

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

Between

HER MAJESTY THE QUEEN

and

TOWN OF WHITECOURT and WOODLANDS COUNTY

AGREED STATEMENT OF FACTS

1. The Town of Whitecourt and Woodlands County both stand charged that:

On or between the 12th day of September 2016 and the 28th day of November 2016, at or near Whitecourt, in the Province of Alberta, did contravene a term or condition of an approval: to wit, Approval No. 49852-01-00, Section 3.1.6 which states:

The approval holder shall not deviate from the design plan and specifications, as submitted under 3.1.2(A), unless the following conditions are met:

- (a) The deviation results in a minor adjustment to the design plan and specifications in 3.1.2(a) to suit field conditions encountered; and
- (b) The deviation will result in an equivalent design performance of the landfill.

And did thereby commit an offence contrary to section 227(e) of the *Environmental Protection and Enhancement Act*.

Background and Landfill Concepts

2. The Whitecourt Regional Landfill Authority (the "Landfill") operates a landfill near Whitecourt, Alberta. The Landfill is operated pursuant to a contractual arrangement between the Town of Whitecourt and Woodlands County. The Town of Whitecourt has day to day operational control of the Landfill and a 69.63% stake in the operation. Woodlands County has a 30.37% stake in the operation. Overall control and decisions regarding the Landfill are made by a board (the "Board"). The Board has voting members from each of the Town of Whitecourt and Woodlands County. The Board is supported by resource staff who act in a non-voting advisory capacity – these are primarily people who have key operational roles with the Landfill.
3. The Landfill operates subject to an Alberta Environment and Parks ("Alberta Environment") Approval. The Approval sets out how the Landfill is permitted to operate and under what conditions the Landfill must operate. A term of the Approval was that:

The approval holder shall not deviate from the design plan and specifications, as submitted under 3.1.2(A), unless the following conditions are met:

- (a) The deviation results in a minor adjustment to the design plan and specifications in 3.1.2(a) to suit ~~the~~ field conditions encountered; and
 - (b) The deviation will result in an equivalent design performance of the landfill.
4. Landfills are normally made up of a series of cells in which given amounts of waste are deposited and segregated. The cells often have various types of liners underneath and to their sides. After the cells are filled, various materials are used to cover them. The terms and specifications of how the cells are to be constructed are set out in the Approval for any given landfill.
 5. In landfills, leachate is any liquid that enters an open cell, drains through the cell, and then escapes from the cell (usually into a sump or other specially designed place to collect the leachate). The resulting leachate can potentially contain chemicals. The process that results in leachate is analogous to the way that a coffee percolator is used to make coffee. The Approval for a landfill normally contains the terms and specifications for how the leachate is to be collected and thereafter processed. However, in the case of the Landfill, no leachate collection system was required prior to 2010 when Alberta Environment directed the construction and installation of such a system as part of the opening of a new cell.

6. Surface water run-off in landfills is different than leachate. Surface water run-off usually arises from precipitation that falls on the landfill and then drains away. Surface water run-off should be free of any chemicals as the water has not entered any of the cells (otherwise the water would then become leachate). The Approval for a landfill normally contains terms and specifications for how the surface water is to be processed.

