
ALBERTA PUBLIC LANDS APPEAL BOARD

Decision

Date of Decision – July 24, 2020

IN THE MATTER OF sections 120, 121, and 123 of the *Public Lands Act*, R.S.A. 2000, c. P-40, and sections 211, 212, and 213 of the *Public Lands Administration Regulation*, Alta. Reg. 187/2011;

-and-

IN THE MATTER OF an appeals filed by JH Drilling Inc. with respect to the decision of the Director, Regional Compliance, Peace Region, Alberta Environment and Parks, to issue Administrative Penalty No. PLA-19/13-AP-PR-19/13 to JH Drilling Inc.

Cite as: *JH Drilling Inc. v. Director, Regional Compliance, Peace Region, Alberta Environment and Parks* (24 July 2020), Appeal No. 19-0247-ID1 (A.P.L.A.B.), 2020 ABPLAB 11.

BEFORE:

Mr. Gordon McClure, Chair.

APPELLANT:

JH Drilling Inc., represented by Mr. John Harms.

DIRECTOR:

Mr. Owen Cook, Director, Regional
Compliance, Peace Region, Alberta
Environment and Parks.

EXECUTIVE SUMMARY

JH Drilling Inc. (the Appellant) is the holder of a Surface Material Lease (SML) issued by Alberta Environment and Parks (the Department). The Director, Regional Compliance, Peace Region, Alberta Environment and Parks (the Director), issued Administrative Penalty No. PLA-19/13-AP-PR-19/13 (the Administrative Penalty) to the Appellant for alleged subletting of the SML without authorization. The Appellant appealed the issuance of the Administrative Penalty to the Public Lands Appeal Board (the Board).

After the Appellant received a copy of the Department's Record, the Appellant requested the Board order the Director to disclose further records. The Board considered the disclosure request and found:

- (a) the Appellant had submitted some requests for records after the Board set a deadline for all disclosure requests to be received;
- (b) some of the requests were appropriate and the Appellant was entitled to the records; and
- (c) some of the requests were ambiguous or not specific enough for the Director to reasonably act upon.

The Board ordered the Director to provide certain records and dismissed the Appellant's request for disclosure that was not appropriate.

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I. INTRODUCTION

[1] This is the decision of the Public Lands Appeal Board (the “Board”) concerning an application by JH Drilling Inc. (the “Appellant”) for additional disclosure from the Director, Regional Compliance, Peace Region, Alberta Environment and Parks (the “Director”), relating to Administrative Penalty No. PLA-19/13-AP-PR-19/13 (the “Administrative Penalty”).

II. BACKGROUND

[2] On July 30, 2012, Alberta Environment and Parks (“AEP” or the “Department”) issued Surface Material Lease SML 070028 (the “SML”) to the Appellant for a sand and gravel operation.

[3] On December 3, 2019, the Director issued the Administrative Penalty to the Appellant for alleged contraventions of sections 43(1) and 54.01(5) of the *Public Lands Act*, R.S.A. 2000, c. P-40 (the “Act”).¹ The Administrative Penalty was in the amount of \$31,000.00, which consisted of \$11,000.00 as an administrative penalty and \$20,000.00 for proceeds received as per section 59.4(4) of the Act.² In the Administrative Penalty, the Director alleged the

¹ Section 54.01(5) of the Act states:

“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

- (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.”

Section 43(1) of the Act provides: “The holder shall not mortgage, assign, transfer or sublet the land contained in the holder’s disposition, or any part of it, without the written consent of the director.”

² Section 59.4(4) of the Act provides:

“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.”

Appellant had contracted with another company to remove the surface materials in exchange for payment to the Appellant. The Director stated the agreement amounted to an unauthorized assignment of the SML.

