
ALBERTA
ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – June 2, 2021

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 Sno-Valley Farms Ltd. with respect to the decision of the Director, Regional Compliance, Red Deer-North Saskatchewan Region, Alberta Environment and Parks, to issue Administrative Penalty No. AP-EPEA-30619 to Sno-Valley Farms Ltd.

Cite as: *Sno-Valley Farms Ltd. v. Director, Regional Compliance, Red Deer-North Saskatchewan Region, Alberta Environment and Parks* (2 June 2021), Appeal No. 20-045-D (A.E.A.B.), 2021 ABEAB 16.

BEFORE:

Meg Barker, Acting Board Chair.

PARTIES:

Appellant:

Sno-Valley Farms Ltd., represented by Mr. Scott Norman, Director, Sno-Valley Farms Ltd.

Director:

Mr. Owen Butz, Director, Regional Compliance, Red Deer- North Saskatchewan Region, Alberta Environment and Parks.

EXECUTIVE SUMMARY

Alberta Environment and Parks (AEP) issued an Administrative Penalty to Sno-Valley Farms Ltd. (the Appellant) for contravening the *Environmental Protection and Enhancement Act*. AEP alleged that between June 7, 2018, and May 9, 2019, the Appellant provided a pesticide service involving the use or application of a pesticide listed in Schedule 2 of the *Pesticide (Ministerial) Regulation*, being Axial Xtreme and PrePass XC, for hire or reward, without holding a valid Pesticide Service Registration. The amount of the Administrative Penalty assessed by AEP was \$3,000.00.

The Appellant filed a Notice of Appeal with the Environmental Appeals Board (the Board). 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 assessed amount to \$1,500.00.

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

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I. BACKGROUND

[1] On April 23, 2019, Alberta Environment and Parks (“AEP”) received a report that Sno-Valley Farms Ltd. (the “Appellant”) operated by Mr. Norman Scott (“Mr. Scott”) was providing a pesticide service without being a holder of a Pesticide Service Registration. Sno-Valley Farms Ltd. is a sister corporation to Sno-Valley Manure Management Ltd. Both are owned and operated by Mr. Scott. The report stated that the Appellant had provided a pesticide service on June 7, 2018, at SE-6-36-26-W4M in Red Deer County, Alberta. AEP later received a second report on June 6, 2019, stating that a pesticide service was provided by the Appellant at SE-36-36-26-W4M on May 9, 2019, in Red Deer County, Alberta.

[2] On June 6, 2019, an Environmental Protection Officer (“EPO”) contacted Mr. Scott. Mr. Scott advised that Mr. Richard Scott had his applicator certificate and the Appellant was providing a pesticide service. The EPO advised Mr. Scott that a Pesticide Service Registration was required in order to provide a pesticide service for hire or reward. Mr. Scott advised the EPO that he was unaware one was required.

[3] The Appellant submitted an application for a Pesticide Service Registration on June 6, 2019, and received its Pesticide Service Registration (PSR # 437427-00-00) on June 13, 2019.

[4] AEP sent an investigator’s notice to the Appellant on June 7, 2019. The investigator’s notice stated that the Appellant required a Pesticide Service Registration in order to provide a pesticide service for hire or a reward. The investigator’s notice provided the legal requirements to obtain a Pesticide Service Registration and the requirement for a certified applicator.

[5] AEP investigated the applications and the services provided by the Appellant. The results of the investigation revealed that the Appellant had applied pesticide to land located at SE-6-36-26-W4M in Red Deer County, Alberta, on June 7 and July 8, 2018.

[6] On August 1, 2019, Mr. Scott and Mr. Richard Scott were both interviewed by the EPO. Both Mr. Scott and Mr. Richard Scott admitted to providing a pesticide service without a valid registration during the 2018 and 2019 season. The EPO was advised that the pesticide service

had previously been provided by Sno-Valley Manure Management Ltd., but was subsequently provided by the Appellant.

[7] The Appellant provided additional records to AEP over the course of the investigation, which showed that the Appellant had applied Axial Extreme (PCP 30391) and Prepass (XC 29651 and 29652) to agricultural land. The records also showed the Appellant had been applying Roundup, Liberty Assure, Viper Advantage, and Simplicity. These records revealed applications had been made to land not owned or leased by the Appellant during the 2018 and 2019 seasons.

[8] The pesticides applied by the Appellant are listed on Schedule 2 of the *Pesticide (Ministerial) Regulation*¹ as either commercial or agricultural. Section 7 of the *Pesticide (Ministerial) Regulation* states that no person shall offer or provide a pesticide service involving the application of a pesticide listed in Schedule 2, whether or not for hire or reward, unless the person has a Pesticide Service Registration for the specific class of activity listed in Schedule 5.² The evidence provided by the Appellant showed it did not possess a valid Pesticide Service Registration.

