
ALBERTA ENVIRONMENTAL APPEAL BOARD

Decision

Date of Decision: January 21, 2000

IN THE MATTER OF Sections 84, 87, 91, 92 and 223 of the *Environmental Protection and Enhancement Act*, (S.A. 1992, ch. E-13.3 as amended);

-and-

IN THE MATTER OF an appeal filed by Mr. Alan Halvorson on behalf of Plainsland Airspray Limited with respect to Administrative Penalty No. 99/09-PRA-AP-99/10 issued to Plainsland Airspray Limited by Mr. Fred Schulte, Director of Enforcement and Monitoring, Alberta Environmental Protection.

Cite as: Plainsland Airspray Limited v. Director of Enforcement and Monitoring, Alberta Environment.

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BACKGROUND

[1] On March 17, 1999 the Environmental Appeal Board (Board) received a Notice of Appeal dated March 15, 1999 from Mr. A. Halvorson of Plainsland Airspray Ltd. (Appellant) with respect to a Notice of Administrative Penalty in the sum of \$3,000 issued by F.J.Schulte, Director of Enforcement and Monitoring Environmental Service, Alberta Environment (Department).

[2] According to standard practice, on March 17, 1999, the Board wrote to the Natural Resources Conservation Board (NRCB) and the Alberta Energy and Utilities Board (AEUB) asking whether this matter had been the subject of a hearing or review under their respective Board's legislation. Replies were subsequently received from the AEUB and the NRCB on March 18, 1999 stating they did not hold any hearing or review under their respective legislation.

[3] The Board scheduled this matter for hearing in Lethbridge, Alberta for October 1, 1999 with a notice to affected parties published in the Lethbridge Herald. No persons other than the parties to this appeal notified the Board of their intention to participate in the appeal process.

[4] On September 21, 1999 the Department advised the Board that it believed a mediated resolution could be achieved. On September 22, 1999 the Department advised the Board that the Director and Mr. Halvorson¹ had entered into an agreement that they entitled and treated as a Mediation Resolution pursuant to s. 12(2) of the Environmental Appeal Board Regulation.²

¹ The agreement incorrectly refers to Mr. Halvorson as the appellant. This is clearly an oversight since the penalty was assessed against Plainsland Airspray Ltd. and under s. 84(1)(k) only Plainsland could appeal. Mr. Halvorson was clearly acting throughout as the spokesperson of Plainsland Airspray Ltd. and the Board treats this document and the subsequent withdrawal as being on behalf of Plainsland Airspray Ltd.

² Section 12(2) of the Environmental Appeal Board Regulation A.R. 114/93 provides:

- (2) Where the parties agree to a resolution of a notice of objection filed pursuant to section 84(1)(k) or (l) of the Act, the Board shall within 15 days:
- (a) make its written decision reflecting the agreed upon resolution,
 - (b) obtain the signatures of all the parties to the appeal consenting to the written decision,
 - (c) send a copy of the written decision to each party, and
 - (d) give notice as required under section 90(4)(a) of the Act to all other persons who the Board considers should receive notice of the decision.

[5] The mediated resolution document, a copy of which the Board received, provides, in part:

IT IS HEREBY AGREED THAT:

1. The Appellant and the Director request that the EAB issue a decision directing that Notice of Administrative Penalty No. 99/09-PRA-AP-99/10 is declared void.³
2. The Appellant shall forthwith withdraw Appeal No. 99-007 filed with the EAB.
3. This resolution is entered into on a without costs basis.

[6] Pursuant to the mediated resolution document, and at the Director's request in order to finalize this matter, Mr. Halvorson forwarded a letter to the Board dated November 29, 1999 saying "this will confirm that I withdraw my appeal, being Appeal No. 99-077, filed with the Environmental Appeal Board on March 17, 1999." Given the circumstances under which this letter was sent, it is clear this withdrawal was pursuant to the mediated agreement and conditional upon the Board's accepting the parties signed memorandum as a consent to the Board's written decision in the form requested in the memorandum of mediated resolution--all, pursuant to s. 12(2)(b) of the Environmental Appeal Board regulation. As such, it is not a withdrawal that terminates the Board's jurisdiction pursuant to s. 87(7); at least not until the condition is met and the Board's decision issued.

[7] Pursuant to section 90(3) of the Act, the Board may do the following:

- (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 The reason for this request for a decision, recited in the preamble was that "new information came to light after the Director's decision had been made." Apparently this information also came to light after the appeal to this

The Director could, had the Director known of the matters he now concedes are relevant, have decided *not* to impose an administrative penalty. The Board's powers on this appeal are coincident with the Director's original powers. Since the Director now concedes the decision to impose the Administrative Penalty was void and therefore inappropriate, it is appropriate for the Board to so rule, particularly since the parties ask in writing that we do so.

DECISION

[8] The Board therefore decides pursuant to s. 90(3)(a) and s. 12(2) of the Regulation⁴ that Notice of Administrative Penalty No. 99/09 PRA-AP-99/10 is void and as a consequence set aside. The Board confirms the parties agreement, which incidentally, is without costs. Under the provisions of section 12(2) of the Regulation it is unnecessary for the Appellant to withdraw its appeal. However, since Plainsland Airspray Ltd. has done so, the Board, having issued this decision, discontinues its proceedings in Appeal No. 99-007 and will be closing its file.

DATED January 21, 2000 at Edmonton, Alberta

Dr. William A. Tilleman, Q.C.

⁴ A.R. 114/93 as amended.