, represented by Ms.
Nicole Hartman, Alberta Justice and Solicitor
General.

EXECUTIVE SUMMARY

Alberta Environment and Parks (AEP) issued an Administrative Penalty to Priddis Greens Services Co-op Ltd. (the Appellant) for contravening the *Environmental Protection and Enhancement Act*. AEP determined the Appellant contravened its Approval by disposing of sludge to land, without written authorization, in June 2016 and discovered by AEP on March 3, 2017. AEP assessed an administrative penalty in the amount of \$3,500.00.

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 the Administrative Penalty be varied by reducing the Administrative Penalty to \$2,500.00. The Board accepted the mediated agreement and varied the Administrative Penalty accordingly.

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I. BACKGROUND

[1] On March 1, 2019, the Director, South Saskatchewan Region, Alberta Environment and Parks (the “Director”), issued Administrative Penalty No. EPEA-19/04-AP-SSR-19/05 (the “Administrative Penalty”) to Priddis Greens Services Co-op Ltd. (the “Appellant”), for contravention of Approval No. 1589-02-00¹ issued to Priddis Greens Services Co-op Ltd. under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, E-12 (“EPEA”).² The Director has the authority to issue an administrative penalty under section 237 of EPEA.³

[2] The Administrative Penalty totalled \$3,500.00. The Director assessed a base penalty of \$2,500.00 for Count 1 for the disposal of sludge to land in June 2016 without authorization from the Director. The Director discovered the contravention on March 3, 2017.

¹ Approval No. 1589-02-00 was issued to Priddis Greens Services Co-op Ltd. for the purpose of constructing, operating, and reclaiming a wastewater system, the Priddis Wastewater Treatment plant.

² Section 227(e) of EPEA states:

“A person who ...

- (e) contravenes a term or condition of an approval, a code of practice, a certificate of variance, a reclamation certificate, a remediation certificate or a certificate of qualification,

is guilty of an offence.”

³ 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;
- (3) A person who pays an administrative penalty in respect of a contravention may not be charged under this Act with an offence in respect of that contravention.
- (4) Subject to the right to appeal a notice of administrative penalty to the Environmental Appeals Board, where a person fails to pay an administrative penalty in accordance with the notice of administrative penalty and the regulations, the Minister may file a copy of the notice of administrative penalty with the clerk of the Court of Queen’s Bench and, on being filed, the notice has the same force and effect and may be enforced as if it were a judgment of the Court.”

The Director increased the amount of the Administrative Penalty by a total of \$1,000.00 for factors (a) and (b) under section 3(2) of the *Administrative Penalty Regulation*, Alta. Reg. 23/2003.⁴

[3] On March 4, 2019, 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. The Board also requested the Appellant and Director (collectively, the “Parties”) provide available dates for a mediation meeting, and for the Director to provide the records he reviewed and that were available to him when making his decision (the “Director’s Record”).

[4] On March 14, 2019, the Appellant requested a stay of the Administrative Penalty.

[5] On April 4, 2019, the Board notified the Parties the stay was granted until the Board rendered a decision or until otherwise directed by the Board.⁵

[6] A mediation meeting involving the Parties and a member of the Board acting as mediator was held on June 27, 2019, in Calgary. Productive discussions resulted in a resolution of the appeal.

⁴ Section 3(2) of the *Administrative Penalty Regulation* states:

“In a particular case, the Director may increase or decrease the amount of the administrative penalty from the amount set out in the Base Penalty Table on considering the following factors:

- (a) the importance to the regulatory scheme of compliance with the provision;
- (b) the degree of wilfulness or negligence in the contravention;
- (c) whether or not there was any mitigation relating to the contravention;
- (d) whether or not steps have been taken to prevent reoccurrence of the contravention;
- (e) whether or not the person who receives the notice of administrative penalty has a history of non-compliance;
- (f) whether or not the person who receives the notice of administrative penalty has derived any economic benefit from the contravention;
- (g) any other factors that, in the opinion of the Director, are relevant.”

⁵ See: *Priddis Greens Services Co-op Ltd. v. Director, South Saskatchewan Region, Operations Division, Alberta Environment and Parks* (4 April 2019), Appeal No. 18-024-DL1 (A.E.A.B.), 2019 AEAB 7.

II. DISCUSSION

[7] The mediated agreement resulted in the Parties recommending to the Board the Administrative Penalty be varied by reducing the penalty for Count 1 from \$2,500.00 to \$1,500.00, thereby reducing the total Administrative Penalty from \$3,500.00 to \$2,500.00.

[8] The Board considers the mediated agreement reasonable and will vary the Administrative Penalty according to the agreement reached between the Parties. The Administrative Penalty as varied, is required to be paid within 30 days of the issuance of the Board's decision.

III. DECISION

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

1. Count 1 is reduced from \$2,500.00 to \$1,500.00;
2. the Administrative Penalty is reduced from \$3,500.00 to \$2,500.00; and
3. the Administrative Penalty is to be paid within 30 days of the issuance of the Board's decision.

[10] As this is the Board's decision in relation to the appeal, the stay is no longer in effect.

[11] Pursuant to section 98(3) of EPEA,⁶ a copy of this decision is to be provided to:

1. Mr. Tom Schultz, on behalf of Priddis Greens Services Co-op Ltd.; and
2. Ms. Nicole Hartman, Alberta Justice and Solicitor General, on behalf of the Director, South Saskatchewan Region, Alberta Environment and Parks.

⁶ Section 98(3) of EPEA states:

“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.”

IV. ORDER OF THE BOARD

[12] 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.⁷ Therefore, with respect to the decision of the Director to issue Administrative Penalty No. EPEA-19/04-AP-SSR-19/05 to Priddis Greens Services Co-op Ltd. for contravention of Approval No. 1589-02-00 issued pursuant to 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 is reduced from \$2,500.00 to \$1,500.00;
2. The Administrative Penalty is reduced from \$3,500.00 to \$2,500.00; and
3. The Administrative Penalty is to be paid within 30 days of issuance of the Board's decision.

Dated on July 2, 2019, at Edmonton, Alberta.

"original signed by"

Alex MacWilliam
Board Chair

⁷ 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"