

WATER ACT

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

ENFORCEMENT ORDER NO. EO-WA-35839

Michael Chymycz
Box 6111
Drayton Valley, Alberta
T7A 1R5

WHEREAS Michael Chymycz ("Mr. Chymycz") is the registered owner of lands legally described as NE-10-51-8 W5M and NW-10-51-8 W5M, in Parkland County, in the Province of Alberta;

WHEREAS Mr. Chymycz purchased NE-10-51-8 W5M in 2013 and NW-10-51-8 W5M (the "Lands") in 2020;

WHEREAS on August 18, 2020, Alberta Environment and Parks ("AEP") received a public complaint regarding the rerouting a creek, where the creek bed was straightened and heavy equipment was being used to create trails;

WHEREAS on October 7, 2020, AEP inspectors, an AEP Rangeland Agrologist and an AEP Public Lands Officer conducted a site inspection on the Lands and observed:

- unauthorized ditches in the wetlands throughout the Lands (labelled as Ditches 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11),
- roads through the wetlands present on the Lands, and
- an altered section of the unnamed creek (the "Creek") at the clay extraction area;

(the observations noted above are shown in Figure 1 of the Appendix);

WHEREAS on November 20, 2020, an AEP inspector (the "Inspector") sent an email to Mr. Chymycz requesting that he obtain a report that:

- provides the classification and delineation of wetlands and the Creek on the Lands,
- includes a plan to remedy, restore and/or replace the impacts to the wetlands and Creek stemming from the activities observed during AEP's October 7, 2020 inspection,
- is prepared by an authenticating professional, and
- be submitted to AEP by January 15, 2021 for the wetlands and April 15, 2021 for the Creek;

WHEREAS on November 26, 2020, the Inspector requested information from Mr. Chymycz by email outlining:

- the purpose of the ditches observed during the October 7, 2020 site inspection,
- the purpose for the altering the affected section of the Creek, and
- that AEP required that this information be submitted by December 4, 2020;

WHEREAS on November 27, 2020, Mr. Chymycz sent an email to the Inspector explaining that:

- the disturbance near the Creek on the Lands resulted from his extraction of clay to build a road on the Lands (shown in Figure 1 and 2 in the Appendix), and
- Ditches 1 to 11 (shown in Figure 1 in the Appendix) were installed by Mr. Chymycz;

WHEREAS on December 2, 2020, an AEP Hydrologist reviewed aerial imagery of the Creek and the Lands;

WHEREAS as part of the AEP Hydrologist's review, he identified that the Creek's channel had been realigned, but he provided his professional opinion that he did not expect the alteration to impact the watercourse beyond 10 meters downstream from the affected channel;

WHEREAS on January 25, 2021, an AEP Wetland Specialist reviewed historic aerial photographs of the Lands;

WHEREAS the Wetland Specialist identified that there was a wetland complex (the "Impacted Wetlands") on the Lands that contained a mixture of treed fen, treed bog, and gramanoid fen;

WHEREAS on February 26, 2021 after reviewing the file, an AEP Water Boundaries Specialist confirmed that the bed and shore of the Creek was surveyed in 1910 and are Public Lands vested in the Crown in the right of Alberta under the *Public Lands Act*;

WHEREAS on April 27, 2021, the Inspector completed a follow-up site inspection and Remotely Piloted Aircraft System flight of the Lands. The Inspector observed the following on the Lands:

- unauthorized ditches in the wetlands throughout the Lands (labelled as Ditches 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13),
 - the observed dimensions for the ditches ranged from 0.4 to 1.8 m in depth to 1.5 to 3.4 m in width, and
- unauthorized roads within the Impacted Wetlands labelled Road 1 and 2;

(the observations notes above are shown in Figure 2 of the Appendix);

Collectively here after referred to as the "Unauthorized Activities";

WHEREAS the Inspector confirmed that a *Water Act* Approval had not been issued for the Unauthorized Activities;

WHEREAS the Impacted Wetlands is a "water body" as defined in section 1(1)(ggg) of the *Water Act*;

