
ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – November 16, 2020

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 section 115 of the *Water Act*, R.S.A. 2000, c. W-3;

-and-

IN THE MATTER OF an appeal filed by Chappy's Contracting Ltd. with respect to the decision of the Director, North Region, Regulatory Assurance Division, Alberta Environment and Parks, to issue Administrative Penalty No. WA-20/07-AP-NR-20/07 under the *Water Act* to Chappy's Contracting Ltd.

Cite as: *Chappy's Contracting Ltd. v. Director, North Region, Regulatory Assurance Division, Alberta Environment and Parks* (16 November 2020), Appeal No. 20-017-D (A.E.A.B.), 2020 ABEAB 28.

BEFORE:

Ms. Meg Barker, Acting Board Chair.

PARTIES:

Appellant:

Chappy's Contracting Ltd., represented by Mr. Mitch and Ms. Natasha Chapdelaine.

Director:

Mr. Simon Tatlow, Director, North Region,
Regulatory Assurance Division, Alberta
Environment and Parks.

EXECUTIVE SUMMARY

Alberta Environment and Parks (AEP) issued an Administrative Penalty to Chappy's Contracting Ltd. (the Appellant) for constructing an unauthorized crossing over Punk Creek at SE 19-65-9-W4M in Lac La Biche County. The amount of the Administrative Penalty assessed by AEP was \$3,500.00. In setting the amount of the Administrative Penalty, AEP calculated a base assessment of \$2,500.00 plus an additional \$1,000.00 for factors that varied the assessment.

The Appellant filed a Notice of Appeal with the Environmental Appeals Board (the Board). The Board held pre-mediation conference calls with each of the parties and scheduled a mediation meeting. Due to unforeseen circumstances, the mediation meeting was cancelled. The parties entered into discussions on their own and reached a resolution whereby the parties recommended to the Board that the Administrative Penalty be varied by reducing the assessed amount to \$1,000.00.

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

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I. BACKGROUND

[1] On August 17, 2020, the Director, North Region, Regulatory Assurance Division, Alberta Environment and Parks (the “Director”), in accordance with section 152 of the *Water Act*, R.S.A. 2000, c. W-3, and Water (Offences and Penalties) Regulation, A.R. 193/1998,¹ issued Notice of Administrative Penalty No. WA-20/07-AP-NR-20/07 (the “Administrative Penalty”) to Chappy’s Contracting Ltd. in the amount of \$3,500.00.

[2] The Administrative Penalty consisted of one count. This count relates to the construction of a watercourse crossing over Punk Creek, in Lac La Biche County, without an approval from Alberta Environment and Parks (“AEP”) on August 22, 2018.

[3] In setting the amount of the Administrative Penalty, the Director calculated a base assessment of \$2,500.00 plus an additional \$1,000.00 for factors that varied the assessment.²

¹ Section 152 of the *Water Act* provides:

“152(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.

(1.1) 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.

(2) 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.

(3) 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.”

² 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).

[4] On August 25, 2020, the Environmental Appeals Board (the “Board”) acknowledged receipt of a Notice of Appeal from Mr. Mitch and Ms. Natasha Chapdelaine on behalf of Chappy’s Contracting Ltd. (the “Appellant”) and notified the Director of the appeal. The Board requested the Appellant and the Director (collectively the “Parties”) provide available dates 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”).

[5] On September 16, 2020, the Board scheduled a mediation meeting on October 28, 2020 via video conference involving the Parties and a member of the Board acting as a mediator.

[6] The Director’s Record was received by the Board on September 30, 2020, and provided to the Appellants on October 5, 2020.

[7] On October 27, 2020, the mediation meeting scheduled for October 28, 2020 was cancelled as a result of unforeseen circumstances of the mediator. The Parties undertook settlement discussions on their own and reached an agreement. On October 29, 2020, the Parties requested the Board issue its decision ordering the Administrative Penalty be modified according to the agreement.

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.”

II. DISCUSSION

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

III. DECISION

[9] Based on the Parties' agreement, the Board varies the Administrative Penalty as follows:

1. The base penalty amount is varied from \$2,500.00 to \$1,000.00; and
2. The adjustment factors are varied from +\$500.00 (importance to the regulatory scheme) and +\$500.00 (degree of wilfulness or negligence) to neutral (importance to the regulatory scheme) and neutral (degree of wilfulness or negligence).

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

1. Mr. Mitch and Ms. Natasha Chapdelaine on behalf of Chappy's Contracting Ltd.; and
2. Mr. Simon Tatlow, Director, North Region, Regulatory Assurance Division, Alberta Environment and Parks.

IV. ORDER OF THE BOARD

[11] 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.³ Therefore, with respect to the decision of

³ 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

the Director to issue the Administrative Penalty No. WA-20/07-AP-NR-20/07 to Chappy's Contracting Ltd., the Board orders the decision of the Director to issue the Administrative Penalty is varied as follows:

1. The assessment for the base penalty amount is varied from \$2,500.00 to \$1,000.00;
2. The adjustment factors are varied from +\$500.00 (importance to the regulatory scheme) and +\$500.00 (degree of wilfulness or negligence) to neutral (importance to the regulatory scheme) and neutral (degree of wilfulness or negligence);
3. Chappy's Contracting Ltd. shall pay the total amount of \$1,000.00 to the Government of Alberta within 30 days of the date of this Order; and
4. No interest is payable on the Administrative Penalty amount until after 30 days of the date of this Order.

Dated on November 16, 2020, at Edmonton, Alberta.



Meg Barker
Acting Board Chair

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- (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.”