



WATER ACT

BEING CHAPTER W-3 R.S.A. 2000 (the "Water Act")

ENFORCEMENT ORDER NO. WA-EO-2018/07-LAR

Tim Kalinski
606 Beach Avenue
Cold Lake, AB
T9M 1G5

Kalinko Enterprises Ltd.
P.O. Box 6710
Bonnyville, AB
T9N 2H2

Leslie Helm
Site 635 Comp 29 RR 2
Lac La Biche, AB
T0A 2C2

Silver Sage Enterprises Ltd.
P.O. Box 6710
Bonnyville, AB
T9N 2H2

Jessica Brennan
P.O. Box 458
Ardmore, AB
T0A 0B0

(Collectively "the Parties")

WHEREAS Kalinko Enterprises Ltd. ["Kalinko"] holds a Surface Material Lease SML010005 ["SML05"], for the lands legally described as the NE-13-62-8-W4M, NW-18-62-7-W4M and SW-19-62-7-W4M in the Municipal District of Bonnyville No. 87 ["SML05 Lands"];

WHEREAS Kalinko is a corporate entity registered in Alberta that operates a gravel pit on the SML05 Lands. Tim Kalinski ["Kalinski"] is the sole director of Kalinko, and at all material times made the decisions in respect of the issues which form the subject-matter of this Order;

WHEREAS Kalinko was issued SML05 on July 12, 2001 under the *Public Lands Act* to excavate gravel as part of a dry excavation operation on the SML05 Lands;

WHEREAS SML05 issued to Kalinko includes condition 21.631, which states: "*Prior to the commencement of construction, the holder shall obtain authority under the Water Act from Alberta Environment...*";

WHEREAS Jessica Brennan ["Brennan"] holds a Surface Material Lease, SML110037 ["SML37"], for the lands legally described as NW-18-62-7-W4M, SW-19-62-7-W4M and SE-19-62-7-W4M in the Municipal District of Bonnyville No. 87 ["SML37 Lands"];

WHEREAS the SML37 Lands are adjacent to SML05 Lands;

WHEREAS Brennan was issued SML37 on March 17, 2015 under the *Public Lands Act* the right to work and remove out of the surface thereof Sand and Gravel (Mixed) on the SML37 Lands;

WHEREAS SML37 issued to Brennan includes condition 1.003(e) which states: *The holder is responsible for obtaining any necessary federal, municipal and other permits and approvals with respect to this activity;*

WHEREAS on April 11, 2016, an Alberta Environment and Parks ["AEP"] Environmental Protection Officer ["EPO"] – who is designated as an inspector and investigator under the *Water Act* – noticed a discrepancy between site diagrams Kalinko provided in its approved Conservation and Reclamation Plan ["C&R"] in 2001 and the new unapproved Conservation and Reclamation Business Plan ["CRBP"] submitted in 2014 for SML05. A body of water and an existing ditch labelled in the site diagrams in the 2014 CRBP were absent from the approved 2001 C&R;

WHEREAS in the Surface Water and Groundwater Management Section (5.4) of the 2014 CRBP states groundwater was encountered and a ditch was created to dewater the area by removing the groundwater from the product being excavated;

WHEREAS on April 27, 2016, the EPO inspected the Lands, took photographs and confirmed a manmade ditch [the "Ditch"] that runs east to west from NW-18-62-7-W4M to NE-13-62-8-W4M on the SML05 Lands from a manmade settling pond [the "Pond"] on the SML37 Lands [collectively the "Unauthorized Activity"];

WHEREAS on July 13, 2017, the EPO conducted a search of the Alberta Provincial Authorizations Viewer for SML05 for a *Water Act* Approval to conduct activities and a *Water Act* License to divert water off site. Neither authorization could be located;

WHEREAS on July 14, 2017, the EPO interviewed Leslie Helm ["Helm"] of Silver Sage Enterprises LTD ["Silver Sage"] where he stated:

- They have been employed as an independent consultant for Kalinko since 2010.
- They produced the 2014 CRBP on behalf of Kalinko.
- The Ditch was constructed to control water and erosion.
- A drainage was present in 2010 and was approximately one meter deep.
- The drainage was altered in 2011 based on Helm's directions on behalf of Silver Sage:
 - Deepened the Ditch by approximately 4 meters.
 - Reduced the gradient of the Ditch to reduce water velocity.
 - Sloped the side banks to reduce erosion.
 - Revegetated the area and bioengineered the Ditch with willows.
 - Created a larger settling pond to help with sedimentation and erosion.

- Added geotextile material and riprap the outlet of the channel on to crown land.
- The Ditch and the Pond contained groundwater and surface water.
- The Ditch runs towards the Beaver River.
- No *Water Act* approval or licence is in place for the diversion of water, dewatering the area offsite onto crown land or for wet excavating on SML 05 or SML 37.
- Brennan is also a Silver Sage client.
- There is a site agreement between Brennan and Kalinko to drain surface and groundwater to the same area.

WHEREAS Silver Sage is a corporate entity registered in Alberta and is the consultant for Kalinko and Jessica Brennan. Helm and Diana Helm are joint owners of Silver Sage and Helm is the president;

WHEREAS on July 25, 2017, the EPO interviewed Kalinski on behalf of Kalinko where he stated:

- The Ditch was constructed to manage water onsite.
- The Ditch drained onto crown land towards the Beaver River.
- Material was mined and stockpiled to allow the groundwater to drain from the material into the Pond.
- When the Pond reaches capacity it drains into the Ditch.
- No Water Act Approval or Licence is in place on SML 05 and he was not advised by Helm of Silver Sage to seek authorization.
- Silver Sage conducted works on the Ditch in 2011.
- Groundwater and surface water is mixed in the water control measures.
- Groundwater was encounter during excavating in pockets as well as ongoing from a natural drainage seep.
- There is a verbal agreement between Kalinko and Brennan to have SML37 drainage activities directed towards SML05.

