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# ALBERTA ENVIRONMENTAL APPEALS BOARD

## Decision

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Date of Decision – November 25, 2020

**IN THE MATTER OF** sections 91, 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 Thorlakson Nature's Call Inc. of Administrative Penalty No. EPEA-19/10-AP-SSR-20/01 issued by the Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks.

Cite as: *Thorlakson Nature's Call Inc. v. Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks* (25 November 2020), Appeal No. 19-102-D (A.E.A.B.), 2020 ABEAB 30.

**BEFORE:**

Ms. Meg Barker, Acting Chair.

**SUBMISSIONS BY:**

**Appellants:** Mr. Keith Wilson, Wilson Law Office, representing Thorlakson Nature's Call Inc.

**Director:** Ms. Jodie Hierlmeier, Alberta Justice and Solicitor General, representing Mr. Craig Knaus, Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks.

## EXECUTIVE SUMMARY

Alberta Environment and Parks (AEP) issued an Administrative Penalty to Thorlakson Nature's Call Inc. (the Appellant) for contravening the *Environmental Protection and Enhancement Act* (EPEA). AEP determined the Appellant contravened EPEA by accepting more waste than authorized at its composting facility in 2018. The contravention was discovered by AEP on December 19, 2018. AEP assessed an administrative penalty in the amount of \$1,486,861.49, which included a base penalty amount of \$17,000.00 and an economic benefits amount of \$1,469,861.49.

The Board received a Notice of Appeal from the Appellant appealing the Administrative Penalty. The Board held a mediation meeting that did not result in the appeal being resolved and a hearing was subsequently scheduled. The parties were able to reach an agreed upon resolution whereby the parties recommended the Board reduce the economic benefits portion of the Administrative Penalty to \$0.00 (zero), which would reduce the total of the Administrative Penalty to \$17,000.00. The Board accepted the agreement and varied the Administrative Penalty accordingly.

**TABLE OF CONTENTS**

I. BACKGROUND ..... 1

II. DISCUSSION ..... 5

III. DECISION ..... 5

IV. ORDER OF THE BOARD ..... 6

## I. BACKGROUND

[1] Thorlakson Nature's Call Inc. (the "Appellant") operated a compost facility (the "Facility") authorized by EPEA Registration No. 268921-00-002 (the "Registration"), which was issued by Alberta Environment and Parks ("AEP") under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, ("EPEA"). The Facility was located near the City of Airdrie, in Rocky View County. The Facility was subject to the *Code of Practice for Compost Facilities* (the "COP") and was authorized to accept no more than 20,000 tonnes of organic waste per year to create compost, including:

- leaf and yard waste;
- municipal food waste;
- agricultural waste; and
- organic materials that biologically decompose.

[2] On December 19, 2018, AEP employees inspected the Facility and learned it had received more than 20,000 tonnes of organic waste in 2018. Further investigation showed the Facility had accepted a total of 54,994 tonnes of organic waste in 2018.

[3] On September 5, 2019, at a meeting between the Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks (the "Director") and the Appellant, the Appellant told the Director that in 2018 it spent more in processing the excess organic waste than it received in tipping fees from its customers.

[4] On February 12, 2020, the Director issued Administrative Penalty No. EPEA-19/10-AP-SSR-20/01 (the "Administrative Penalty")<sup>1</sup> to the Appellant for contravention of the Registration, the COP, and EPEA. Section 137 of EPEA authorizes the Director to issue the Administrative Penalty.<sup>2</sup>

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<sup>1</sup> Director's Record, at Tab 1.

<sup>2</sup> 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

[5] The Administrative Penalty totalled \$1,486,861.49. The Director assessed a base penalty of \$17,000.00 for the following five counts:

- Count 1: \$3,500.00 for contravening section 61 of EPEA<sup>3</sup> by accepting more than 20,000 tonnes of waste per year without an approval.
- Count 2: \$1,000.00 for contravening sections 6(1), 7(1), and 11(1) of the COP<sup>4</sup> by failing to:

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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.”

<sup>3</sup> Section 61 of EPEA provides: “No person shall commence or continue any activity that is designated by the regulations as requiring an approval or registration or that is redesignated under section 66.1 as requiring an approval unless that person holds the required approval or registration.”

