

ALBERTA PUBLIC LANDS APPEAL BOARD

Report and Recommendations

Date of Report and Recommendations – September 5, 2019

IN THE MATTER OF sections 121, 122, and 124 of the *Public Lands Act*, R.S.A. 2000, c. P-40, and sections 210, 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 Les Helm and Silver Sage Enterprises Ltd., with respect to the decision of the Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks, to issue Administrative Penalty No. PLA-19/03-AP-LAR-19/02 under the *Public Lands Act* to Les Helm and Silver Sage Enterprises Ltd.

Cite as: *Helm v. Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks* (5 September 2019), Appeal No. 18-0020-R (A.P.L.A.B.), 2019 APLAB 20.

BEFORE:

Mr. Gordon McClure, Board Chair.

PARTIES:

Appellant: Mr. Les Helm and Silver Sage Enterprises Ltd.

Director: Mr. Neil Brad, Director, Regional Compliance,
Lower Athabasca Region, Alberta
Environment and Parks, Shannon Simpkins,
Alberta Environment and Parks, represented by
Jodie Hierlmeier, Alberta Justice and Solicitor
General.

Mediator: Dave McGee, Board Member.

EXECUTIVE SUMMARY

The Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks (the Director), issued an Administrative Penalty to Mr. Les Helm and Silver Sage Enterprises Ltd. (the Appellants). The Director alleged the Appellants engaged in the use of public land without appropriate authorization when the Appellant's submitted a Departmental License of Occupation 160031 application on March 4, 2016, on behalf of Kalinko Enterprises Ltd. The application was to build a road between phases of the mining operation held under Surface Material Lease 100057 (SML) located on public land in the South West and South East Quarters of Section 7, Township 63, Range 8, West of the Fourth Meridian. The application was submitted following construction of the road. On January 25, 2017, AEP Officers inspected the SML and observed that the road had been constructed, while a review of the records at the time indicated that no approval had been granted.

The Administrative Penalty was assessed \$5,000.00 under section 171(5) of the Public Lands Administration Regulation.

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.

The Board conducted a mediation meeting at which a resolution was reached whereby the parties asked the Board to recommend the Minister vary the Director's decision by reducing the amount of the Administrative Penalty to \$4,500.00.

The Board accepted the mediated agreement and recommended the Minister vary the Administrative Penalty accordingly.

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I. INTRODUCTION

[1] This is the Report and Recommendations of the Public Lands Appeal Board (the “Board”) to the Minister, Alberta Environment and Parks (the “Minister”), arising from a mediation held on August 7, 2019, in regards to an appeal of an administrative penalty filed by Mr. Les Helm and Silver Sage Enterprises Ltd. (the “Appellants”).

II. BACKGROUND

[2] On January 25, 2019, the Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks (the “Director”), issued Administrative Penalty No. PLA-19/03-AP-LAR-19/02 (the “Administrative Penalty”) to the Appellants in the amount of \$5,000.00 pursuant to section 59.3(b) of the *Public Lands Act*, R.S.A. 2000, c. P-40 (the “Act”) (for unauthorized use) which had been calculated in accordance with section 171 of the Public Lands Administration Regulation, A.R. 187/2011 (“PLAR”).

[3] The location of the alleged incident is on public land in the South West and South East Quarters of Section 7, Township 63, Range 8, West of the Fourth Meridian (the “Lands”) held under Surface Material Lease 100057 (the “SML”).

[4] The contravention is alleged to have occurred on March 4, 2016. The contravention first came to the attention of Alberta Environment and Parks (“AEP”) on January 25, 2017.

[5] The Appellants were consultants for Kalinko Enterprises Ltd. (“Kalinko”) and Tim Kalinski (“Kalinski”) in the mining operation of the SML for the purpose of aggregate extraction. On March 4, 2016, a Departmental License of Occupation 160031 (the “DLO”) application was submitted to AEP by Silver Sage on behalf of Kalinko to build a road between phases of the mining operation of the SML.

[6] On January 25, 2017, AEP inspected the SML and observed that the road had been constructed, while a review of the records at the time indicated that no approval had been granted.

[7] On March 20, 2018, AEP Officers conducted an in-person interview with Mr. Helm. It is alleged Mr. Helm admitted that he submitted the DLO application on behalf of Kalinko, post-construction of the road. Mr. Helm stated he believed the road to have been constructed sometime in early February 2016. When he did an on-site inspection on March 1, 2016, the road

was already built. Mr. Helm recommended to Kalinko to submit the application for a DLO knowing the road was already built.