[4] On December 17, 2019, the Appellant filed a Notice of Appeal with the Board. The Appellant stated that by issuing the Administrative Penalty, the Director erred in the determination of a material fact, erred in law, and exceeded the Director's jurisdiction or legal authority. On the same date, the Board wrote to the Appellant and the Director (collectively the "Parties"), providing the Director with a copy of the Notice of Appeal, and requested the Director provide "a copy of the Director's Records (all documents and all electronic media) that were reviewed and that were available when making the decision, including policy documents, and an index. This includes all of the records within the compliance group relating to this appeal."³ The Director provided the Director's File on January 31, 2020.⁴ A copy of these records were subsequently provided to the Appellant.

[5] In a letter dated February 26, 2020, the Board scheduled a mediation for April 15, 2020. On April 7, 2020, the Appellant provided the Board and the Director with a mediation brief (the "Mediation Brief") that was labelled "Without Prejudice".

[6] The mediation was held on April 15, 2020, but did not result in a resolution to the appeal.

[7] On May 25, 2020, the Appellant wrote to the Board and listed eleven categories of disclosure it sought from the Director and advised it may seek further disclosure.

[8] On May 27, 2020, the Board wrote to the Parties and stated:

"The Board notes the Appellant has indicated he may be seeking additional disclosure. As the Board's appeal process is constrained by legislative

³ Board's Letter, December 17, 2019. As discussed in Reconsideration Decision: *Colette Benson and CRC Open Camp and Catering Ltd. v. Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks* (20 December 2019), Appeal No. 18-0015-RD (A.P.L.A.B.), 2019 ABPLAB 25, the proper terminology the Board should be using is not the "Director's Record", but the "Department's Record."

⁴ As discussed in Reconsideration Decision: *Colette Benson and CRC Open Camp and Catering Ltd. v. Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks* (20 December 2019), Appeal No. 18-0015-RD (A.P.L.A.B.), 2019 ABPLAB 25, there is a disagreement between the Board and the Director as to what records are required to be filed. In the Director's view, it is the "Director's File", whereas in the Board's view, it is the "Department's Record".

timeframes, the Board requires all disclosure requests to be submitted by 4:30 pm on May 29, 2020. The request must include an explanation of why the documents already requested, and any further documents requested, are relevant to the hearing of the Administrative Penalty.”⁵

The letter also requested the Director comment on the disclosure request, if he was able to provide the documents, and provide an estimate of when the documents could be made available to the Board.

[9] On May 29, 2020, the Appellant provided a list of fifteen additional disclosure categories it sought from the Director.

[10] On June 5, 2020, the Director responded to the Appellant’s disclosure request.

[11] On June 17, 2020, the Board wrote to the Parties and noted the Appellant’s disclosure request referred to grounds of appeal not included in the Appellant’s Notice of Appeal filed on December 17, 2019. The Board noted the Appellant may be referencing the Appellant’s Mediation Brief provided on April 7, 2020. The Board explained documents submitted for the mediation are confidential, and the Board cannot consider any references to the Mediation Brief unless the Appellant waived confidentially.

[12] On June 21, 2020, the Appellant advised the Board he did not wish to waive the confidentiality of the Mediation Brief.

[13] On July 12, 2020, the Board received an email from the Appellant titled “Summary of Grounds of Appeal in support of the Disclosure Applications.” The email contained 17 “Grounds of Appeal” and requests for disclosure of documents.

III. SUBMISSIONS

[14] The Board reviewed all the submissions from the Parties regarding the disclosure request and summarized them as follows.

A. Appellant

[15] The Appellant made fifteen requests which appeared to list grounds from the

⁵ Board’s Letter, May 27, 2020.

