

ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – October 20, 2021

IN THE MATTER OF sections 91, 92, and 95 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12;

-and-

IN THE MATTER OF an appeal filed by 719722 Alberta Ltd. with respect to the decision of the Director, Central Region, Alberta Environment and Water, to issue Environmental Protection Order No. 2010/48-CR, and an appeal filed by Shin Han with respect to the decision of the Director, Upper Athabasca Region to issue Amendment No. 4.

Cite as: *719722 Alberta Ltd. and Han v. Director, Central Region, Alberta Environment and Parks* (20 October 2021), Appeal Nos. 10-031 & 19-041-D (A.E.A.B.), 2021 ABEAB 24.

BEFORE: Mr. Alex MacWilliam, Board Chair (ret.).*

PARTIES:

Appellants: 719722 Alberta Ltd. and Mr. Shin Han.

Directors: Mr. Gerald Feschuk, Director, Central Region, Alberta Environment and Water, and Mr. Owen Butz, Director, Alberta Environment and Parks,** represented by Ms. Erika Gerlock, Alberta Justice and Solicitor General.

* Although Mr. MacWilliam's appointment as member of the Environmental Appeals Board expired in April 2020, he was seized with the file and made this decision.

** At the time EPO No. EPO-2010/48-CR was issued, the Department was called Alberta Environment and Water, and the Director was Mr. Feschuk. Currently, and at the time Amendment No. 4 was issued, the Department is called Alberta Environment and Parks. Mr. Butz was the Director who issued Amendment No. 4.

EXECUTIVE SUMMARY

The Environmental Appeals Board (the Board) received a Notice of Appeal from 719722 Alberta Ltd. with respect to the November 12, 2010 decision of Alberta Environment and Water (now Alberta Environment and Parks (AEP)) to issue an Environmental Protection Order (EPO) under the *Environmental Protection and Enhancement Act* to 719722 Alberta Ltd. requiring the remediation of petroleum hydrocarbon contamination at a gas station located in Calmar, Alberta.

On September 19, 2019, AEP issued an amendment to the EPO (Amendment No. 4) adding Mr. Shin Han to the EPO and providing deadlines for completion of groundwater sampling. The Board received an appeal from Mr. Han appealing the issuance of Amendment No. 4.

The Board wrote to the appellants on three separate occasions requesting answers to three questions regarding the remediation work and sampling on the site. The letters were mailed and couriered to two different addresses and sent to two email addresses that had been provided by the appellants. Two of the letters warned the appellants that failure to respond to the Board in a timely manner may result in the dismissal of the appeals. The appellants did not respond.

The Board dismissed the appeal, pursuant to section 95(5)(a)(iv) of the *Environmental Protection and Enhancement Act*, since the appellants failed to respond to the Board's request for additional information.

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I. BACKGROUND

[1] On November 12, 2010, the Director, Central Region, Environmental Management, Alberta Environment and Water (the “Director”),¹ issued Environmental Protection Order No. EPO-2010/48-CR (the “EPO”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”), to 719722 Alberta Ltd. (the “Company”). The EPO required delineation and remediation of petroleum hydrocarbon contamination at a gas station located in Calmar, Alberta (the “Site”).

[2] On November 19, 2010, the Board received a Notice of Appeal from the Company appealing the Director’s decision to issue the EPO. The Board held a mediation meeting with the Company and the Director on July 19, 2011, and continued the mediation meeting on February 27, 2012. The mediation meeting did not result in the resolution of the appeal.

[3] The Board set a public hearing for April 11 to 13, 2012. The Company and Director requested the hearing be adjourned as an amended EPO had been issued amending the dates for the Company to complete the remediation work required under the original EPO.² The Board notified the parties the hearing was re-scheduled to September 25 to 27, 2012.

[4] On August 16, 2012, the Company requested the hearing be postponed while remediation work continued on the Site. The Director did not oppose the postponement request. The Board adjourned the hearing and requested regular updates on the status of the work being done to comply with the EPO. The parties continued to provide regular status updates to the Board.

[5] On July 31, 2017, the Company advised it was unable to conduct further remediation work on the Site that year for economic reasons.

¹ At the time EPO No. EPO-2010/48-CR was issued, the Department was called Alberta Environment and Water. Currently, and at the time Amendment No. 4 was issued, the Department is called Alberta Environment and Parks.

² There were three amendments to the EPO prior to the final Amendment No. 4. The three other amendments, issued on December 20, 2010, March 24, 2011, and March 16, 2012, amended the dates for the Company to provide reports to the Director.

