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# ALBERTA PUBLIC LANDS APPEAL BOARD

## Report and Recommendations

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Date of Report and Recommendations – August 30, 2019

**IN THE MATTER OF** sections 121, 122, and 124 of the *Public Lands Act*, R.S.A. 2000, c. P-40, and sections 211, 212, 213, 226, 227, and 235 of the *Public Lands Administration Regulation*, Alta. Reg. 187/2011;

**-and-**

**IN THE MATTER OF** an appeal filed by JMB Crushing Systems ULC, with respect to the decision of the Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks, to issue Administrative Penalty No. PLA-18/04-AP-LAR-19/06 to JMB Crushing Systems ULC.

Cite as: *JMB Crushing Systems ULC v. Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks* (30 August 2019), Appeal No. 18-0023-R (A.P.L.A.B.), 2019 APLAB 19.

**BEFORE:**

Mr. Gordon McClure, Board Chair.

**PARTIES:**

**Appellant:** Mr. Jeff Buck, JMB Crushing Systems ULC, represented by Mr. Robert O'Neill, Ogilvie LLP.

**Director:** Mr. Simon Tatlow, Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks, represented by Ms. Jody Hierlmeier and Ms. Barbara Harnum, Alberta Justice and Solicitor General.

**Mediator:** Mr. Dave McGee, Board Member

## **EXECUTIVE SUMMARY**

The Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks (the Director), issued an Administrative Penalty to JMB Crushing Systems ULC (the Appellant). The Director stated the Appellant received money or other consideration for resource extraction on public land. The resource extraction occurred without appropriate authorization. The Administrative Penalty was assessed at \$247,236.31. The base penalty amount of this Administrative Penalty was \$5,000.00, with the remaining \$242,236.31 of the Administrative Penalty being the proceeds or profit said to have been earned as a result of the extraction work.

The Appellant filed a Notice of Appeal with the Public Lands Appeal Board (the Board), alleging the Director, in issuing the Administrative Penalty, erred in a determination of a material fact on the face of the record, erred in law, and exceeded the Director's or Officer's jurisdiction or legal authority.

A mediation meeting was held and a resolution was reached whereby the parties asked the Board to recommend that the Minister of Environment and Parks vary the Director's decision by reducing the proceeds or profit amount of the Administrative Penalty to zero. The base penalty amount would remain the same, resulting in the total of the Administrative Penalty to \$5,000.00.

The Board reviewed the mediated resolution and determined it was reasonable. Therefore, the Board recommended that the Minister vary the Administrative Penalty accordingly.

## **TABLE OF CONTENTS**

I. INTRODUCTION .....	1
II. BACKGROUND .....	1
III. DISCUSSION .....	3
IV. RECOMMENDATION .....	3

## I. INTRODUCTION

[1] This is the Report and Recommendations of the Public Lands Appeal Board (the “Board”) to the Minister of Environment and Parks (the “Minister”), arising from a mediation held regarding an appeal filed by JMB Crushing Systems ULC (the “Appellant”).

## II. BACKGROUND

[2] On February 22, 2019, the Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks (the “Director”), issued Administrative Penalty No. PLA-18/04-AP-LAR-19/06 (the “Administrative Penalty”), to the Appellant, under the *Public Lands Act*, R.S.A. 2000, c. P-40 and the *Public Lands Administration Regulation*, A.R. 187/2011 (“PLAR”) in the amount of \$247,236.31. The Director said that between June 2015 and September 2015, the Appellant extracted aggregate from public lands that were the subject of an application by Mr. Matthew Kalinski for Surface Material Licence SMC 140037 (the “SMC”).<sup>1</sup> The Appellant was contracted by Mr. Kalinski to do the extraction work. Mr. Kalinski applied for the SMC on July 18, 2014. On September 16, 2015, Alberta Environment and Parks (“AEP”) refused Mr. Kalinski’s application for the SMC.