WHEREAS each of the Unauthorized Activities is an "activity" as defined in section 1(1)(b) of the *Water Act*;

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

WHEREAS AEP has not issued an approval under the *Water Act* to Mr. Chymycz or any other person authorizing any of the Unauthorized Activities, and these activities are not otherwise authorized under the *Water Act*;

WHEREAS Mr. Chymycz is a person responsible for the Unauthorized Activities pursuant to section 1(1)(kk) of the *Water Act* and section 1(5) of the *Water (Ministerial) Regulation*;

WHEREAS Maxwell Harrison, Compliance Manager, Northern Region, has been appointed a Director for the purpose of issuing Enforcement Orders under the *Water Act* (the "Director");

WHEREAS the Director is of the opinion that Mr. Chymycz has contravened section 36(1) of the *Water Act*, which is an offence under section 142(1)(h) of the *Water Act* by conducting the Unauthorized Activities without an approval;

THEREFORE, I, Maxwell Harrison, Director, pursuant to section 135(1) and 136(1) of the *Water Act*, HEREBY ORDER THAT:

1. Mr. Chymycz shall immediately cease all unauthorized activities on the Lands.
2. Mr. Chymycz shall retain an Authenticating Wetland Professional that meets each of the requirements of section 4.0 of "*Professional Responsibilities in Completion and Assurance of Wetland Science, Design and Engineering Work in Alberta*" (Government of Alberta, May 1, 2017) (the "Authenticating Professional").
3. Mr. Chymycz shall, on or before December 15, 2021 submit to the Director in writing all of the following information:
 - a. The name and contact information of the Authenticating Wetland Professional, and
 - b. A summary of how the Authenticating Wetland Professional meets all of the requirements of Clause 2 of this Order.
4. On or before February 28, 2021, Mr. Chymycz shall submit to the Director for the Director's written approval, a written Compliance Wetland Assessment and Impact Report, prepared, stamped and signed by the Authenticating Wetland Professional referenced in Clause 2.
5. In the Compliance Wetland Assessment and Impact Report, Mr. Chymycz shall include at least each of the following:
 - a. An assessment of the conditions of each of the Impacted Wetlands prior to the Unauthorized Activities, including, all of the following for each of the Impacted Wetlands:
 - I. Delineation of the wetland boundary,
 - II. Classification, determined in accordance with the "Alberta Wetland Classification System" (Government of Alberta, June 1, 2015),
 - III. Landscape characteristics, including topography and slope,
 - IV. Hydrology,
 - V. Soils,
 - VI. Vegetation,
 - VII. zones of wetland function, and
 - VIII. topography and slopes;
 - b. The current location and current physical characteristics of the Unauthorized Activities;
 - c. Whether current site conditions will accurately reflect the wetland value from an Alberta Wetland Rapid Evaluation Tool- Actual (ABWRET-A) assessment (Government of Alberta, 2015);
 - d. All of the effects of the Unauthorized Activities; and

Unauthorized Activities Reclamation Plan

6. Within 30 days of receiving written approval from the Director for the Compliance Wetland Assessment and Impact Report, Mr. Chymycz shall submit to the Director for the Director's written approval, a written Unauthorized Activities Reclamation Plan, prepared, stamped and signed by the Authenticating Wetland Professional referenced in Clause 2;
7. In the Unauthorized Activities Reclamation Plan, Mr. Chymycz shall include at least each of the following:
 - a. A detailed plan to reclaim areas of wetland(s) lost as a result of the Roads 1 and 2, including the following:
 - I. The method of wetland restoration that will be utilized for the unauthorized access road construction,
 - II. Wetland size,
 - III. Wetland classification, and
 - IV. Wetland compensation value;
 - b. A detailed plan to restore the natural drainage of water to pre-disturbance conditions in the thirteen ditches using ditch plugs, including the following:
 - i. Where the ditch plug material will be source from,
 - i. If source material is located on the Lands, a figure detailing the location and conditions at the location,
 - ii. If source material is imported, analytical results outlining the conditions of the material prior to importation,
 - II. A complete list of the types of equipment to be used, and
 - III. Methods to be used when installing plugs, following Section 9(1) to 9(4) of the Code of Practice for Wetland Replacement Works;
 - c. A detailed description of the measures to prevent all erosion, siltation and other adverse effects to all other water bodies during all of the work carried out in the implementation of the Unauthorized Activities Reclamation Plan;
8. In the Unauthorized Activities Reclamation Plan, Mr. Chymycz shall include, in table format, a schedule of implementation for the work proposed in the Unauthorized Activities Reclamation Plan with a completion date of no later than March 31, 2022 (the "Completion Date");
9. Mr. Chymycz shall only complete the work described in the Unauthorized Activities Reclamation Plan in accordance with the Director's written authorization;
10. Mr. Chymycz shall provide the Director with 5 days' notice by email prior to commencing the work in the Unauthorized Activities Reclamation Plan as approved by the Director;
11. Mr. Chymycz on or before May 30, 2022, shall provide to the Director, a written Unauthorized Activities Reclamation Validation Report documenting the actions taken as part of the Unauthorized Activities Remediation Plan;