[6] The Board continued to receive regular status reports. On September 19, 2019, the Director issued Amendment No. 4 to the EPO, adding Mr. Shin Han, the sole director for the Company, as a party to the EPO, and providing deadlines for the Company and Mr. Han (collectively, the “Appellants”) to complete groundwater sampling and submit a written report to the Director.

[7] On September 25, 2019, the Board received a Notice of Appeal from Mr. Han appealing Amendment No. 4.

[8] On November 6, 2019, the Board wrote the Appellants requesting answers to the following questions be submitted to the Board by November 20, 2019:

- “1. Is there an opportunity for additional remediation work to be undertaken as part of the rebranding of the site as a Shell Gas Station?
2. Would the Appellants be prepared to undertake one complete groundwater sampling event to provide the Director with current information regarding the site?
3. If the Appellants are prepared to carry out any of the work discussed in question 1 or 2, would the Appellants please provide a clear timeline for providing a plan for undertaking such work?”

The letter was emailed, mailed, and couriered to the Appellants and copied to the Director.

[9] The Board did not receive a response from the Appellants, and on November 25, 2019, the Board wrote the Appellants, requesting a response by December 2, 2019. The letter was emailed, mailed, and couriered to the Appellants. The Board notes the couriered letter was returned to the Board. The November 25, 2019 letter contained the following wording, in bold type:

“Please be advised that the Environmental Appeals Board has strict timelines. Failure to respond to the Board in a timely manner may result in the dismissal of the appeals pursuant to section 95(5)(a)(iv) of the Environmental Protection and Enhancement Act” (the “Warning Paragraph”).

[10] On January 6, 2020, the Board noted it had still not received a response from the Appellants, and again wrote the Appellants asking them to provide answers to the questions in the November 6, 2019 letter. The Board mailed and couriered the letter to two available addresses, and sent it to two email addresses the Appellants had provided to the Board as contact

information. The letters sent by courier were both signed for as delivered. The Board requested the Appellants respond by January 17, 2020, and again included the Warning Paragraph.

[11] On February 5, 2020, the Board wrote to the Appellants and Director explaining that because it had not received a response from the Appellants, the Board had dismissed the appeals.

[12] These are the Board's reasons for dismissing the appeals.

II. ANALYSIS

[13] Under section 95(5)(a)(iv) of EPEA,³ the Board has the authority to dismiss an appeal if an appellant fails to provide information requested by the Board.

[14] In this case, the Board made numerous requests for the Appellants to provide answers to three questions regarding the remediation work on the Site, a groundwater sampling event, and timelines to conduct the work. The information requested related to work originally required in the EPO and subsequent amendments. Providing the information was the responsibility of both Appellants under the appeals filed by 719722 Alberta Ltd. and Mr. Han, and the letters sent by the Board, including the Warning Paragraph, were addressed to both Appellants. Both Appellants failed to respond to any of the Board's requests.

[15] The Board attempted to contact the Appellants by mail, courier, and email to addresses provided by the Appellants to the Board. The Board sent the Appellants three separate letters and emails requiring answers to the questions. The Appellant did not respond to the Board's request for the additional information. Although the November 6, 2019 couriered letter

³ Section 95(5):

"The Board

(a) may dismiss a notice of appeal if

(iv) the person who submitted the notice of appeal fails to comply with a written notice under section 92...."

Section 92 provides:

"Where the Board receives a notice of appeal, it may by written notice given to the person who submitted the notice of appeal require the submission of additional information specified in the written notice by the time specified in the written notice."

was returned to the Board, there was no indication the Appellants did not receive the letter by mail or email.

[16] In the November 25, 2019 and January 6, 2020 letters to the Appellants, the Board clearly stated it may dismiss the appeals if the Appellants did not respond in a timely manner. No response was provided. The Appellant failed to make any attempts to provide the Board with the additional information requested.

[17] The Board tried multiple methods of ensuring the Appellants received the letter requesting additional information and informing the Appellants of the possible consequence of failing to respond. The letters mailed to the Appellants were not returned undeliverable, the Appellants signed for the couriered letters, and email messages appeared to be received, all indicating the Appellants received the letters.

[18] Given the Appellants' refusal to respond to the Board's multiple requests for additional information, the Board dismisses the appeals.⁴

III. CONCLUSION

[19] Pursuant to section 95(5) of EPEA, the Board dismisses the appeals of 719722 Alberta Ltd. and Mr. Shin Han for failing to respond to the Board's requests for additional information.

Dated on October 20, 2021, at Edmonton, Alberta.



Alex MacWilliam
Board Chair (ret.)

⁴ The Board notes that, after receiving notification of the Board dismissing the appeals, the Appellants emailed the Board using one of the email addresses used by the Board when requesting additional information from the Appellants. The Appellants explained the property had been sold and the new owner was accepting responsibility for the remediation work on the Site.