

# ALBERTA PUBLIC LANDS APPEAL BOARD

## Report and Recommendations

Date of Report and Recommendations: June 21, 2021

**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 Darren Myshak, KMC Oilfield Services Ltd. and Muskeg Construction Ltd. with respect to the decision of the Director, Environmental Enforcement Branch, North Region, Regulatory Assurance Division, Alberta Environment and Parks, to issue Notice of Administrative Penalty and Proceeds Assessment No. AP-PLA-30019 to Darren Myshak, KMC Oilfield Services Ltd. and Muskeg Construction Ltd.

Cite as: *Myshak et al. v. Director, Environmental Enforcement Branch, North Region, Regulatory Assurance Division, Alberta Environment and Parks* (21 June 2021), Appeal No. 20-0027-R (A.P.L.A.B.), 2021 ABPLAB 8.

**BEFORE:**

Mr. Gordon McClure, Board Chair.

**PARTIES:**

**Appellants:** Mr. Darren Myshak, KMC Oilfield Services Ltd., and Muskeg Construction Ltd.

**Director:** Mr. Simon Tatlow, Director, Environmental Enforcement Branch, North Region, Regulatory Assurance Division, Alberta Environment and Parks.

## EXECUTIVE SUMMARY

The Director, Environmental Enforcement Branch, North Region, Regulatory Assurance Division, Alberta Environment and Parks (the Director), issued Notice of Administrative Penalty and Proceeds Assessment No. AP-PLA-30019 (the Administrative Penalty) to Darren Myshak, KMC Oilfield Services Ltd. and Muskeg Construction Ltd. (the Appellants) on February 25, 2021 for allegedly allowing access to and use of public lands in Swan Hills without authority, and failing to furnish all information that was reasonably required for the exercising of powers and the carrying out of duties by the Environmental Protection Officer. The Director issued a base penalty of \$8,000.00 and a proceeds assessment of \$27,500.00, for a total penalty of \$35,500.00. The Appellants assumed that because they partnered with the previous disposition holder of the public lands and paid the municipal taxes on the public lands, they had control of the disposition.

The Appellant appealed the issuance of the Administrative Penalty to the Public Lands Appeal Board (the Board) on March 12, 2021.

A mediation meeting was held on June 9, 2021, that resulted in a resolution whereby the parties asked the Board to recommend to the Minister of Environment and Parks that the Administrative Penalty issued to the Appellants be reduced to \$9,000.00. 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 of Environment and Parks (the “Minister”), arising from a mediation of an appeal filed by Mr. Darren Myshak, KMC Oilfield Services Ltd., and Muskeg Construction Ltd. (the “Appellants”).

## II. BACKGROUND

[2] On February 25, 2021, the Director, Environmental Enforcement Branch, North Region, Regulatory Assurance Division, Alberta Environment and Parks (the “Director”) issued Notice of Administrative Penalty and Proceeds Assessment No. AP-PLA-30019 (the “Administrative Penalty”) to the Appellants for alleged contraventions of sections 54.01(5) and 69.6 of the *Public Lands Act* (the “Act”).<sup>1</sup> The Administrative Penalty was in the amount of \$35,500.00, which consisted of \$8,000.00 as a base penalty, plus an additional \$27,500.00 for factors that varied the assessment, including the proceeds (economic benefit) from renting the public lands to a third party without authorization. Pursuant to section 59.4(4)<sup>2</sup> of the Act, the

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<sup>1</sup> 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 69.6 of the Act states:

“The disposition holder of, and every person found on, any land in respect of which an officer is exercising powers or carrying out duties under this Act or the regulations shall

- (a) give the officer all reasonable assistance to enable the officer to exercise those powers and carry out those duties, and
- (b) furnish all information that the officer may reasonably require for the exercising of those powers and the carrying out of those duties.”

<sup>2</sup> 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

Director included \$27,500.00 for proceeds derived from the use of public land in contravention of the Act and the *Public Lands Administration Regulation*, AR 187/2011 (“PLAR”). In the Administrative Penalty, the Director alleged the Appellants had rented public lands to a third party without holding a disposition.

[3] On March 12, 2021, the Appellants filed a Notice of Appeal with the Board appealing the Administrative Penalty. The Appellants stated that by issuing the Administrative Penalty, the Director erred in the determination of a material fact, erred in law, exceeded the Director’s jurisdiction or legal authority, did not comply with a regional plan approved under the *Alberta Land Stewardship Act*, and the decision is expressly subject to appeal under section 15 of PLAR or section 59.2(3) of the Act.

[4] On March 19, 2021, the Board wrote to the Appellants and the Director (collectively the “Parties”), providing the Director with a copy of the Notice of Appeal, and requesting the Director provide a copy of the Department’s records (all documents and all electronic media) (the “Department’s Record”) that were reviewed and that were available when making the decision, including policy documents and the records within the compliance group relating to the appeal, along with an index of the records.

[5] The Director provided the Department’s Record on May 6, 2021 and a copy was subsequently provided to the Appellants.

[6] In a letter dated May 5, 2021, the Board scheduled a mediation meeting for June 9, 2021.

[7] A mediation meeting was held on June 9, 2021, via video conference, that resulted in a resolution of the appeal.

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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.”

### III. DISCUSSION

[8] The mediated agreement resulted in the Parties asking the Board to recommend to the Minister that the Administrative Penalty issued to the Appellant be reduced from \$35,500.00 to \$9,000.00.