[3] The Appellant, in an interview with the Director as part of the Director’s investigation into the unauthorized extraction of the aggregate, explained it was told by Mr. Kalinski’s agent that the SMC had been issued and to begin extraction operations. The Appellant acknowledged it removed the aggregate and received payment for its work.

[4] The Director recommended the Administrative Penalty be assessed against the Appellant in the amount of \$247,236.31, determined as follows:

1. \$5,000.00 for one count of contravening section 54.01(5) of the *Public Lands Act*;<sup>2</sup> and

<sup>1</sup> Alberta Environment and Parks’ abbreviation for a Surface Material Licence is “SMC.”

<sup>2</sup> Section 54.01(5) of the *Public Lands Act* provides:

“No person shall provide or receive money or other consideration for the purpose of gaining or allowing access to, passage on or over or use of public land unless

2. \$242,236.31 for total proceeds received, pursuant to section 59.4(4) of the *Public Lands Act*.<sup>3</sup>

[5] On March 5, 2019, the Appellant filed a Notice of Appeal with the Board stating the Director, in issuing the Administrative Penalty, erred in the determination of a material fact on the face of the record, erred in law, and exceeded the Director's or Officer's jurisdiction or legal authority.

[6] On March 7, 2019, the Board requested the Director provide the records he relied on and that were available to him when making his decision (the "Director's Record"). The Director provided an electronic copy of the Director's Record to the Board and the Appellant on April 29, 2019. The Board provided a hard copy of the Director's Record to the Appellant on May 18, 2019.

[7] The Appellant requested a stay of the Administrative Penalty when it filed the Notice of Appeal. The Board has the authority to grant a stay pursuant to section 123(1) of the *Public Lands Act*.<sup>4</sup> On April 1, 2019 the Board issued its decision granting a stay of the Administrative Penalty until the Board heard the appeal and the Minister issued an order, or until the Board directed otherwise.<sup>5</sup>

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- (a) the person receiving the money or other consideration is the holder of a disposition or authorization under section 20 and is entitled at law to receive money or other consideration for that purpose, and
- (b) the access, passage or use is in respect of public land that is the subject of the disposition or authorization."

3 Section 59.4(4) of the *Public Lands Act* states:

"A notice of administrative penalty under this section may require one or more of the following:

- (a) payment of the penalty determined by the director under section 59.3;
- (b) any person who in the director's opinion is in receipt of proceeds derived directly or indirectly from any use of public land in contravention of this Act or the regulations to provide an accounting of the proceeds believed by the director to have been received by that person;
- (c) payment by a person referred to in clause (b) of any proceeds referred to in that clause, or an amount equivalent to the value of the proceeds if the person has converted the proceeds."

4 Section 123(1) of the *Public Lands Act* states:

"The appeal body may, on the application of a party to a proceeding before the appeal body, stay a decision in respect of which a notice of appeal has been submitted."

5 *JMB Crushing Systems ULC v. Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks* (1 April 2019), Appeal No. 18-0023-DL1 (A.P.L.A.B.), 2019 APLAB 4.

[8] On June 25, 2019, the Board held a mediation meeting involving the Appellant and the Director (collectively, the “Parties”) and a member of the Board acting as mediator.

### **III. DISCUSSION**

[9] At the mediation meeting, the Appellant provided information regarding its net proceeds (profit) in relation to the Administrative Penalty. The information showed the Appellant’s net proceeds (profit) as negligible, which led to a resolution between the Parties. The Parties jointly requested the Board submit a Report and Recommendations to the Minister, recommending the Minister vary the Director’s decision by reducing the proceeds (profit) amount of the Administrative Penalty to zero. The base penalty of \$5,000.00 for the contravention of section 54.01(5) of the *Public Lands Act* remained unchanged, bringing the total assessment of the Administrative Penalty to \$5,000.00.