Mediation Brief. The Appellant also requested eleven records that did not reference the Mediation Brief. The eleven requests - not referencing the Mediation Brief - and the reasons for each request are set out below:

- (1) The Appellant requested the complete file of AEP Lands Officer, Nikki Homberger, regarding the SML. The Appellant stated disclosure of this record was relevant to the Appellant's limitation period defence as per section 59.7 of the Act.
- (2) The Appellant asked for the complete file of AEP Area Forester, Erin Cook, pertaining to the SML. The Appellant stated disclosure of this record was relevant to the Appellant's limitation period defence as per section 59.7 of the Act.
- (3) The Appellant requested the complete file relating to the SML of former AEP Lands Officer Brian Parlin. The Appellant stated disclosure of this record was relevant to the Appellant's limitation period defence as per section 59.7 of the Act.
- (4) The Appellant asked for records of a meeting that occurred on March 5, 2014. The Appellant did not provide any further information on who attended the meeting or where it was held. The Appellant stated disclosure of this record was relevant to the Appellant's limitation period defence as per section 59.7 of the Act.
- (5) The Appellant sought the "Field files" for the SML. The Appellant stated disclosure of this record was relevant to the Appellant's limitation period defence as per section 59.7 of the Act.
- (6) The Appellant requested the files from the Edmonton AEP office regarding the SML. The Appellant stated disclosure of this record was relevant to the Appellant's limitation period defence as per section 59.7 of the Act.
- (7) The Appellant asked for inspection reports. The Appellant did not provide any further details. The Appellant stated disclosure of this record was relevant to the Appellant's limitation period defence as per section 59.7 of the Act.
- (8) The Appellant sought disclosure of the file of the Director, Owen Cook, and the investigation files. The Appellant stated disclosure of these records were relevant to the Appellant's "Reasonableness Defence."
- (9) The Appellant requested internal and external email messages pertaining to the SML. The Appellant stated disclosure of this record was relevant to the Appellant's "Reasonableness Defence."
- (10) The Appellant asked for notes of all meetings about the SML. The Appellant stated disclosure of these records were relevant to the

Appellant's "Reasonableness Defence" and the limitation period defence as per section 59.7 of the Act.

- (11) The Appellant requested copies of all official correspondence from AEP and other communication reports, notes, photos, and related records. The Appellant did not provide any further information or details regarding this request. The Appellant stated disclosure of these records were relevant to the Appellant's "Reasonableness Defence" and the limitation period defence as per section 59.7 of the Act.

[16] The Appellant stated it is entitled to the disclosure and review of all the records concerning the SML, not just the documents the Director identified as relevant to his decision to issue the Administrative Penalty. The Appellant submitted the principles of natural justice and fairness required that it receive the complete disclosure of the documents requested. The Appellant said a denial of the records would place the Appellant at a disadvantage as there would be no way of knowing which records were omitted from the Director's File.

B. Director

[17] The Director responded to the Appellant's eleven disclosure requests as follows:

- (1) the relevant documents from Lands Officer Nikki Homberger's file are included in the Director's file at tabs 13, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 50, 51, 53, 54, 55, 56, 57, 58, and 91;
- (2) the relevant documents from the Area Forester Erin Cook's file are included in the Director's file at tab 49;
- (3) regarding the complete file of Lands Officer Brian Parlin, the Director stated any additional records were not before him and were not considered in making his decision;
- (4) records of the March 5, 2014, meeting are in the Director's file at tabs 100 to 106. A search was done for additional records related to the meeting, but no records were found;
- (5) regarding the field files for the SML, the Director stated any additional records were not before him and were not considered in making his decision;
- (6) with regards to the files from the Edmonton AEP office related to the SML, the Director stated any additional records were not before him and were not considered in making his decision;
- (7) regarding inspection reports for the SML, the Director stated any additional records were not before him and were not considered in making his decision;

- (8) the file of the Director, Owen Cook, and the investigation files were provided in the Director's file;
- (9) the request for internal and external email messages about the SML was too broad and ambiguous to form the basis of an order for further disclosure;
- (10) any notes relevant to the investigation and the Director's decision were in the Director's file, but any additional records were not before him and were not considered in making his decision;
- (11) the request for copies of all official correspondence from AEP and other communication reports, notes, photos, and related records, is too broad and ambiguous to form the basis of an order for further disclosure.

[18] The Director stated the Director's Record provided to the Board is the Director's File for the decision being appealed and contains the records of the Department considered by the Director in making the decision.