DATED at the City of Edmonton, in the Province of Alberta, this 19th day of November 2021.



Maxwell Harrison, Director
Compliance Manager
North Region – Capital District

Section 115 of the *Water Act* may provide a right of appeal against this decision to the Alberta Environment 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:
Alberta Environmental Appeals Board
30 6 Peace Hills Trust Tower, 10011-109 Street,
Edmonton, Alberta, TSJ 3S8
Telephone 780-427-6207; Fax 780-427-4693.**

Notwithstanding the above requirements, the Parties shall obtain all other necessary approvals or authorizations required to comply 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 the *Water Act* or any other legislation.

Appendix

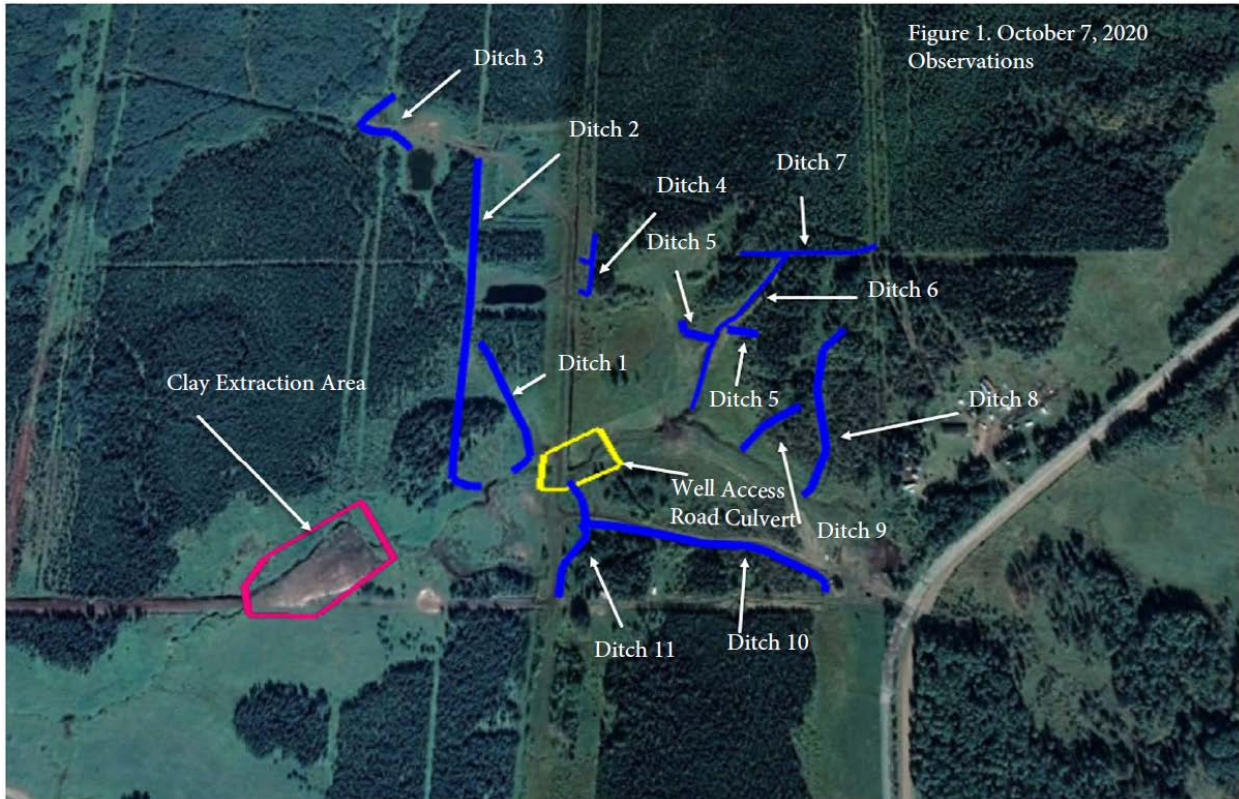


Figure 1.

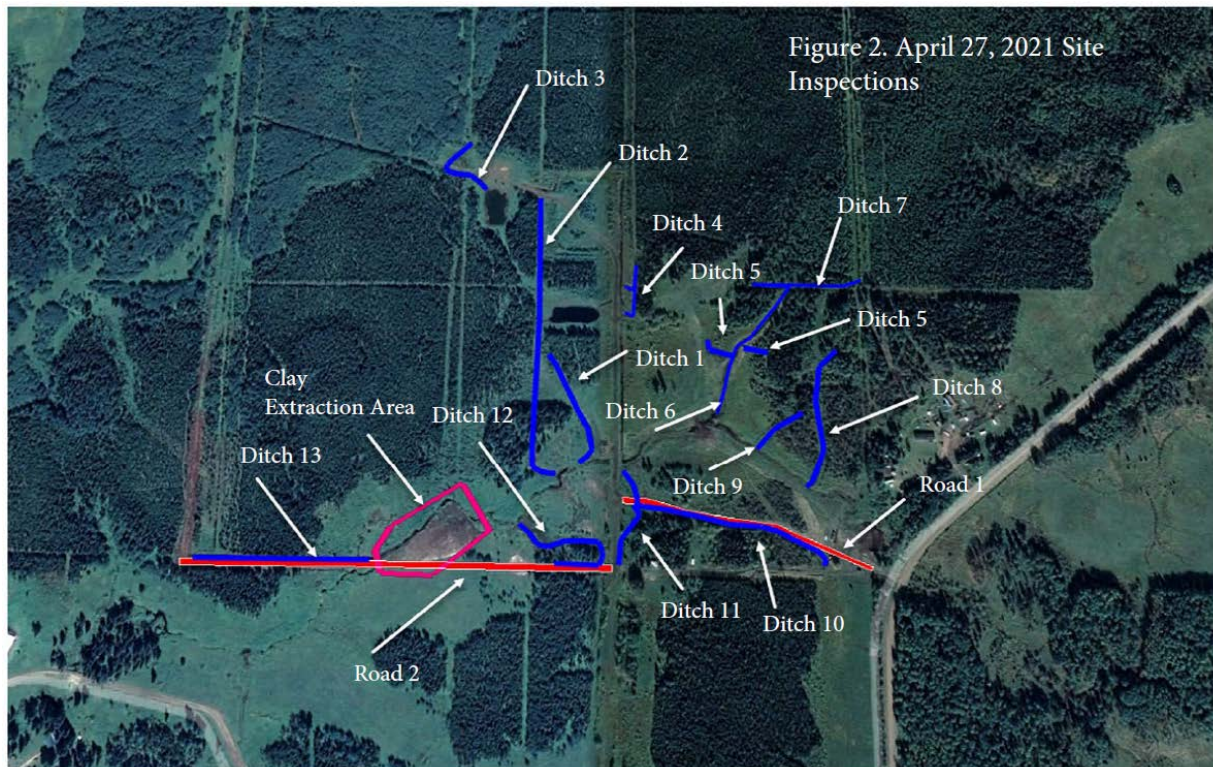


Figure 2