

ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – April 25, 2022

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 Salt Box Coulee Water Supply Company Ltd. of Administrative Penalty No. AP-EPEA-32479 issued under the *Environmental Protection and Enhancement Act* by the Director, Environmental Investigations, Environmental Enforcement Branch, Regulatory Assurance Division, Alberta Environment and Parks, to Salt Box Coulee Water Supply Company Ltd.

Cite as: *Salt Box Coulee Water Supply Company Ltd. v. Director, Environmental Investigations, Environmental Enforcement Branch, Regulatory Assurance Division, Alberta Environment and Parks* (25 April 2022), Appeal No. 21-021-D (A.E.A.B.), 2022 ABEAB 17.

BEFORE:

Dr. Chidinma Thompson, Chair.

SUBMISSIONS BY:

Appellant: Mr. Jeff Colvin, Salt Box Coulee Water Supply Company Ltd.

Director: Mr. Owen Butz, Director, Environmental Investigations, Environmental Enforcement Branch, Regulatory Assurance Division, Alberta Environment and Parks.

EXECUTIVE SUMMARY

Alberta Environment and Parks (AEP) issued an Administrative Penalty to Salt Box Coulee Water Supply Company Ltd. (the Appellant) for contravening their Approval to operate a waterworks system by failing to monitor the waterworks systems, failing to report the contravention to AEP, and failing to file electronic monthly reports. AEP assessed an administrative penalty in the amount of \$8,000.00.

The Board received a Notice of Appeal from the Appellant appealing the Administrative Penalty. The Board held a mediation meeting that resulted in the appeal being resolved. The parties were able to reach an agreed upon resolution whereby the parties recommended that the Board reduce the Administrative Penalty to \$4,000.00. The Board accepted the agreement and varied the Administrative Penalty accordingly.

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I. BACKGROUND

[1] Salt Box Coulee Water Supply Company Ltd. (the “Appellant”) operates a waterworks system in Rocky View County originally authorized by EPEA Approval No. 67490-01-00, and followed by EPEA Approval No 67490-02-00 (the “Approval”), which were issued by Alberta Environment and Parks (“AEP”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, (“EPEA”).

[2] On December 3, 2019, AEP conducted a search for electronic monitoring data which revealed the Appellant did not enter data from April 1 to December 3, 2019, as required by the Approval. A subsequent inspection carried out at the Appellant’s facility by AEP on December 5, 2019, and further investigations by AEP, revealed further contraventions of the Approval including missed sampling and reporting.

[3] On September 17, 2021, the Director, Environmental Investigations, Environmental Enforcement Branch, Regulatory Assurance Division, Alberta Environment and Parks (the “Director”) issued a letter to the Appellant providing a preliminary assessment of the contraventions and penalty. The Appellant responded to the Director on November 2, 2021.

[4] On November 10, 2021, the Director issued Administrative Penalty No. AP-EPEA-32479 (the “Administrative Penalty”) and the explanatory document Director’s Decision¹ to the Appellant for contravention of the Approval and section 227(e) of EPEA. Section 237 of EPEA authorizes the Director to issue the Administrative Penalty.²

¹ Director’s Record, at Tab 1.

² Section 237 of EPEA provides in part:

“(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

[5] The Administrative Penalty totalled \$8,000.00. The Director assessed a base penalty of \$7,500.00 for five counts of contravening section 227(3) of EPEA. The Director increased the amount of the Administrative Penalty by \$500.00 for factor (a) under section 3(2) of the *Administrative Penalty Regulation*,³ Alta. Reg. 23/2003. The additional \$500.00 reflects the importance to the regulatory scheme and the consequence to water users for failing to immediately report contraventions of the drinking water monitoring requirements.

[6] On December 10, 2021, 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 were available to him when making his decision to issue the Administrative Penalty (the “Director’s Record”).

[7] The Director’s Record was received on January 25, 2022, and provided to the Appellant on January 27, 2022.

[8] The Board held a mediation meeting on April 6, 2022 by video conference. The Parties reached an agreement at the mediation meeting, recommending that the Board vary the Administrative Penalty.

II. DISCUSSION

[9] In the negotiated agreement, the Parties recommended to the Board the Administrative Penalty be varied by:

- (a) withdrawing Count 3 (failure to report the contraventions of the Approval) in the amount of \$1,500.00;

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.”

³ Sections 2 of the *Administrative Penalty Regulation* states in part:
“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) withdrawing Count 5 (failure to file an electronic monthly report for April 2019) in the amount of \$1,500.00;
- (c) varying the adjustment factor (a) (the importance to the regulatory scheme of compliance with the provision) from an increase of +\$500.00 to neutral (\$0);
- (d) varying the adjustment factor (d) (whether or not steps have been taken to prevent reoccurrence of the contravention) from neutral (\$0) to a decrease of \$500.00; and
- (e) directing the Appellant to pay the Administrative Penalty, in the amount of \$4,000.00, within 12 months of the date of the Board's decision in this appeal.

[10] The Board considers the agreement acceptable and will vary the Administrative Penalty according to the agreement reached between the Parties.

III. DECISION

[11] Based on the agreement between the Parties, the Board varies the \$8,000.00 Administrative Penalty as follows:

- (a) Count 3 (failure to report the contraventions of the Approval) is withdrawn, reducing the Administrative Penalty by \$1,500.00;
- (b) Count 5 (failure to file an electronic monthly report for April 2019) is withdrawn, reducing the Administrative Penalty by \$1,500.00;
- (c) Adjustment factor (a) (the importance to the regulatory scheme of compliance with the provision) is varied from an increase of +\$500.00 to neutral (\$0);
- (d) Adjustment factor (d) (whether or not steps have been taken to prevent reoccurrence of the contravention) is varied from neutral (\$0) to a decrease of \$500.00;
- (e) the Appellant will pay the Administrative Penalty, in the amount of \$4,000.00, within 12 months of the date of the Board's decision in this appeal;
- (f) no interest is payable on the Administrative Penalty if paid within 12 months of the issuance of the Board's decision in this appeal.

[12] Pursuant to section 98(3) of EPEA,⁴ a copy of this decision is to be provided to:

1. Mr. Jeff Colvin, Salt Box Coulee Water Supply Company Ltd.;
2. Mr. Owen Butz, Director, Environmental Investigations, Environmental Enforcement Branch, Regulatory Assurance Division, Alberta Environment and Parks; and
3. Environmental Law Section, Alberta Justice and Solicitor General.

IV. ORDER OF THE BOARD

[13] 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.⁵ Therefore, with respect to the decision of the Director to issue Administrative Penalty No. AP-EPEA-32479 to Salt Box Coulee Water Supply Company Ltd. for contravention of its Approval, the Board orders the decision of the Director to issue the Administrative Penalty and Director's Decision are varied as follows:

1. Count 3 in the amount of \$1,500.00 is withdrawn;
2. Count 5 in the amount of \$1,500.00 is withdrawn;
3. Adjustment factor (a) is varied from an increase of +\$500.00 to neutral (\$0);
4. Adjustment factor (d) is varied from neutral (\$0) to a decrease of \$500.00;
5. The total amount of the Administrative Penalty is varied from \$8,000.00 to \$4,000.00;

⁴ 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.”

⁵ 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.”

6. The Appellant will pay the Administrative Penalty, in the amount of \$4,000.00, within 12 months of the date of the Board's decision in this appeal; and
7. No interest is payable on the Administrative Penalty if paid within 12 months of the issuance of the Board's decision in this appeal.

Dated on April 25, 2022, at Edmonton, Alberta.

"original signed by"

Chidinma Thompson

Chair