

ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – February 5, 2024

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 appeals filed by Lyndon Boychuk and Ryan Smith of Notice of Administrative Penalty and Economic Benefit Assessment No. AP-EPEA-36979 issued under the *Environmental Protection and Enhancement Act* by the Director, Environmental Investigations Section, Regulatory Assurance Division, Alberta Environment and Protected Areas, to Lyndon Boychuk, Ryan Smith, and One Environmental Inc.

Cite as: *Boychuk and Smith v. Director, Environmental Investigations Section, Regulatory Assurance Division, Alberta Environment and Protected Areas* (5 February 2024), Appeal Nos. 23-023-024-D (A.E.A.B.), 2024 ABEAB 4.

BEFORE:

Mr. Chris Powter, Acting Chair.

SUBMISSIONS BY:

Appellants: Lyndon Boychuk and Ryan Smith, represented by Mr. Josh Janzi, DLA Piper (Canada) LLP.

Director: Mr. Owen Butz, Director, Environmental Investigations Section, Regulatory Assurance Division, Alberta Environment and Protected Areas, represented by Ms. Erika Gerlock and Ms. Barbara Harnum, Environmental Law Section, Alberta Justice.

EXECUTIVE SUMMARY

Alberta Environment and Protected Areas (EPA) issued a Notice of Administrative Penalty and Economic Benefit Assessment to Lyndon Boychuk, Ryan Smith, and One Environmental Inc. for contravening Approval No. 347704-00-03 held by One Environmental Inc., by directing the disposal of hydrovac solids not meeting the limits for reuse at Sarcee Gravel Products Ltd. (“Sarcee”). Sarcee is not a facility holding a current approval, registration or as otherwise authorized under the *Environmental Protection and Enhancement Act*, or a facility approved by a local environmental authority outside of Alberta or otherwise authorized in writing by EPA. EPA assessed an administrative penalty of \$12,000.00 and a one-time amount for economic benefit in the amount of \$123,804.19 for a total assessment of \$135,804.19.

The Board received Notices of Appeal from Mr. Boychuk, Mr. Smith, and One Environmental Inc. appealing the Administrative Penalty. The Board held a mediation meeting that resulted in One Environmental Inc. withdrawing from the mediation process and withdrawing their appeal. EPA and the two remaining parties who were former directors of One Environmental Inc., Mr. Boychuk and Mr. Smith, reached an agreed upon resolution whereby they recommended the Board remove One Environmental Inc. from the penalty. The Board accepted the agreement and varied the Administrative Penalty accordingly.

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1. BACKGROUND

[1] One Environmental Inc. operates the Waste Management Facility in Rocky View County authorized by Approval No. 347704-00-03 (the “Approval”) issued by Alberta Environment and Protected Areas (“EPA”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, (“EPEA”).

[2] On or between September 2020 and May 2021, Mr. Lyndon Boychuk, Mr. Ryan Smith, and One Environmental Inc. contravened condition 4.3.29(b) of the Approval, by directing the disposal of hydrovac solids not meeting the limits for reuse at Sarcee Gravel Products Ltd. (“Sarcee”). Sarcee is not a facility holding a current approval, registration or as otherwise authorized under EPEA, or a facility approved by a local environmental authority outside of Alberta or otherwise authorized in writing by the Director, Environmental Investigations Section, Regulatory Assurance Division, Alberta Environment and Protected Areas (the “Director”).

[3] On May 29, 2023, the Director issued Notice of Administrative Penalty and Economic Benefit No. AP-EPEA-36979 (the “Administrative Penalty”) in the amount of \$135,804.19 and the explanatory Director’s Decision¹ to Mr. Lyndon Boychuk, Mr. Ryan Smith, and One Environmental Inc. for the contraventions. The Administrative Penalty states \$12,000.00 was issued in accordance with section 237 of EPEA and the *Administrative Penalty Regulation*, Alta. Reg. 23/2003, and a one-time amount of \$123,804.19 was issued for economic benefit in accordance with section 237(2)(b) of EPEA, for a total assessment of \$135,804.19.

[4] Section 237 of EPEA authorizes the Director to issue the Administrative Penalty. 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.

¹ Director’s Record, at Tab 205.

(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;

(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.

(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 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 King'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.”

[5] The Environmental Appeals Board (the “Board”) received Notices of Appeal from One Environmental Inc. on June 27, 2023, and from Mr. Lyndon Boychuk and Mr. Ryan Smith on June 28, 2023. The Board acknowledged receipt of the appeals and requested the Director provide the records he reviewed and were available to him when making his decision to issue the Administrative Penalty (the “Director’s Record”).

[6] The Director’s Record was provided to the Board, One Environmental Inc., Mr. Boychuk, and Mr. Smith on August 30, 2023.

[7] The Board held a mediation meeting on October 24, 2023. One Environmental Inc. withdrew from the mediation and withdrew their appeal. The Director, Mr. Boychuk and Mr. Smith (“the Parties”) reached an agreement at the mediation meeting with respect to Appeals 23-023 and 23-024, recommending the Board vary the Administrative Penalty.

2. DISCUSSION

[8] In the negotiated agreement, the Parties recommended to the Board the Administrative Penalty be varied by removing One Environmental Inc. and confirming Mr. Boychuk’s and Mr. Smith’s names remain.

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

3. DECISION

[10] Based on the agreement between the Parties, the Board varies the Administrative Penalty by removing One Environmental Inc. and confirming Mr. Lyndon Boychuk's and Mr. Ryan Smith's names remain on the Administrative Penalty. Further, no interest is payable by Mr. Boychuk or Mr. Smith on the Administrative Penalty if the full amount of \$135,804.19 is paid within 30 days of the date of this decision.

[11] Pursuant to section 98(3) of EPEA,² this decision is to be provided to:

1. Mr. Josh Janzi, DLA Piper (Canada) LLP, on behalf of Mr. Lyndon Boychuk and Mr. Ryan Smith;
2. Mr. Owen Butz, Director, Environmental Investigations Section, Regulatory Assurance Division, Alberta Environment and Protected Areas; and
3. Ms. Erika Gerlock and Ms. Barbara Harnum, Environmental Law Section, Alberta Justice.

4. ORDER OF THE BOARD

[12] 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:

[13] 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

² 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.”

could make, and (b) make any further order the Board considers necessary for the purposes of carrying out the decision.”

[14] Therefore, with respect to the decision of the Director to issue Notice of Administrative Penalty and Economic Benefit No. AP-EPEA-36979 to One Environmental Inc., Mr. Lyndon Boychuk, and Mr. Ryan Smith, the Board orders:

1. the Notice of Administrative Penalty and Economic Benefit be varied by removing One Environmental Inc. and confirming Mr. Lyndon Boychuk’s and Mr. Ryan Smith’s names remain; and
2. that no interest be charged to Mr. Boychuk or Mr. Smith if the \$135,804.19 penalty is paid in full within 30 days of the date of this decision.

Dated on February 5, 2024, at Edmonton, Alberta.

“original signed by”
Chris Powter
Acting Chair