[8] On May 29, 2018, AEP Officers conducted an in-person interview with Mr. Tim Kalinski during which he is alleged to have said the purpose of the road was to access the southeast quadrant of the SML and that Mr. Helm gave a verbal “go ahead” to construct the road. Mr. Kalinski is also alleged to have said JMB Crushing ULC constructed the road at his direction sometime in the spring of 2016 and used the road for hauling for two crushing operations.

[9] The Appellants made submissions to the Director at a procedural due process meeting held on January 22, 2019.

[10] On January 24, 2019, the Director issued a final decision in which he stated the Appellants had contravened a provision of the Act by willfully providing false or misleading information to an officer, the director or the Minister concerning public land and were guilty of an offence pursuant to section 56(1)(c) of the Act.

[11] In determining the Administrative Penalty, the Director took into consideration the seriousness of the contravention, the extent of actual or potential loss or damage and the applicable factors provided to vary assessment. The Director set the initial amount at \$3,500.00 and added \$2,000.00 to that amount based on the application of the factors. Included in the \$2,000.00 was the amount of \$1,000.00 attributable to the fact the Appellants had received a prior administrative penalty on September 1, 2017 for contravening sections 54 (1)(a.1) and 20(1)(e) of the Act. This resulted in a total assessment of \$5,500.00, however, section 171(5) of PLAR provides that an administrative penalty cannot exceed \$5,000.00. Accordingly, the Administrative Penalty was set at \$5,000.00.

[12] On February 12, 2019, the Appellants submitted a Notice of Appeal with the Board in regards to the Administrative Penalty alleging that the Director erred in the determination of a material fact, erred in law, and/or exceeded the Director’s or Officer’s jurisdiction or legal authority and seeking to have the decision of the Director reversed and the Administrative Penalty removed.

[13] On February 14, 2019, the Board requested the Director's Record from the Director. The Director's Record was received by the Board on March 20, 2019, and was provided to the Appellant on October 31, 2018.

[14] On August 7, 2019, the Board held a mediation meeting between the Appellant and the Director (the "Parties") with a Board member acting as mediator.

III. DISCUSSION

[15] The mediation meeting resulted in an agreement between the Parties to jointly request the Board submit a Report and Recommendations to the Minister recommending the Minister vary the Director's decision by reducing the Administrative Penalty from \$5,000.00 to \$4,500.00. The basis for the reduction is that the Parties agreed to remove the original adjustment of \$1,000.00 attributable to the prior administrative penalty as it was assessed shortly before the assessment of this Administrative Penalty, leaving the Appellants with no opportunity to change their behaviour.

[16] In consideration of this change to the amount of the Administrative Penalty, the Appellants agreed to withdraw their appeal.

[17] The Board considers the mediated agreement 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

[18] In accordance with section 122(3) of the Act¹, and PLAR, the Board recommends the Minister vary the Director's decision and vary the Administrative Penalty by varying adjustment factor (e) from "+ \$1,000.00" to "neutral" and varying the total amount of the Administrative Penalty from \$5,000.00 to \$4,500.00.

¹ 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."

[19] In accordance with section 124(4) of the *Public Lands Act*,² copies of this Report and Recommendations, and any decision by the Minister regarding this appeal, are to be provided to:

1. Mr. Les Helm and Silver Sage Enterprises Ltd.; and
2. Ms. Jodie Hierlmeier, Alberta Justice and Solicitor General, on behalf of the Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks.

Dated on September 5, 2019, at Edmonton, Alberta.

“original signed by”
Gordon McClure
Board Chair

² 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 43/2019

*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. 18-0020

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. 18-0020.

Dated at the City of Edmonton, Province of Alberta, this 19 day of Sept,
2019.



Jason Nixon
Minister

Appendix

Order Respecting Public Lands Appeal Board Appeal No. 18-0020

With respect to the January 25, 2019, decision of the Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks (the “Director”), to issue Administrative Penalty No. PLA-19/03-AP-LAR-19/02 (the “Administrative Penalty”) to Mr. Les Helm and Silver Sage Enterprises Ltd. in the amount of \$5,000.00 pursuant to section 59.3(b) of the *Public Lands Act*, R.S.A. 2000, c. P-40 (the “Act), for unauthorized use, which had been calculated in accordance with section 171 of the Public Lands Administration Regulation, A.R. 187/2011, I, Jason Nixon, Minister of Environment and Parks, in accordance with section 124(3) of the Act, order that:

1. The Director’s decision regarding the Administrative Penalty be varied by changing the adjustment factor (e) from “+ \$1,000.00” to “neutral” and varying the total amount of the Administrative Penalty from \$5,000.00 to \$4,500.00.