[19] The Director noted the Appellant stated it is "entitled to disclosure and review of all the records concerning SML070028". The Director responded that the Appellant appeared to be improperly using the Board and appeal process to make a Freedom of Information Request or routine disclosure request. The Director submitted the Appellant's expansive disclosure request should not be confused with the Director's File that is already before the Board.

IV. ANALYSIS

[20] The Act requires the provision of the record for appeals before the Board. Section 120 of the Act states: "An appeal under this Act must be based on the decision and the record of the decision maker." The "decision" is the decision being appealed by the appellant and must be one of the decisions prescribed in section 211 of *Public Lands Administration Regulation*, Alta.Reg. 187/2011 ("PLAR").⁶ The decision-maker is the director or the officer who issued the

⁶ Section 211 of PLAR states:

"The following decisions are prescribed as decisions from which an appeal is available:

- (a) the issuance, renewal, amendment or suspension of a disposition issued under the Act;
- (b) the rejection of an application under the Act for a disposition,
- (c) a refusal to issue a disposition or to renew or amend a disposition applied for under the Act;
- (d) the imposition or variation under the Act of a term or condition of a disposition;
- (e) a deemed rejection under section 15(1);

decision.

[21] The “record” is defined in section 209(f) of PLAR as follows: “‘record’ means record as defined in the *Freedom of Information and Protection of Privacy Act...*” Section 1(q) of the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (“FOIP”) states:

“‘record’ means a record of information in any form and includes notes, images, audiovisual recordings, x rays, books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records...”

[22] The Director refers to the “director’s file,” which is defined in section 209(f) of PLAR as “in respect of a prescribed decision made by the director, means records of the Department that are considered by the director in making the decision...” The Board notes the term “director’s file” appears nowhere else in the Act or PLAR. In making a decision, a director considers the “director’s file”, which consists of information the director gathered from the department’s record. There is a distinct difference between the “record” and the “director’s file.” The “record” encompasses the director’s file, and includes other documents and information not in the director’s file. The “director’s file” represents a subset of the “record” that the director considered. The terms “director’s file” and the “record” are not interchangeable.

[23] Decisions by a director are not made in isolation. The director relies on AEP staff who have experience and expertise in the matter the director is considering. The director reviews the records provided by AEP staff, and it becomes part of the director’s file. Often, AEP staff provide a decision rationale and other opinions to the director to help in the decision-making process. This is a reasonable approach to ensure the director has the information needed to make

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- (f) an order under section 35(1) to vacate vacant public land;
 - (g) a refusal under section 43(1) of the Act;
 - (h) an enforcement order, a stop order or an administrative penalty;
 - (i) a removal under section 69(2)(f)(iii) of the Act;
 - (j) an order under section 182;
 - (k) a refusal to admit, or a requirement to remove, a pet animal under section 194(2);
 - (l) an order under section 201(b) to vacate a public land recreation area;
 - (m) an order under section 204(1) to vacate a campsite;
 - (n) an order under section 205.”

an informed and correct decision. However, the director does not always review the entire record related to the matter. The director is also reliant on the records provided by AEP staff. This may result in an incomplete record that the director uses to compile the director's file.

[24] In the Board's view, the "director's file" can be inadequate for the purposes of full disclosure to an appellant because it may not contain enough information for an appellant to make their case, or because there is insufficient information to show the director considered the decision in the context of the entire record. If the director is considering only a portion of the record, there may be important information that is not coming to the director's attention. In procedural fairness terms, the director, by only considering a subset of the record, may make a reviewable error of law or error of fact by failing to take into account relevant information available on the record.