WHEREAS on July 25, 2017, the EPO inspected SML05 Lands and SML37 Lands took photos and observed:

- Water discharging from the Ditch onto crown land towards the Beaver River;
- Riprap positioned at the outlet of the Ditch on SML05 and on Crown land; and
- Erosion on the constructed banks of the Ditch.

WHEREAS, the Ditch conveys water from the Pond towards the Beaver River and the Beaver River transects part of NE-13-62-8-W4M, which the SML05 Lands also occupy, in a meandering pattern in a north-south direction;

WHEREAS the majority of the Pond is located on SML37 and the Ditch is located on SML05;

WHEREAS on April 10, 2018, the EPO conducted a search of the Alberta Provincial Authorizations Viewer for SML37 for a *Water Act* Approval to conduct activities and a *Water Act* License to divert water off site and could not locate either one of the required authorizations;

WHEREAS the Beaver River is a fish bearing river with "fish habitat" as defined in Section 34(1) of the *Fisheries Act* and flows throughout the year;

WHEREAS altering the flow, direction of flow or level of water or changing the location of water for the purpose of drainage is an "activity" as defined in Section 1(1)(b)(i and ii) of the *Water Act*;

WHEREAS Section 36(1) of the *Water Act* states that no person shall commence or continue an activity except pursuant to an approval unless otherwise authorized under the *Act*;

WHEREAS AEP has not issued an approval or licence to any of the Parties or to any person for the Unauthorized Activity and this activity is not otherwise authorized under the *Water Act*;

WHEREAS the Parties are each, a "person responsible" for the activity described herein pursuant to Section 1(1)(kk) of the *Water Act*, and Section 1(5) of the *Water (Ministerial) Regulation* (AR 205/1998);

WHEREAS, Simon Tatlow, AEP Compliance Manager, Lower Athabasca Region [the "Director"] has been designated as a Director for the purpose of issuing enforcement orders under the *Water Act*;

WHEREAS the Director is of the opinion that the Parties have contravened Section 36(1) of the *Water Act*, which is an offence under Section 142(1)(h) of the *Water Act*, by commencing or continuing an activity without an approval;

THEREFORE, I, Simon Tatlow, Director, pursuant to Sections 135(1) and 136(1) of the *Water Act*, DO HEREBY ORDER THAT:

1. The Parties shall immediately cease all unauthorized activities on the SML05 Lands and SML37 Lands, including any work on, in or around the Ditch or Pond.
2. The Parties shall submit to the Director, for the Director's approval, the name and qualifications of a Professional who is a member in good standing with a Professional Regulatory Organizations, with experience in preparing a remedial plan and managing groundwater by July 17, 2018.
3. The Parties shall submit to the Director, for the Director's approval, a written remedial plan [the "Remedial Plan"] signed and stamped by the Professional by August 21, 2018.
4. The Parties shall include in the Remedial Plan, at least all of the following:
 - A. A detailed assessment of the SML05 Lands and SML37 Lands including drainage, soils, vegetation, water (ground/surface) and the affected area surrounding the SMLs;
 - B. Apply for required authorization to conduct remedial activities off of SML05 and SML37;
 - C. A detailed map to determine:
 - i. The source of the water in the Ditch and Pond;
 - ii. The original drainage prior to any activity on SML05 Lands and SML37 Lands; and
 - iii. The current drainage including the extent water is discharged outside of SML05.

- D. The amount of water that has been and is discharging outside of SML 05 and SML 37;
 - E. A description of how the Ditch, the Pond and any other manmade water bodies present on SML05 Lands and SML37 Lands will be decommissioned;
 - F. A detailed plan on how water will be managed on SML05 Lands and SML37 Lands and be returned to the natural drainage system;
 - G. A description of the type of equipment, methods, and materials that will be used in implementing the Remedial Plan;
 - H. A description of the long-term monitoring and maintenance measures that will be implemented to ensure that remedial works remain effective at achieving the goals in Paragraphs 4D and 4E of this Order; and
 - I. A schedule for implementing the Remedial Plan with a completion date no later than October 1, 2018.
5. The Parties shall implement the Remedial Plan as approved in writing by the Director in accordance with the schedule of implementation approved by the Director.
 6. The Parties shall provide the Director with a minimum of 2 business days' notice by email prior to commencing any work under the Remedial Plan.
 7. The Parties shall submit to the Director a final report prepared and signed by the approved Professional describing the work undertaken to comply with this Order by November 30, 2018.

DATED at the Hamlet of Ardmore in the Province of Alberta, this 3rd day of July, 2018.

Original Signed by:

Simon Tatlow
Compliance Manager
Lower Athabasca Region

Copy 1 - Issued to Jessica BRENNAN at 62219 RR 443
Hamlet of Ardmore, July 3/18 @ 13:44 hours

Copy 2 + 3 - To Les Helm + Silver Sage Enterprises Ltd. at
Provincial Building, Lac La Piche July 4/18 @ 09:52 hours.

Copy 4 + 5 - Sent registered mail to Tim Kalinski + Kalinka
Enterprises Ltd. at addresses on the order

Notwithstanding the above requirements, the Parties shall obtain all other necessary approvals from any regulatory agency (provincial or federal) in complying with this order.

Take notice that this enforcement order is a remedial tool only, and in no way precludes any enforcement proceedings being taken regarding this matter under this Act or any other legislation. Failure to comply with this order may result in further enforcement proceedings.

Section 115 of the *Water Act* may provide a right of appeal against this decision to the Alberta Environmental Appeals Board. There may be a strict time limit for filing such an appeal. For further information, please contact the Board Secretary at:

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