

IN THE PROVINCIAL COURT OF ALBERTA CRIMINAL DIVISION

Between:

HER MAJESTY THE QUEEN

and

TOWN OF BOW ISLAND ALSO KNOWN AS THE TOWN OF BOW ISLAND

AGREED STATEMENT OF FACTS

Background

1. On Information 200188712P1, the Town of Bow Island also known as The Town of Bow Island ("Bow Island") stands charged that:

Count 5: On or between the 1st day of January 2014 and the 31st day of December 2017, at or near the Town of Bow Island, in the Province of Alberta, did fail to immediately report to the Director by a method under section 7.1.1, any structural or equipment malfunction in the waterworks system that may affect the quality or supply of potable water contrary to section 7.1.2 of the Code of Practice for a Waterworks System Consisting Solely of a Water Distribution System contrary to section 227(e) of the Environmental Protection and Enhancement Act, notice of the offence having first come to the attention of the Director on February 14, 2018.
2. Bow Island has around 2,043 residents. Bow Island, under an Alberta Environment and Parks registration, operates a drinking water distribution system. Bow Island does not directly treat drinking water. Instead, Bow Island obtains drinking water from a treatment facility and then distributes the water to the residents of Bow Island.
3. Bow Island's registration requires them to comply with the *Potable Water Regulation* and the *Code of Practice for a Waterworks System Consisting Solely of a Water Distribution*

System. Section 5.1.4 of the *Code of Practice* sets out the requirements for sampling. The *Code of Practice* is adopted as part of the regulations under the *Environmental Protection and Enhancement Act*.

4. "Chlorine residual samples" are used to test whether there are sufficient levels of chlorine in the water to kill bacteria in the water during the treatment process. Chlorine in the Bow Island distribution system is required to be checked 5 times per week except on weeks where a statutory holiday falls.
5. The majority of sampling on water distribution systems is done to confirm that no bacteria are in the system and the system has enough chlorine to kill any bacteria in the system.
6. Lead testing is less frequent. Operators are required to confirm lead levels once per year.
7. Operators of a water distribution system are required to report water main breaks and undertake special steps to ensure no contamination of the water distribution system.

Narrative

8. In September 2017, Bow Island hired a new operator to work under the existing operator. Bow Island increasingly gave more responsibility to the new operator. Bow Island wanted to ensure that their water distribution system was running properly.
9. Sometime prior to December 7, 2017, Bow Island attempted to contact the Alberta Environment and Parks ("AEP") Inspector who commonly came to inspect their facilities. She was holidays at the time they initially tried to contact her.
10. On December 7, 2017, Bow Island's new operator called the AEP complaint line to make a report. He reported that Bow Island had discovered that 20 daily chlorine samples had not been taken as required from January to September 2017. Later, in written follow up, Bow Island reported that 26 samples had actually been missed.
11. Bow Island had ongoing discussions with AEP. Eventually, AEP noted that Bow Island had failed to file their 2016 Annual Report. AEP required Bow Island to file the 2016 Annual Report.
12. On February 13, 2018, the Bow Island Public Works Manager contacted AEP to advise that the lead sample results from their 2015 and 2016 annual reports appeared to have been copied from their 2014 annual report (again by the same prior operator).
13. Bow Island emailed AEP its 2016 Annual Report on February 13, 2018. Bow Island later followed up that email by properly filing the 2016 Annual Report using the computer database system on February 20, 2018.
14. AEP conducted an inspection on February 15, 2018. Through the combination of the 2014, 2015, and 2016 Annual Reports and the AEP inspection, AEP concluded that:
 - a. The Drinking Water Safety Plan and Operations Program had not been updated since 2013;

- b. 31 unreported water main breaks had occurred from 2014 to 2017.
15. Further, as a result of the previous operator's inactions and actions:
- a. 9 chlorine residual samples had been missed in 2014;
 - b. 12 chlorine residual samples had been missed in 2015;
 - c. 82 chlorine residual samples had been missed in 2016;
 - d. 29 chlorine residual samples had been missed from January to September 2017;
 - e. No monthly reports had been made for January, February, and March 2015 (these reports are cumulative summaries of various monthly sampling results);
 - f. In the annual report, for the months of April, July, September, and October 2016, prior chlorine sampling results appeared to have been copied from prior months and passed off as the results for each month; and
 - g. The 2015 and 2016 annual report lead test results were identical to the 2014 test results.
16. Bow Island relied upon the individuals who held water treatment certificates to meet regulatory obligations as a water distribution system operator.
17. The prior operator's employment with Bow Island was terminated on February 26, 2018. Bow Island took the position that the termination was for cause. Bow Island had initially discovered some missing chlorine samples in November 2017. On January 19, 2018, the former operator confessed to the new operator and the Public Works Manager that he had falsified lead reports. The former operator was suspended from January 23-25, 2018 for contravening the *Code of Practice*.
18. Since January 2018, Bow Island has put in place systems that will enable administration to confirm Bow Island is meeting the regulatory obligations.

Agreements

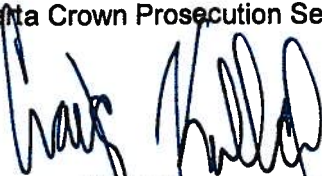
19. The parties agree:
- a. Bow Island will plead guilty to Count 5 on Information 200188712P1 described in paragraph 1 of this Agreed Statement of Facts.
 - b. Bow Island agrees that it will be sentenced on the facts set out herein forming part of the circumstances of the offence that could constitute the basis for separate charges pursuant to s. 725(1)(c) of the Criminal Code of Canada.
 - c. The facts contained within the Agreed Statement of Facts are fully admitted and acknowledged by Bow Island and will solely form the facts to be considered by the Judge pronouncing sentence upon Bow Island. The parties will be at liberty to make further submissions about those facts to the Court.

- d. The parties will jointly submit that Bow Island should receive a penalty of \$10,000 plus 2.5 years probation on agreed conditions for Count 5 on information 200188712P1.
- e. This Agreed Statement of Facts may be filed and relied upon even if signed electronically and in counterpart or by facsimile copies of the signatures of any person or both.

CONSENTED TO WITH RESPECT TO FORM AND SUBSTANCE this 31 day of August, 2020.

Alberta Crown Prosecution Service

Per:



Craig A. Kalla
Solicitor for the Alberta Crown
Prosecution Service,
Specialized Prosecutions Branch

Reynolds Mirth Richards & Farmer LLP

Per:



Shauna N. Finlay
Solicitor and Agent for Town of Bow Island
also known as The Town of Bow Island