### IV. RECOMMENDATIONS

[9] In accordance with section 124(3) of the Act,<sup>3</sup> the Board recommends the Minister of Environment and Parks order that Notice of Administrative Penalty and Proceeds Assessment No. AP-PLA-30019 be varied by reducing the penalty from \$35,500.00 to \$9,000.00.

[10] With respect to section 124(4) of the Act,<sup>4</sup> the Board recommends that copies of this Report and Recommendations, and any decision by the Minister regarding this appeal, be provided to:

1. Mr. Darren Myshak, KMC Oilfield Services Ltd. and Muskeg Construction Ltd.;
2. Mr. Simon Tatlow, Director, Environmental Enforcement Branch, North Region, Alberta Environment and Parks; and
3. Environmental Law Section, Alberta Justice and Solicitor General.

Dated on June 21, 2021, at Edmonton, Alberta.

"original signed by"

Gordon McClure  
Board Chair

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<sup>3</sup> Section 124(3) of the Act provides: "On receiving the report of the appeal body, the Minister may, by order, confirm, reverse or vary the decision appealed and make any decision that the person whose decision was appealed could have made, and make any further order that the Minister considers necessary for the purpose of carrying out the decision."

<sup>4</sup> Section 124(4) of the Act states: "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."

V. APPENDIX



**PUBLIC LANDS  
APPEAL BOARD**

**RESOLUTION  
PUBLIC LANDS APPEAL BOARD  
PLAB No. 20-0027**

In the matter of the mediation of the appeal filed in relation to the February 25, 2021 decision of the Director, Alberta Environment and Parks (the Director), to issue Notice of Administrative Penalty and Proceeds Assessment No. AP-PLA-30019 in the amount of \$35,500.00 to Darren Myshak, KMC Oilfield Services Ltd., and Muskeg Construction Ltd. (collectively the Appellants), for contravening sections 54.01(5) and 69.6 of the *Public Lands Act*.


All participants to the appeal have agreed to the following terms and conditions:

1. With respect to Count 1, the Appellants agree to pay the amount of \$3,500.00.
2. With respect to Count 2, the Director agrees to withdraw this Count.
3. With respect to the Factors, the Director agrees to withdraw the Factors.
4. With respect to the Proceeds, the Director agrees to vary the Proceeds amount from \$27,500.00 to \$5,500.00.
5. Therefore, the total amount of the Administrative Penalty is \$9,000.00 and is due within 30 days of the date of the Minister's Order in this matter.
6. That in signing this resolution, the Appellants withdraw their Notice of Appeal.

RESOLUTION AGREED TO BY:

\_\_\_\_\_  
Darren Myshak  
Owner  
KMC Oilfield Services Ltd., and  
Muskeg Construction Ltd.

Date: \_\_\_\_\_

  
\_\_\_\_\_  
Simon Tatlow, Director  
North Region  
Alberta Environment and Parks

Date: June 9/21





## PUBLIC LANDS APPEAL BOARD

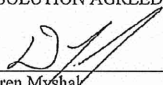
### RESOLUTION PUBLIC LANDS APPEAL BOARD PLAB No. 20-0027

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All participants to the appeal have agreed to the following terms and conditions:

1. With respect to Count 1, the Appellants agree to pay the amount of \$3,500.00.
2. With respect to Count 2, the Director agrees to withdraw this Count.
3. With respect to the Factors, the Director agrees to withdraw the Factors.
4. With respect to the Proceeds, the Director agrees to vary the Proceeds amount from \$27,500.00 to \$5,500.00.
5. Therefore, the total amount of the Administrative Penalty is \$9,000.00 and is due within 30 days of the date of the Minister's Order in this matter.
6. That in signing this resolution, the Appellants withdraw their Notice of Appeal.

RESOLUTION AGREED TO BY:

  
\_\_\_\_\_  
Darren Myshak  
Owner  
KMC Oilfield Services Ltd., and  
Muskeg Construction Ltd.

Date: June 9, 2021

\_\_\_\_\_  
Simon Tatlow, Director  
North Region  
Alberta Environment and Parks

Date: \_\_\_\_\_



ALBERTA  
ENVIRONMENT AND PARKS

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

## MINISTERIAL ORDER 69/2021

*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. 20-0027

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 the Order Respecting Public Lands Appeal Board Appeal No. 20-0027.

Dated at the City of Edmonton, in the Province of Alberta, this 23 day of July, 2021.



Jason Nixon  
Minister

## APPENDIX

### Order Respecting Public Lands Appeal Board Appeal No. 20-0027

With respect to the February 25, 2021, decision of the Director, Environmental Enforcement Branch, North Region, Regulatory Assurance Division, Alberta Environment and Parks (the "Director"), to issue under the *Public Lands Act*, R.S.A. 2000, c. P-40, Notice of Administrative Penalty and Proceeds Assessment No. AP-PLA-30019 ("Administrative Penalty") to Darren Myshak, KMC Oilfield Services Ltd., and Muskeg Construction Ltd., I, Jason Nixon, Minister of Environment and Parks, order that:

1. The decision of the Director to issue the Administrative Penalty is varied as follows:
  - a. The amount of the Administrative Penalty is varied from \$35,500.00 to \$9,000.00;
  - b. Darren Myshak, KMC Oilfield Services Ltd., and Muskeg Construction Ltd. shall submit payment for the Administrative Penalty within 30 days of the date of this Order; and
  - c. No interest is payable on the Administrative Penalty until 30 days after the date of this Order.