[10] The Board considers the mediated resolution to be reasonable and recommends the Minister vary the Director’s decision and reduce the amount of the Administrative Penalty as requested by the Parties.

### **IV. RECOMMENDATION**

[11] In accordance with section 122(3) of the *Public Lands Act*,<sup>6</sup> and section 227 of PLAR, and in accordance with the mediation resolution between the Parties, the Board recommends the Minister vary the Director’s decision to issue the Administrative Penalty as follows:

1. Confirm the base penalty portion of the Administrative Penalty as \$5,000.00; and
2. Reduce the proceeds (profit) amount of the Administrative Penalty to zero.

[12] Reducing the proceeds (profit) amount will reduce the total Administrative Penalty from \$247,236.31 to \$5,000.00.

<sup>6</sup> Section 122(3) of the *Public Lands Act* provides:

“The appeal body may, with the consent of the parties to the appeal, make its report to the Minister without conducting a hearing of the appeal.”

[13] The Board also recommends that no interest should be owing on the Administrative Penalty until 30 days after the date of the Minister's Order. Further, the Board recommends the Administrative Penalty should be paid by the Appellant within 30 days of the Minister's Order.

[14] The stay of the Administrative Penalty is lifted as of the date of the Minister's Order.

[15] In accordance with section 124(4) of the *Public Lands Act*,<sup>7</sup> copies of this Report and Recommendations, and any decision by the Minister regarding this appeal, are to be provided to:

1. Mr. Robert O'Neill, Ogilvie LLP, on behalf of the Appellant; and
2. Ms. Jody Hierlmeier and Ms. Barbara Harnum, Alberta Justice and Solicitor General, on behalf of Mr. Simon Tatlow, Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks.

Dated on August 30, 2019, at Edmonton, Alberta.

"original signed by"  
Gordon McClure  
Board Chair

<sup>7</sup> Section 124(4) of the *Public Lands Act* provides:

"The Minister shall immediately give notice of any decision made under this section to the appeal body, and the appeal body shall immediately, on receipt of the notice of the decision, give notice of the decision to all persons who submitted notices of appeal or made representations or written submissions to the appeal body and to all the persons who the appeal body considers should receive notice of the decision."





ALBERTA  
ENVIRONMENT AND PARKS

*Office of the Minister  
Government House Leader  
MLA, Rimbey-Rocky Mountain House-Sundre*

**Ministerial Order**  
**42/2019**

*Public Lands Act,  
R.S.A. 2000, c. P-40*

and

*Public Lands Administration Regulation,  
Alta. Reg. 187/2011*

**Order Respecting Public Lands Appeal Board  
Appeal No. 18-0023**

I, Jason Nixon, Minister of Environment and Parks, pursuant to section 124 of the *Public Lands Act*, make the order in the attached Appendix, being an Order Respecting Public Lands Appeal Board Appeal No. 18-0023.

Dated at the City of Edmonton, Province of Alberta, this 11 day of Sept,  
2019.

  
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Jason Nixon  
Minister

## Appendix

### Order Respecting Public Lands Appeal Board Appeal No. 18-0023

With respect to the decision of the Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks, to issue Administrative Penalty No. PLA-18/04-AP-LAR-19/06 (the "Administrative Penalty"), in the amount of \$247,236.31 under the *Public Lands Act*, R.S.A. 2000, c. P-40, to JMB Crushing Systems ULC, I, Jason Nixon, Minister of Environment and Parks, order that:

1. The Administrative Penalty is varied to be a total of \$5,000.00 as follows:
  - (a) the base penalty amount of \$5,000.00 for contravening section 54.01 of the *Public Lands Act* is confirmed; and
  - (b) the proceeds (profit) amount of \$242,236.31 is reduced to zero.
2. No interest is due or owing on the Administrative Penalty until after 30 days from the date of this Ministerial Order.
3. The Appellant shall pay the Administrative Penalty within 30 days from the date of this Ministerial Order.