[9] On February 19, 2021, the Director, Regional Compliance, Red Deer-North Saskatchewan Region, Alberta Environment and Parks (the “Director”), in accordance with section 237 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”),³ issued

¹ *Pesticide (Ministerial) Regulation*, Alta. Reg. 43/1997, at Schedule 2.

² Section 7(1)(a) of the *Pesticide (Ministerial) Regulation* provides:

“7(1) No person shall offer or provide a pesticide service involving the use or application of a pesticide listed in Schedule 1, 2 or 3 whether or not for hire or reward, unless that person (a) holds a valid pesticide service registration for the specific class of activity listed in Schedule 5,”

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.

Notice of Administrative Penalty No. EPEA-18/07-AP-LAR (the “Administrative Penalty”) to Sno-Valley Farms Ltd. in the amount of \$3,000.00.

[10] The Administrative Penalty consisted of two counts. Count 1 related to the Appellant having provided a pesticide service on June 7, 2018, at SE 6-36-26-W4M in Red Deer County, Alberta. Count 2 related to the Appellant providing a pesticide service at SE-36-36-26-W4M on May 9, 2019, in Red Deer County, Alberta. In setting the amount of the Administrative Penalty, the Director calculated a base assessment of \$3,000.00 with neutral factors that did not vary the assessment.⁴

[11] On March 9, 2021, the Environmental Appeals Board (the “Board”) acknowledged receipt of a Notice of Appeal from the Appellant and notified the Director of the appeal. The Board requested the Appellant and the Director (collectively the “Parties”) provide available dates

(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.”

⁴ Section 3(1) and 3(2) of the *Administrative Penalty Regulation*, A.R. 23/2003, lists factors a Director may consider when assessing the amount of an Administrative Penalty:

“3(1) Subject to subsections (2) and (3), the amount of an administrative penalty for each contravention that occurs or continues is the amount set out in the Base Penalty Table but that amount may be increased or decreased by the Director in accordance with subsection (2).

BASE PENALTY TABLE
Type of Contravention

| | | Major | Moderate | Minor |
|---|----------|--------|----------|--------|
| Potential for Adverse Effect | Major | \$5000 | \$3500 | \$2500 |
| | Moderate | 3500 | 2500 | 1500 |
| | Minor to | 2500 | 1500 | 1000 |
| | None | | | |

- (2) 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.”

for a mediation meeting and the Director provide the records he reviewed and that were available to him when making his decision (the “Director’s Record”).

[12] The Director’s Record was received by the Board on April 15, 2021, and provided to the Appellant on April 19, 2021.

[13] A mediation meeting involving the Parties and a member of the Board acting as a mediator was held on April 29, 2021, by way of teleconference. Productive discussions resulted in a resolution of the appeal.

II. DISCUSSION

[14] The mediated agreement resulted in the Parties recommending to the Board the Administrative Penalty be varied by reducing the Administrative Penalty from \$3,000.00 to \$1,500.00. The Board considers the mediated agreement to be reasonable and will vary the Administrative Penalty according to the agreement reached between the Parties.

III. DECISION

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

1. The Director’s assessment for one Count of \$1,500.00 will be reversed; and
2. The Director’s assessment for the second Count will be \$1,500.00.

[16] Pursuant to section 98 of EPEA, a copy of this decision is to be provided to:

1. Mr. Norman Scott, Director, Sno-Valley Farms Ltd.; and
2. Mr. Owen Butz, Director, Regional Compliance, Red Deer-North Saskatchewan Region, Alberta Environment and Parks.

IV. ORDER OF THE BOARD

[17] In accordance with section 98 (1) and (2) of EPEA, the Board has the authority to confirm, reverse, or vary the decision of the Director.⁵ Therefore, with respect to the decision of the Director to issue the Administrative Penalty to Sno-Valley Farms Ltd., the Board orders the decision of the Director to issue the Administrative Penalty is varied as follows:

1. The assessment for Count 2 of \$1,500.00 is reversed;
2. The assessment for Count 1 of \$1,500.00 is confirmed;
3. The Date(s) of Offence(s) on the face of the Notice of Administrative Penalty is repealed and replaced with:
“Dates on which the offences came to the attention of Alberta Environment and Parks: April 23, 2019 & June 6, 2019.”
4. No interest is owing or to be charged on the Administrative Penalty for any period before 30 days after the date of the Board’s decision;
and
5. The Administrative Penalty shall be paid in full (\$1,500.00) within 30 days of the issuance of the Board’s decision.

Dated on June 2, 2021, at Edmonton, Alberta.

“original signed by”

Meg Barker
Acting Board Chair

⁵ Section 98 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.
(3) 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.”