The Incident

7. The Landfill operates using a set of discrete “cells” to accept appropriate waste. In 2015, the existing operating cell was approaching end of life due to unexpectedly high volumes of incoming waste over the prior year. An environmental consulting firm (the “Environmental Consultant”) was hired to prepare construction drawings for the next cell expansion and submit the required notice to Alberta Environment. However, the Environmental Consultant proposed a change in design and operating philosophy which would extend the life of the existing facility by, it estimated, over 15 years. Alberta Environment Approvals department staff had some brief contact with the Environmental Consultant. The Environmental Consultant was advised that an Approval Amendment would be required for the proposed scope of work. The Board approved this proposed change in philosophy and in so doing, recognized the need for an Approval amendment. The Environmental Consultant did not raise with the Board any concern about the timing of such an amendment relative to the need to continue operating the Landfill.
8. In July 2016, a Town of Whitecourt employee (the “Director of Infrastructure”) was in contact with Alberta Environment numerous times in an attempt to communicate that the amendment to the Landfill Approval was required on an urgent basis in light of the ongoing operational status of the Landfill. Both Alberta Environment Approvals and Compliance staff advised the Director of Infrastructure that an Approval Amendment was necessary before any work could start on the proposed changes to the Landfill. The Director of Infrastructure advised Alberta Environment that the current Landfill cell was nearly at capacity, and requested that Alberta Environment staff assist by expediting the Approval amendment process and by working closely with the Environmental Consultant. The Director of Infrastructure also communicated that the Landfill was the only regional landfill in the area, which further increased the urgency of maintaining operations. The Director of Infrastructure was assured by the Director of Approvals for Alberta Environment that “we will work with you”.
9. On August 2, 2016, the Landfill submitted an application to amend the Approval.

10. On August 22, 2016, Alberta Environment Approvals staff advised the Director of Infrastructure that no major issues had been identified with the submission of the Environmental Consultant, and that Alberta Environment was continuing its review of the amendment application.
11. On August 24, 2016, as Town of Whitecourt and Woodlands County staff discussed the lack of space in the Landfill, the Director of Infrastructure wrote an email to various people within both municipalities saying: "We aren't waiting for A[lberta] E[nvironment] to give us the green light for the project as we know we are under time constraints to have the project completed and operational this fall. We may not have our approvals but we will have some place to put our waste. The most important parts of the construction will be completed first to allow us to continue to operate. We might not get the leachate pond fully finished if the geotextile isn't installed but we can manage with our existing system in spring just as we have this year."
12. Alberta Environment had discussions with the Landfill regarding deficiencies in their application to amend the Approval between August 25, 2016 and September 1, 2016. Alberta Environment viewed the application as incomplete primarily due to the failure to file engineered drawings as part of the application. During this time, the Director of Infrastructure repeatedly asked Alberta Environment to "work with" the Landfill. In response, Alberta Environment staff told the Director of Infrastructure that an Approval Amendment was necessary multiple times, while also either assuring the Director of Infrastructure that Alberta Environment would "work with" the Landfill on this issue (as the Director of Approvals had already indicated), or not indicating anything to the contrary. Unfortunately, neither party clarified exactly what they understood that phrase to mean.
13. On September 2, 2016, the Landfill sent out an invitation to tender to potential bidders for construction on the landfill. Alberta Environment was informed that the Landfill was doing this.
14. On September 8, 2016, the Director of Infrastructure informed the Board that a particular contractor (the "Contractor") had won the tender. He acknowledged to the Board that the necessary Approval Amendment had yet to be obtained. He ended his email: "So..... we don't have approvals to proceed but will run out of space... and construction weather if we delay. We have kept A[lberta] E[nvironment] informed throughout the design and tendering process and hope that they continue to work with us to complete the construction this year."

15. On September 12, 2016, the Board officially awarded the tender for an estimated cost of \$1,167,929.00. No discussion of the Approval Amendment was noted in the Board meeting minutes. However, the Board members understood that construction proceeding was subject to an Approval Amendment, which they were advised by the Director of Infrastructure had not yet been issued but which he, ultimately incorrectly, assumed was forthcoming shortly.
16. On September 21, 2016, the Contractor sent an email to the Environmental Consultant. The Contractor advised that Landfill employees had told employees of the Contractor that Alberta Environment had not approved the work on the Landfill. Later that day, the Director of Infrastructure sent an email to the contractor saying: "Proceeding without or approvals is a know [sic] risk. Both the town and county understand are have accepted this. The ladies concerns are noted but this project in proceeding."
17. From September 23-26, 2016, the Director of Infrastructure, in an attempt to assist the Authority in preparing the Landfill site for cell expansion in light of the urgency of the situation, personally supervised employees who used pumps to drain a surface water run-off pond into bush adjacent to the Landfill.
18. On September 24, 2016, Alberta Environment received an anonymous complaint that the Director of Infrastructure was pumping storm water into a forested area.
19. On September 27, 2016, Alberta Environment inspected the site. By September 29, 2016, the Landfill had voluntarily ceased all construction activity at the site in response to concerns that Alberta Environment had raised.
20. On October 21, 2016, the Director of Infrastructure sent an email to various people in which he told them that he believed that when Alberta Environment says "we will work with you", the meaning was that Alberta Environment and the Landfill were working together to get the project finished.
21. Starting approximately October 24, 2016, the Landfill constructed a single pond to replace the 2 ponds that had been removed from September 23-26, 2016. The single pond was not in accordance with the Approval, although it had significantly more capacity than the prior approved two ponds and a design that the Landfill's engineers considered to be superior. The single pond closely matched the plans for how the Landfill was intending to fix things if the Amendment Approval was granted. When Alberta Environment learned of the single pond, Alberta Environment immediately required that the single pond be reconstructed into a format that complied with the Approval.