<sup>4</sup> Section 6 (1) of the COP provides:

“The person responsible shall construct a compost facility that is designed in accordance with the following requirements:

- (a) there shall be a design plan which defines and describes
  - (i) the operating capacity of the compost facility to receive feedstock, and to produce and store the compost and non-compostable materials,
  - (ii) the structures and equipment required for the operation of the compost facility, and
  - (iii) the structures, facilities and equipment for control of emissions of offensive odours and contaminated liquids;
- (b) there shall be a composting pad
  - (i) constructed of at least 0.5 metres of clayey material having a permeability less than  $5 \times 10^{-8}$  metres per second, or an alternative material that provides equivalent protection, and
  - (ii) constructed with a minimum slope of 2 percent in order that the pad does not collect water or leachate;
- (c) there shall be a run-on control system that prevents the flow of surface water onto the storage, processing and curing areas; and
- (d) there shall be a run-off control and management system that provides protection of surface water quality in accordance with section 7(4).”

Section 7(1) of the COP states:

“The person responsible shall develop, maintain and implement an operations plan that is consistent with the compost facility design and includes as a minimum:

- create a design plan for the Facility;
  - maintain its operations plan for the Facility;
  - maintain an operating record for the Facility; and
  - provide the record and its contents to AEP upon request.
- Count 3: \$1,500.00 for contravening section 7(4) of the COP<sup>5</sup> by failing to prevent the release of leachate or runoff from the placement of uncured compost windrows off the compost pad.
- Count 4: \$3,500.00 for contravening section 12 of the COP<sup>6</sup> by failing to immediately report contraventions of the COP to the Director.
- Count 5: \$3,500.00 for contravening section 176 of EPEA<sup>7</sup> by disposing of waste on lands and not at a waste management facility.

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- (a) a description of the source and types of feedstock to be composted;
  - (b) operation procedures for feedstock preparation, aeration, moisture control, and temperature control;
  - (c) feedstock acceptance procedures and policies;
  - (d) an emergency response plan to deal with fires, releases, or medical emergencies;
  - (e) a plan for the management, detection and mitigation of offensive odours; and
  - (f) a plan for minimizing dust.”

Section 11(1) of the COP provides: “The person responsible shall establish and maintain an operating record for the compost facility, and shall provide the operating record and its contents to Alberta Environmental Protection upon request.”

<sup>5</sup> Section 7(4) of the COP states:

“The person responsible shall prevent the release of leachate or run-off from the composting pad to the surrounding watershed unless the leachate or run-off meets the least stringent of the following parameters:

- (a) surface water background quality,
- (b) the most recent edition of Alberta Ambient Water Quality Interim Guidelines, published by Alberta Environmental Protection, or
- (c) the most recent edition of Canadian Water Quality Guidelines, published by the Canadian Council of Ministers of the Environment.”

<sup>6</sup> Section 12 of the COP provides:

“The person responsible shall immediately report any contraventions of this Code of Practice by telephone to the Director of Pollution Control Division at (403) 422-4505. The Director of Pollution Control Division may require the person responsible to provide a further written report of any contravention.”

<sup>7</sup> 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.”

The Director increased the amount of the Administrative Penalty by a total of \$4,000.00 for factors (a) and (b) under section 3(2) of the *Administrative Penalty Regulation*,<sup>8</sup> Alta. Reg. 23/2003. The total base penalty assessed was \$17,000.00.

[6] The Director assessed the economic benefit the Appellant derived from the contraventions at \$1,469,861.49. The total penalty (base penalty plus economic benefit) was assessed at \$1,486,861.49.

[7] On March 11, 2020, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from the Appellant. The Board acknowledged receipt of the appeal, requested the Appellant and the Director (collectively, the “Parties”) provide available dates for a mediation meeting, and asked the Director to provide the records he reviewed and that were available to him when making his decision (the “Director’s Record”).

[8] The Director’s Record was received on April 28, 2020, and provided to the Appellant on May 12, 2020.

[9] The Board held a mediation meeting on July 15, 2020. Due to the COVID-19 pandemic, the meeting was held by video conference. The Parties did not reach an agreement at the mediation meeting, but continued to discuss the matter.

[10] The Board scheduled a hearing by video conference for November 4, 2020, and published a Notice of Hearing in the local newspaper specifying a deadline for applications to intervene in the hearing. The hearing was subsequently rescheduled to November 25, 2020.

