

ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – June 28, 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 Yellowhead County with respect to Administrative Penalty No. EPEA-19/02-AP-UAR-19/03 issued to Yellowhead County, under the *Environmental Protection and Enhancement Act*, by the Director, Upper Athabasca Region, Alberta Environment and Parks.

Cite as: *Yellowhead County v. Director, Upper Athabasca Region, Alberta Environment and Parks* (28 June 2019), Appeal No. 18-026 -D (A.E.A.B.), 2019 AEAB 20.

BEFORE:

Mr. Alex MacWilliam, Board Chair.

PARTICIPANTS:

Appellant: Yellowhead County, represented by Ms. Shauna Finlay and Mr. Mikkell Arnston, Reynolds Mirth Richards & Farmer LLP.

Director: Mr. Owen Butz, Compliance Manager, Upper Athabasca Region, Alberta Environment and Parks, represented by Ms. Jodie Hierlmeier, Alberta Justice and Solicitor General.

EXECUTIVE SUMMARY

Alberta Environment and Parks (AEP) issued an Administrative Penalty to Yellowhead County (the Appellant) for contravening the *Environmental Protection and Enhancement Act*. AEP determined the Appellant failed to take remedial measures to repair, remedy, and confine the effects of a substance, being sediment, from entering the McLeod River, and failed to report a release of a substance into the environment causing an adverse effect between August of 2016 and September of 2017. AEP assessed an administrative penalty in the amount of \$13,000.00.

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 \$6,000.00. The Board accepted the mediated agreement and varied the Administrative Penalty accordingly.

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I. BACKGROUND

[1] On February 26, 2019, the Director, Upper Athabasca Region, Alberta Environment and Parks (the “Director”), issued Administrative Penalty No. EPEA-19/02-AP-UAR-19/03 (the “Administrative Penalty”) to Yellowhead County (the “Appellant”), for contravention of sections 110 and 112 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c.E-12 (“EPEA”).¹ The Director has the authority to issue an administrative penalty under section 237 of EPEA.²

¹ Section 110 of EPEA states:

- “(1) A person who releases or causes or permits the release of a substance into the environment that may cause, is causing or has caused an adverse effect shall, as soon as that person knows or ought to know of the release, report it to
- (a) the Director,
 - (b) the owner of the substance, where the person reporting knows or is readily able to ascertain the identity of the owner,
 - (c) any person to whom the person reporting reports in an employment relationship,
 - (d) the person having control of the substance, where the person reporting is not the person having control of the substance and knows or is readily able to ascertain the identity of the person having control, and
 - (e) any other person who the person reporting knows or ought to know may be directly affected by the release.
- (2) The person having control of a substance that is released into the environment that may cause, is causing or has caused an adverse effect shall, immediately on becoming aware of the release, report it to the persons referred to in subsection (1)(a), (b), (c) and (e) unless the person having control has reasonable grounds to believe that those persons already know of the release.”

Section 112 of EPEA provides:

- “(1) Where a substance that may cause, is causing or has caused an adverse effect is released into the environment, the person responsible for the substance shall, as soon as that person becomes aware of or ought to have become aware of the release,
- (a) take all reasonable measures to
 - (i) repair, remedy and confine the effects of the substance, and
 - (ii) remediate, manage, remove or otherwise dispose of the substance in such a manner as to prevent an adverse effect or further adverse effect,
- and
- (b) restore the environment to a condition satisfactory to 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] The Administrative Penalty was for a total amount of \$13,000.00. That amount reflected the evidence before the Director that, between August 2016 and September 2017, the Appellant had allegedly failed to take remedial measures to repair, remedy and confine the effects of a substance, being sediment, from entering into the McLeod River, and failed to report a release of a substance into the environment causing an adverse effect. The Director assessed a penalty of \$3,500.00 for each of Counts 1 and 2 for failing to take remedial measures to repair, remedy, and confine the effects of a substance from entering the McLeod River, and \$3,500.00 for Count 3 for failing to immediately report an unauthorized contravention. The Director also assessed a total of \$2,500.00 for factors (a), (b), and (c) under section 3(b) of the *Administrative Penalty Regulation*, Alta. Reg. 23/2003.³

[3] On March 25, 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.

[4] A mediation meeting involving the Parties and a member of the Board acting as the mediator was held on June 17, 2019, in Edmonton. Productive discussions resulted in a resolution of the appeal.

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- (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.”

³ 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.”

II. DISCUSSION

[5] The mediated agreement resulted in the Parties recommending to the Board the Administrative Penalty be varied by removing Count 1, removing the factors to vary the penalty, and reducing the penalty of Count 3 to \$2,500.00, thereby reducing the amount of the Administrative Penalty from \$13,000.00 to \$6,000.00.⁴

[6] The Board considers the mediated agreement as 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

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

1. Count 1 is deleted;
2. Count 3 is reduced to \$2,500.00;
3. the factors to vary the penalty are deleted;
4. the total Administrative Penalty is reduced from \$13,000.00 to \$6,000.00; and
5. the Administrative Penalty is to be paid within 30 days of the Board's decision.

[8] Pursuant to section 98(3) of EPEA,⁵ a copy of this decision is to be provided to:

1. Ms. Shauna Finlay and Mr. Mikkel Arnston, Reynolds Mirth Richards & Farmer LLP, on behalf of Yellowhead County; and
2. Ms. Jodie Hierlmeier, Alberta Justice and Solicitor General, on behalf of the Director, Upper Athabasca Region, Alberta Environment and Parks.

⁴ Count 1 related to the Appellant allegedly failing to take remedial measures to repair, remedy, and confine the effects of a substance from entering the McLeod River during the period of August 6, 2016 and August 11, 2017. Count 3 was in relation to the Appellant's failure to immediately report an unauthorized contravention.

⁵ 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

[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.⁶ Therefore, with respect to the decision of the Director to issue Administrative Penalty No. EPEA-19/02-AP-UAR-19/03 to Yellowhead County, the Board orders the decision of the Director to issue the Administrative Penalty is varied as follows:

1. Count 1 is deleted;
2. Count 3 penalty is reduced to \$2,500.00;
3. The factors to vary are deleted;
4. The total Administrative Penalty is reduced from \$13,000.00 to \$6,000.00;
and
5. The Administrative Penalty is to be paid within 30 days of the Board's decision.

Dated on June 28, 2019, at Edmonton, Alberta.

"original signed by"

Alex MacWilliam
Board Chair

⁶ 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"