22. From approximately November 22-28, 2016, the Landfill reconstructed the single pond into a double pond more akin to what was required by the Approval. The commencement of these reconstruction attempts was delayed by cold weather and rainfall until the noted dates.
23. From September 23-26, 2016 to November 22-28, 2016, the Landfill deviated from the design plan and specifications that they had previously submitted under the Approval as the Landfill lacked a double pond as originally designed and approved.
24. On December 2, 2016, the Landfill's Approval Amendment application was officially deemed as administratively complete (all materials submitted such that Approvals could now consider the application on its merits). Only at this point, from the perspective of Alberta Environment, could the application now start to be processed.
25. Ultimately, the Approval Amendment was granted and construction was permitted to proceed. The Approval Amendment permitted construction almost entirely as first proposed by the Landfill, with the exception of the use of phytoremediation processes which were voluntarily removed by the Landfill to permit the Approval Amendment application to be processed more quickly, given Alberta Environment's indication that it was not familiar with such processes and more information would be required to address the application.

Agreements

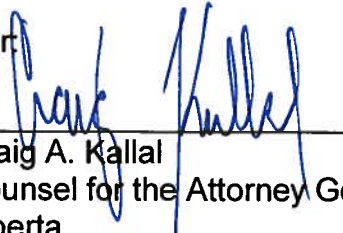
26. The parties agree that:
 - a. Each of the parties charged on the Information will plead guilty to Count 11 on Information 181075714P1 described in paragraph 1 of this Agreed Statement of Facts. All remaining charges as against all charged parties on the Information will be withdrawn upon the Court sentencing those parties.
 - b. Each of the parties charged on the Information 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 parties.

- d. The parties will jointly submit that the Town of Whitecourt should receive a penalty of \$69,630.00, inclusive of victim fine surcharge, for Count 11 on Information 181075714P1.
- e. The parties will jointly submit that Woodlands County should receive a penalty of \$30,370.00 , inclusive of victim fine surcharge, for Count 11 on Information 181075714P1.
- f. The parties will jointly submit that the agreed penalties should be subject to a creative sentence order, the terms of which are to be mutually agreed upon prior to attending in Court to make this joint submission.
- g. 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 10th day of June, 2019.

Only
Alberta Crown Prosecution Service,
Specialized Prosecutions Branch

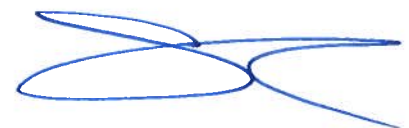
Per:



Craig A. Kallal
Counsel for the Attorney General of
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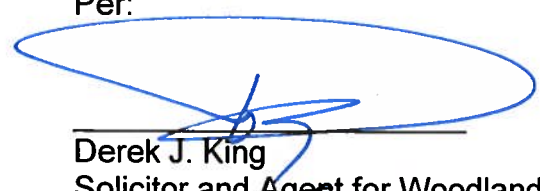
Per:



Stuart W. Chambers
Solicitor and Agent for the Town of
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Per:



Derek J. King
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