[25] Based on these definitions, the Board considers the "Department's Record" to consist of the Director's File, along with records of the decision-maker, which is any of the information as defined in section 1(q) of the *Freedom of Information and Protection of Privacy Act*. When the Board requests the record from a director, it is requesting the Department's Record.⁷

[26] A basic principle of administrative law is the duty of fairness, often referred to as natural justice or procedural fairness. The Courts have stated:

"Natural justice does not equate with what one party feels is a 'fair resolution' to the complaint. Rather, it is a procedural right which includes the right to know the case being made, the right to respond and the right to be heard by an unbiased decision maker."⁸

[27] A key component of the duty of fairness is *audi alteram partem*, which means "hear the other side."⁹ This principle has been described as "...the requirement in administrative law that a person must know the case being made against him or her and be given an opportunity

⁷ See: Reconsideration Decision: *Colette Benson and CRC Open Camp and Catering Ltd. v. Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks* (20 December 2019), Appeal No. 18-0015-RD (A.P.L.A.B.), 2019 ABPLAB 25.

⁸ *0896022 B.C. Ltd., Re*, 2016 CarswellBC 2711, at paragraph 19.

⁹ Phillip Jones, Q.C., and Anne S. de Villars, Q.C., *Principles of Administrative Law*, 6th ed. (Toronto: Carswell, 2014), at page 263. See also: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.

to answer it before the delegate making the decision.”¹⁰

[28] Disclosure of evidence used to make a decision affecting a person is essential in knowing the case being made and answering it. In *Administrative Law in Canada*, Sara Blake stated: “Disclosure enables a party to review the alleged facts, to prepare to challenge them with evidence that rebuts them or reduces their impact and prepare submissions explaining how they should be weighed and analyzed.”¹¹

[29] The duty of fairness requires fairness not just in the provision of evidence to the affected person, but also fairness to the person providing the evidence. The information sought must be relevant to the issue under consideration. So-called “fishing expeditions” are not acceptable. Fishing expeditions have been described as “where one party seeks production in order to determine whether it has a case or not. The wider the net is cast with regard to the production request, the greater the likelihood that the party seeking the request is simply engaging in a fishing expedition.”¹² Requests for disclosure must be as focused as possible, with the understanding that the party asking for the disclosure does not have access to the documents and may not be able to precisely identify the records. The provider of the disclosure must meet the duty to be fair, but irrelevant information does not have to be disclosed.¹³

[30] The extent of disclosure necessary depends on the facts and circumstances of the appeal. The Supreme Court of Canada stated: “... the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case.”¹⁴ The Supreme Court of Canada has referred to a sliding scale of procedural fairness. The Court stated: “The more important the decision is to the lives of those affected and the greater its impact on that person or those persons, the more stringent the procedural protections that will be mandated.”¹⁵ In the context of disclosure, the more important and impactful a decision is to an individual, the greater the duty to disclose.

¹⁰ David Phillip Jones, Q.C., and Anne S. de Villars, Q.C., *Principles of Administrative Law*, 6th ed. (Toronto: Carswell, 2014), at page 263.

¹¹ Sara, Blake, *Administrative Law in Canada*, 5th ed. (Markham, ON: LexisNexis, 2011), at page 36.

¹² *London (City) and CUPE, Local 101 (Idzkowski), Re*, [2017] O.L.A.A. No. 150, at paragraph 24.

¹³ Sara Blake, *Administrative Law in Canada*, 5th ed. (Markham, ON: LexisNexis, 2011), at page 37.

¹⁴ *Knight v. Indian Head School Division, No. 19*, [1990] 1 S.C.R. 653, at page 682.

[31] Another factor impacting the extent of disclosure required is the statutory powers of the reviewing tribunal, in this case, the Board. In *Litchfield v. College of Physicians & Surgeons (Alberta)* (“*Litchfield*”), the Court considered the duty of fairness concerning an investigative committee’s failure to disclose relevant documents in deciding on the alleged misconduct of a doctor. The Court found the investigative committee’s actions in withholding the information did not meet the duty of fairness. The Court noted the legislation provided for an appeal of the decision to a tribunal that could consider new evidence. The appeal tribunal’s ability to consider the undisclosed documents preserved the duty of fairness owed to the accused doctor. However, the Court stated if “... there was no mechanism in place to allow the Council [the appeal tribunal] to consider this evidence, the Court may be obliged to intervene...”¹⁶

[32] Unlike the appeal tribunal in *Litchfield*, the Board’s powers to hear new evidence is limited. As noted earlier, appeals before the Board are based on the decision and the record of the decision-maker. All parties to an appeal, the director, the appellant, and the Board, rely upon the record. This reliance results in a greater need for the Department’s Record to be complete, otherwise, the duty of fairness may not be met.

