



WATER ACT

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

Amendment No. 3

to

ENFORCEMENT ORDER NO. WA-EO-2017/05-SSR

I, Coreen Bates, Compliance Manager, Southern Region, designated Director for the purpose of section 143 of the *Water Act*, DO HEREBY AMEND Enforcement Order No. WA-EO-2017/05-SSR ("Order") by:

- 1) consolidating Amendment No. 1 dated October 11, 2017, which deleted November 1, 2017 from Clause 1 and replaced it with March 1, 2018 and which deleted May 15, 2018 from Clause 4f. and replaced with November 1, 2018, into the Order;
- 2) consolidating Ministerial Order 02/2020 dated January 9, 2020 ("MO 02/2020"), which varied the Order by repealing and replacing Clauses (referred to in MO 02/2020 as Conditions) 1, 2, 4e., 4f., 6, and 7 of the Order ("Amendment No. 2");
- 3) deleting the words crossed out below from the Order; and
- 4) adding the underlined words below to the Order.

DATED at the City of Lethbridge in the Province of Alberta, this 15 day of October, 2021.

A handwritten signature in cursive script that reads "Coreen Bates".

Coreen Bates
Compliance Manager
Southern Region

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. A copy of section 115 is enclosed. For further information, please contact the Board Secretary at #306 Peace Hills Trust Tower, 10011 – 109 Street, Edmonton, Alberta, T5J 3S8; telephone (780) 427-6207; fax (780) 427-4693.

Notwithstanding the above requirements, the Party(ies) shall obtain all necessary approvals in complying with this order under any other provincial or federal legislation.

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 or any other provincial or federal legislation.

Honey Holdings Ltd.
P.O. Box 474
Lethbridge, AB
T1J 3Z1

("Honey Holdings")

Tollestrup Construction (2005) Inc.
P.O. Box 474
Lethbridge, AB
T1J 3Z1

("TCI")

(Collectively hereinafter referred to as "the Parties")

WHEREAS Honey Holdings Ltd. owns the lands ("Honey Holdings") legally described as: SE-11-009-22-W4M, SW-12-009-22-W4M, NW-01-009-22-W4M, NE-01-009-22-W4M (the "Lands") located within the City of Lethbridge, Alberta;

WHEREAS Tollestrup Construction (2005) Inc. ("TCI") owns and operates a construction business on the Lands, which consists of an office trailer, a registered asphalt plant, a gravel washing facility, gravel processing/crushing facilities, gravel stockpiles, heavy equipment staging areas and approximately 52 hectares of excavated gravel pit area, as are all shown in the attached Appendix A;

WHEREAS the majority of the Lands are located within the mapped Flood Hazard Area of the Oldman River Valley within the City of Lethbridge limits, and are directly adjacent to the Oldman River;

WHEREAS approximately 2 km of the western boundary of the Lands are directly adjacent to the Oldman River which flows in a northerly direction;

WHEREAS the Oldman River is a "water body" within the meaning of section 1(1)(ggg) of the *Water Act*;

WHEREAS on June 9, 2015, Alberta Environment and Parks ("AEP") received a public complaint regarding the ongoing construction of a berm on the Lands;

WHEREAS on May 3, 2016, the AEP Environmental Protection Officer (the "Officer") conducted an inspection of the Lands and observed:

- TCI had constructed a berm that lay along the western boundary of the Lands that are adjacent to the Oldman River (the “Berm”);
- The Berm appeared to be mainly composed of compacted soil fill material;

WHEREAS on May 3, 2016, the Officer advised TCI that the construction and operation of the Berm is not approved under the *Water Act* and that any further construction and operation of the Berm must immediately cease;

WHEREAS on June 30, 2016, AEP sent a Letter of Non-Compliance to TCI that required a written plan be submitted no later than July 25, 2016, with details and proposed timelines for how the Berm will be brought into compliance under the *Water Act*;

WHEREAS on July 22, 2016, TCI provided a written response to the Letter of Non-Compliance sent June 30, 2016, that proposed the submission of a completed engineering report for Approval in spring of 2017;

WHEREAS on August 10, 2016, AEP responded in writing to TCI that the response provided by TCI in the July 22, 2016, letter did not meet the requirements set out by AEP in the Letter of Non-Compliance dated June 30, 2016;

WHEREAS by letter dated September 12, 2016, TCI advised AEP that they had retained the professional services of an engineering consultant, Tetra Tech EBA, and would submit a completed engineering report prior to January 1, 2017;

WHEREAS on October 3, 2016, staff from AEP and the City of Lethbridge conducted a further site inspection to examine the Berm and observed the following:

- The Berm is approximately 2 km in length and substantially larger in length and width towards the northerly portion of the Lands that are adjacent to the Oldman River;
- The Berm generally ranges from 4 to 40 meters in width, though in some locations it is greater than 40 meters;
- The Berm ranges from approximately 10 to 30 meters in height along its length;
- Visible signs of soil erosion, slumping and cracking were observed throughout the Berm as well as concrete slabs that had fallen into the Oldman River and/or were still embedded in the Berm;
- Various plastic pipes and culverts were observed protruding from the Berm;
- The City of Lethbridge confirmed that the northerly portion of the Berm had encroached onto City Lands;
- A portion of the Berm encroaches on Provincial Crown owned right of way;
- Recent earthen material not present in previous inspections that was used to infill further areas on the Lands and expand the width of Berm;
- TCI confirmed that this material was hauled in from a construction project at the University of Lethbridge;

WHEREAS on November 18, 2016, the Director received the following from TCI:

- Geotechnical Assessment of the Berm (“Geotechnical Assessment Tollestrup Earthen Berm,” Tetra Tech EBA Inc., January 2017);
- Hydraulic Assessment related to the construction of the Berm (“Tollestrup Site Flood Protection Berm Water Level Impact,” Tetra Tech EBA Inc., November 18, 2016);

