

**IN THE PROVINCIAL COURT OF ALBERTA
CRIMINAL DIVISION**

Between

HER MAJESTY THE QUEEN

and

THE CITY OF EDMONTON

AGREED STATEMENT OF FACTS

1. The City of Edmonton stands charged that:

On or about the 11th day of May, 2016 at or near Edmonton in the Province of Alberta, did distribute, use, apply or handle a pesticide except in accordance with the label for that pesticide contrary to Section 163(1) of the *Environmental Protection and Enhancement Act* and did thereby commit an offence contrary to s. 227(j) of the *Environmental Protection and Enhancement Act*, evidence of said offence having first come to the attention of the Director on or after September 9, 2016.

2. On May 11, 2016, a City of Edmonton crew inadvertently applied Hyvar XL pesticide to a residential area along a pathway between houses leading to a large field. The label for Hyvar XL states "Do not use in residential areas."
3. The lead worker on the City of Edmonton crew was a certified pesticide applicator. The other crew member was a pesticide assistant. The City of Edmonton and its employees had all appropriate registrations and permissions under the *Environmental Protection and Enhancement Act* to be permitted to apply pesticides.

4. A City of Edmonton worker, the supervisor of the pesticide application crew (the "Pesticide Supervisor"), filled out the pesticide application record on behalf of the City of Edmonton. The pesticide application record indicated that Hyvar XL pesticide had been applied.
5. Starting June 27, 2016, homeowners adjacent to the pathway started to phone their homeowner's association and the City of Edmonton regarding dead foliage along their property lines both inside and outside of their properties.
6. On June 28, 2016, a City of Edmonton employee attended the site and documented dead and distressed trees.
7. On July 6, 2016, a homeowner (the "Homeowner") emailed the Pesticide Supervisor. The Homeowner had had some prior contact with the City of Edmonton after City of Edmonton employees had attended the places where dead foliage had been reported. The Homeowner had been told by the Pesticide Supervisor that Hyvar XL had been sprayed near his home by City of Edmonton employees. In the email, the Homeowner told the Pesticide Supervisor that the pesticide label for Hyvar XL stated no spraying in residential areas and to keep the pesticide away from children, homes, schools, and parks.
8. The Homeowner had extensive trees and shrubs adjacent to the path behind their home. The Homeowner's trees and bushes near the path were damaged. Other homeowners in the area where the pesticide was sprayed also had damaged trees and shrubs.
9. On July 9, 2016, the Homeowner specifically asked the Pesticide Supervisor if the City of Edmonton had reported the incident to Alberta Environment and Parks. Nobody from the City of Edmonton answered this query.
10. On July 11, 2016, the City of Edmonton Environmental Management Supervisor (the "Environmental Management Supervisor") learned of the incident.
11. On July 12, 2016, the City of Edmonton attended the Homeowner's property

to conduct an inspection of the impacted vegetation. The City of Edmonton took soil and plant tissue samples to be sent for laboratory testing.

12. During the week of July 18, 2016, the City of Edmonton applied active charcoal to the affected area to mitigate the effect of any residue Hyvar XL that may remain in the area.
13. On August 2, 2016, the City of Edmonton received preliminary pesticide laboratory test results showing the presence of Hyvar XL in plant tissue samples and along the walking path but not in the soil samples within 1.5 metres of the affected tree.
14. On August 4, 2016, the Environmental Management Supervisor stated in an internal email that he believed that the City of Edmonton was solely responsible for the dead vegetation. It was his opinion that Hyvar XL likely entered through the roots that had grown to the area of application.
15. On September 6, 2016 and September 8, 2016, the Homeowner asked the Pesticide Supervisor whether the City of Edmonton had reported the matter to Alberta Environment and Parks.
16. On September 9, 2016, the Environmental Management Supervisor directed that this incident be reported to Alberta Environment and Parks. Within an hour, the City of Edmonton reported the matter to Alberta Environment and Parks.
17. On September 12, 2016, the City of Edmonton followed up with its written report of the incident.
18. On September 15, 2016, the City of Edmonton informed some homeowners that they had reported the matter to Alberta Environment and Parks.
19. On October 6, 2016, the City of Edmonton again reported the matter to Alberta Environment and Parks. The City of Edmonton provided more details regarding the scope of the matter.
20. On November 6, 2017, voluntarily without Alberta Environment and Parks taking steps to compel the same, the City of Edmonton undertook

remediation work along the pathway over a period of 3 weeks. Impacted soil on City of Edmonton lands was excavated and replaced with new soil. Further, soil samples were collected for chemical analysis to confirm that all levels of bromacil (the active ingredient in Hyvar XL) was below the applicable regulatory guidelines.

21. On December 27, 2017, the City of Edmonton submitted to Alberta Environment and Parks an excavation report summarizing the aforementioned remediation work that was undertaken and the results of the testing. At this time, Alberta Environment and Parks has closed any files relating to any need for further remediation work on the pathway. Should any application be made to Alberta Environment and Parks with respect to these lands, further monitoring might be required.

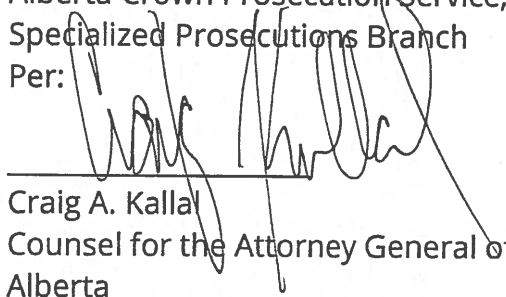
22. The parties agree that:

- a. The City of Edmonton will plead guilty to Count 4 on Information 180945412P1 described in paragraph 1 of this Agreed Statement of Facts. All remaining charges as against all charged parties on the Information will be withdrawn upon the Court sentencing The City of Edmonton.
- b. The City of Edmonton agrees that it will be sentenced on all facts forming part of the circumstances of the offences 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 this Agreed Statement of Facts are fully admitted and acknowledged by the City of Edmonton and will solely form the facts to be considered by the Judge pronouncing sentence upon the City of Edmonton. The parties will be at liberty to make further submissions about those facts to the Court.
- d. The parties will jointly submit that the City of Edmonton should receive a penalty of \$165,000.00 for Count 4 on Information 180945412P1.
- e. This Agreed Statement of Facts may be filed and relied upon even if signed in counterpart or by facsimile copies of the signatures of any

person or both.


CONSENTED TO WITH RESPECT TO FORM AND SUBSTANCE THIS 12th day of July,
2019.

Alberta Crown Prosecution Service,
Specialized Prosecutions Branch
Per:



Craig A. Kallal
Counsel for the Attorney General of
Alberta

Dentons Canada LLP
Per:



Alex MacWilliam
Solicitor and Agent for The City of
Edmonton