[33] The Board considered the legislation and the above-noted principles and case law when reviewing the Appellant’s request for further disclosure.

[34] The Board specifically advised the Appellant in its March 27, 2020 letter that all disclosure requests were to be submitted by 4:30 pm on May 29, 2020. The Board set the deadline to provide some certainty to the disclosure requests. The Appellant complied and provided its disclosure request on time. However, the Board noted the fifteen additional disclosure requests provided on May 29, 2020, referred to the Mediation Brief. The Appellant refused to waive confidentiality of the Mediation Brief, which prevented the Board from considering the fifteen additional disclosure requests.

[35] The email from the Appellant titled “Summary of Grounds of Appeal in support of the Disclosure Applications” was provided 44 days after the Board’s May 29, 2020 deadline for disclosure requests. After the Board advised it could not consider requests that referenced the

¹⁵ *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at paragraph 25.

¹⁶ *Litchfield v. College of Physicians & Surgeons (Alberta)*, 2005 ABQB 962, at paragraph 75.

Mediation Brief, the Appellant did not ask the Board to extend the deadline to file disclosure requests.

[36] The Board is bound by legislative deadlines and therefore has a limited time to conduct the hearing process and provide a report and recommendations to the Minister. For this reason, the Board must set deadlines for receipt of information and preliminary motions, including disclosure requests. The Board may grant extensions of deadlines if requested, but there must be sufficient reason for doing so. If the Board allowed the parties to an appeal to ignore the deadlines set by the Board, the appeal process would become chaotic and procedural fairness impeded.

[37] The Board dismisses the Appellant's document request dated July 12, 2020, for being filed past the deadline set by the Board.

[38] The Board considered the remaining eleven requests for records and its decision is as follows:

- (a) The Appellant requested the complete file of Lands Officer Homberger relating to the SML. The Director stated the "relevant" documents from Officer Homberger were in the Director's file. The Board finds the principles of procedural fairness require greater disclosure for the Appellant to know the case to be met. Officer Homberger's file related to the SML may have relevant documents that did not come to the attention of the Director. Therefore, the Appellant is entitled to the full file, not just selected documents.
- (b) The Appellant requested the complete file of Area Forester Cook relating to the SML. The Director stated the "relevant" documents were contained in the Director's file. The Board finds the principles of procedural fairness require greater disclosure for the Appellant to know the case to be met. Area Forester Cook's file related to the SML may have relevant documents that did not come to the attention of the Director. Therefore, the Appellant is entitled to the full file, not just selected documents.
- (c) The Appellant asked for the complete file of Lands Officer, Brian Parlin, as it relates to the SML. The Director stated any additional records were not before him and were not considered in making his decision. The Board finds the principles of procedural fairness require greater disclosure for the Appellant to know the case to be met. Officer Parlin's file related to the SML may have relevant documents that did not come to the attention of

the Director. Therefore, the Appellant is entitled to the full file, not just selected documents.