WHEREAS AEP reviewed the TCI reports submitted on November 18, 2016 and it appeared there was no immediate risk of a catastrophic failure of the berm;

WHEREAS the continued construction and operation of the Berm may alter or become capable of altering the flow or level of water, may become capable of changing the location of water, and may cause or become capable of causing siltation of water or the erosion of the bed and shore of the waterbody, and may cause or may become capable of causing an effect on the aquatic environment of the waterbody;

WHEREAS the Berm is a “works” within the meaning of section 1(1)(mmm) of the *Water Act*;

WHEREAS the construction and operation of the Berm is an “activity” within the meaning of sections 1(1)(b)(i) and 1(1)(b)(ii) of the *Water Act*;

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

WHEREAS AEP has never issued an approval to the Parties for the construction and operation of the Berm, and the construction and operation of the Berm is not otherwise authorized under the *Water Act*;

WHEREAS the Parties are each a “person responsible” for the Berm pursuant to section 1(1)(kk) of the *Water Act* and section 1(5) of the *Water (Ministerial) Regulation* (A.R. 205/1998);

WHEREAS Stephen Mathyk, Compliance Manager, South Saskatchewan Region, has been appointed a Director for the purposes of issuing Enforcement Orders under the *Water Act* (the “Director”);

WHEREAS the Director is of the opinion that TCI has contravened section 36 (1) of the *Water Act* which is an offence under section 142(1)(h) of the *Act*, by conducting an activity without an approval, being the ongoing construction and operation of the Berm;

WHEREAS the Director is of the opinion that the Berm may cause adverse effects to:

- the bed and shore of the Oldman River;

- the hydrology of the River;
- the aquatic environment of the River;
- other property owners;

AND—WHEREAS the Director is of the opinion that the Berm must be decommissioned and removed;

WHEREAS on August 10, 2017, the Director issued the Order to TCI;

WHEREAS TCI appealed the Order to the Environmental Appeal Board (“the Board”) on August 16, 2017;

WHEREAS on October 11, 2017, the Director amended the Order to extend the deadline in Clause 1 to March 1, 2018 and the deadline in Clause 4f. to November 1, 2018 (Amendment No.1);

WHEREAS following the appeal hearing on November 19, 2019, the Board provided its report and recommendations in Appeal Nos. 17-052-053-R to the Minister of Alberta Environment and Parks (“Minister”);

WHEREAS the Minister ordered that the Order be varied by repealing and replacing Clauses (referred to in MO 02/2020 as Conditions) 1, 2, 4e, 4f, 6 and 7 of the Order;

WHEREAS pursuant to Clause 1 of the Order, as varied by MO 02/2020, TCI was required to submit by no later than July 9, 2021, a written decommissioning plan for the delineation, removal and remediation of the Berm (the “decommissioning plan”) to the Director for approval;

WHEREAS TCI did not submit a decommissioning plan to the Director by July 9, 2021 in contravention of Clause 1 of the Order, as varied by MO 02/2020;

WHEREAS TCI requested that the Director extend the deadline to submit a decommission plan in Clause 1, as varied by MO 02/2020, to April 9, 2022 to accommodate its timelines associated with its application for approval of the berm to AEP;

THEREFORE, I, Stephen Mathyk, the Director, pursuant to sections 135(1) and 136(1) of the Act, DO HEREBY ORDER THAT HONEY HOLDINGS LTD. AND TOLLESTRUP CONSTRUCTION (2005) INC. SHALL:

1. On or before ~~18 months from the date of the Minister's order~~ April 9, 2022, submit to the Director for approval, a written decommissioning plan for the delineation, removal and remediation of the Berm (the "Decommissioning Plan");

2. The Decommissioning Plan must be authenticated by a Professional Engineer registered and in good standing with the Association of Professional Engineers and Geoscientists of Alberta (APEGA);
3. The Decommissioning Plan shall meet the objectives of removing and remediating the Berm in such a manner to prevent any adverse effects to:
 - a. The bed and shore of the Oldman River;
 - b. The hydrology of the Oldman River;
 - c. The aquatic environment of the Oldman River; and,
 - d. Other property owners;
4. The Decommissioning Plan shall include, at a minimum, the following:
 - a. A detailed plan for the complete delineation of the vertical and lateral extent of the Berm and any fill material placed directly behind the Berm that in-fills the floodplain;
 - b. A detailed plan to assess the elevation of the lands underlying the Berm prior any Berm construction or in-filling of the floodplain;
 - c. The construction techniques, mitigation measures, materials, and remediation techniques proposed for the Berm removal;
 - d. Stamped and signed engineered drawings of the proposed final elevations and contours of the lands impacted by the Berm or in-filling of the floodplain;
 - e. River modelling results of the remediated site (after removal of the Berm and any final contouring of areas previously occupied by the Berm) confirming no changes to existing flood hazard mapping models for the Oldman River;
 - f. A schedule of implementation of the plan with a start date three months from the date of the approval of the Decommissioning Plan and a completion date subject to the Director extending the date further;
5. The Parties shall implement the work set out in the Decommissioning Plan in accordance with the schedule of implementation that is approved by the Director;

6. Within 90 days of completion of the requirements of the Decommissioning Plan subject to the Director extending it further, the Parties shall submit to the Director for approval a verification report describing the work undertaken to comply with this order ("the Verification Report");
7. The Verification Report must be authenticated by a Professional Engineer registered and in good standing with APEGA.

DATED at the City of Lethbridge in the Province of Alberta, this 10th day of August, 2017.

[Original signed and dated
August 10, 2017

Stephen Mathyk
District Compliance Manager
Southern Region

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