[11] On September 25, 2020, the Board received an intervenor application from a local resident. After receiving comments from the Parties, the Board denied the intervenor’s application.<sup>9</sup>

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<sup>8</sup> Sections 2(a) and (b) 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...”

<sup>9</sup> See: *Intervenor Decision: Thorlakson Nature’s Call Inc. v. Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks* (25 November 2020), Appeal No. 19-102-DL1 (A.E.A.B.), 2020 ABEAB 29.

[12] On November 16, 2020, the Board received a letter from legal counsel for the Director, which stated:

“After corresponding with [legal counsel for the Appellant], I am writing with a joint proposal to settle this file. The joint resolution is as follows:

Upon the Environmental Appeals Board providing its Report that the economic benefit assessment will not proceed against Thorlakson Nature's Call Inc., Thorlakson Nature's Call Inc. agrees to withdraw EAB appeal 19-102.”<sup>10</sup>

[13] The Board responded on November 17, 2020, and noted the Appellant had previously agreed to pay the base penalty amount and that the appeal was only in relation to the economic benefit portion of the Administrative Penalty. The Board advised that as the Parties had reached the resolution regarding the economic benefit, the November 25, 2020 hearing was cancelled, and the Board would issue a Decision in accordance with section 98 of EPEA.<sup>11</sup>

## **II. DISCUSSION**

[14] In the negotiated agreement the Parties recommended to the Board the Administrative Penalty be varied by reducing the economic benefits portion of the penalty from \$1,469,861.49 to \$0.00. Reducing the economic benefits portion of the penalty to \$0.00 reduces the total Administrative Penalty from \$1,486,861.49 to \$17,000.00.

[15] The Board considers the agreement acceptable and will vary the Administrative Penalty according to the agreement reached between the Parties. The Board understands that the Appellant has already paid the base penalty amount of \$17,000.00.

## **III. DECISION**

[16] Based on the agreement between the Parties, the Board varies the Administrative Penalty as follows:

- (a) the economic benefits portion of the Administrative Penalty is reduced from \$1,469,861.49 to \$0.00;

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<sup>10</sup> Director's letter, November 16, 2020.

<sup>11</sup> Board's letter, November 17, 2020.

- (b) the Administrative Penalty is reduced from \$1,486,861.49 to \$17,000.00;
- (c) if it has not been paid, then the Administrative Penalty is to be paid within 30 days of the issuance of the Board's decision; and
- (d) no interest is payable on the Administrative Penalty if paid within 30 days of the issuance of the Board's decision.

[17] Pursuant to section 98(3) of EPEA,<sup>12</sup> a copy of this decision is to be provided to:

- 1. Mr. Keith Wilson, Wilson Law Offices, on behalf of Thorlakson Nature's Call Inc.; and
- 2. Ms. Jody Hierlmeier, Alberta Justice and Solicitor General, on behalf of the Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks.

#### **IV. ORDER OF THE BOARD**

[18] 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.<sup>13</sup> Therefore, with respect to the decision of the Director to issue Administrative Penalty No. EPEA-19/10-AP-SSR-20/01 to Thorlakson Nature's Call Inc. for contravention of EPEA Registration No. 268921-00-002 issued pursuant to the *Environmental Protection and Enhancement Act*, and the *Code of Practice For Compost Facilities*, the Board orders the decision of the Director to issue the Administrative Penalty is varied as follows:

- 1. The economic benefits portion of the Administrative Penalty is reduced from \$1,469,861.49 to \$0.00;

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<sup>12</sup> Section 98(3) of EPEA provides:

"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."

<sup>13</sup> Section 98(1) and (2) of EPEA provides:

"(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, and (b) make any further order the Board considers necessary for the purposes of carrying out the decision."

2. The Administrative Penalty is reduced from \$1,486,861.49 to \$17,000.00;
3. If the Administrative Penalty has not been paid, it is to be paid within 30 days of the issuance of the Board's decision; and
4. No interest is payable on the Administrative Penalty if paid within 30 days of the issuance of the Board's decision.

Dated on November 25, 2020, at Edmonton, Alberta.

*“original signed by”*

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Meg Barker  
Acting Chair