- (d) The Appellant requested records of a March 5, 2014, meeting. The Director stated some records regarding the meeting were found and included in the Director's file, and a search was completed but found no further records. The Board finds the Director has provided all the records available regarding this meeting. The Board also finds the Appellant's request was vague. There is no mention of participants or location of the meeting were included in the Appellant's request. The Board dismisses the Appellant's request.
- (e) The Appellant asked for the "Field" files for the SML. The Director stated any additional records were not before him and were not considered in making his decision. The Board believes the Appellant was referring to the files held by staff serving in the region where the SML is located, however, the Appellant was not clear in the request. The Board finds the request to be not sufficiently specific for the Director to act upon. The Board dismisses the Appellant's request.
- (f) The Appellant requested the "Edmonton" file for the SML. The Director stated any additional records were not before him and were not considered in making his decision. The Board believes the Appellant was referring to the files held by staff serving in the AEP Edmonton office, however, the Appellant was not clear in the request. The Board finds the request to be not sufficiently specific for the Director to act upon. The Board dismisses the Appellant's request.
- (g) The Appellant asked for "Inspection Reports." The Director stated any additional records were not before him and were not considered in making his decision. The Board finds this request to be non-specific, but it can be reasonably inferred the Appellant is seeking inspection reports related to the SML. The Director did not indicate if any of the inspection reports were provided to the Appellant, although the Board noted there are some inspection reports in the Director's file. The Board is unable to determine if any more inspection reports exist. The Board finds the principles of procedural fairness require greater disclosure for the Appellant to know the case to be met, and the Appellant is entitled to any inspection reports that have not already been provided in the Director's file.
- (h) The Appellant requested the file of the Director. The Director stated his file was provided in the Director's file. The Board finds this is sufficient to satisfy the request by the Appellant.

- (i) The Appellant asked for disclosure of the “internal and external” email messages pertaining to the SML. The Director stated the request is too broad and ambiguous. The Board agrees. There is no date range specified and no senders or any recipients noted. This is an example of a “fishing expedition.” The Board refuses this request.
- (j) The Appellant requested notes of all meetings with regards to the SML. The Director stated notes of meetings relevant to the investigation and his decision, are in the Director’s file. The Director said any additional records were not before him and were not considered in making his decision. The Board finds the principles of procedural fairness require greater disclosure for the Appellant to know the case to be met. Any notes related to meetings regarding the SML are relevant, and the Appellant is entitled to review them.
- (k) The Appellant asked for copies of all official correspondence from AEP and other communication reports, notes, photos, and related records. The Director stated the request is too broad and ambiguous. The Board agrees. The Appellant made no attempt to narrow the focus of the request. The Board dismisses the request.

[39] The Board finds the application of the limitation period to the Administrative Penalty is central to the Appellant’s defence. The Board considers it reasonable and necessary for the Appellant to have access to the complete file relating to the SML. The Appellant is entitled to review all records which pertain to the SML and the Administrative Penalty, not just the records the Director received from the field and looked at in making the decision. A full and complete record allows the Appellant to determine if there are contradictory facts in the record, whether the Director erred in law by not considering information that should have been considered, or exceeded his jurisdiction in issuing the Administrative Penalty.

[40] The Board is not seeking document production beyond what documents and information are in the Department’s Record. The Board is asking for those records that are rationally connected to the SML and the Administrative Penalty.

V. DECISION

[41] Section 123(4) of the Act¹⁷ authorizes the Board to require parties to provide additional information. Therefore, the Board orders the Director to provide the Board with the following records as they relate to the SML from the date of the issuance of the SML to the Appellant until the date the Administrative Penalty was issued:

- (a) the complete file of Lands Officer Homberger;
- (b) the complete file of Area Forester Cook relating to the SML;
- (c) the complete file of Lands Officer, Brian Parlin, as it relates to the SML;
- (d) any inspection reports pertaining the SML that have not already been provided in the Director's File; and
- (e) any notes related to meetings regarding the SML.

[42] Board dismisses the other requests for disclosure.

[43] The Board notes the definition of "record" includes all "notes, images, audiovisual recordings, x rays, books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records" as per section 209(m) of PLAR, which references section 1(q) of FOIP.

[44] The Director is not required to reproduce any records that have already been provided to the Board. The Director is to advise the Board by July 31, 2020, when the records may be provided.

Dated on July 24, 2020, at Edmonton, Alberta.



Gordon McClure
Board Chair

¹⁷ Section 123(4) of the Act states: "The appeal body may require the submission of additional information."