



COUNCIL ORDER No. 0015448

**BEFORE THE FIRE SUB-COUNCIL
On September 22, 2015**

IN THE MATTER OF the Safety Codes Act, Revised Statutes of Alberta 2000, Chapter S-1.

AND IN THE MATTER OF the Order dated October 30, 2014 issued by an Accredited Municipality (the Respondent) against a Truck Rental Company (the Appellant).

UPON REVIEWING the Order **AND UPON HEARING** the Appellant and the Respondent; **THIS COUNCIL ORDERS THAT** the Order is **VARIED:**

From:

1. Remove the 15,000L underground storage tank system as per the Alberta Fire Code 2006 removal process.(Reference: Alberta Fire Code 2006, Division B, Part 4 Subsection 4.3.16) Compliance Date December 18, 2014
2. Have the underground storage tank system removed by an individual approved by the Chief Fire Administrator (Reference: Alberta Fire Code 2006, Division C, Part 2, Article 2.2.3.1) Compliance Date December 18, 2014.

To:

1. Remove the 15,000L underground storage tank system as per the Alberta Fire Code 2006 removal process. (Reference: Alberta Fire Code 2006, Division B, Part 4 Subsection 4.3.16) Compliance Date December 4, 2015.
2. Have the underground storage tank system removed by an individual approved by the Chief Fire Administrator (Reference: Alberta Fire Code 2006, Division C, Part 2, Article 2.2.3.1) Compliance Date December 4, 2015.

However, it is clearly acknowledged that the tank is no longer in place. As such, the above orders apply to the aspects of those sections which are still relevant to the circumstances, including, but not limited to the soil contamination assessment requirements of 4.3.16.1(2).

Issue:

The appeal relates to compliance with the Alberta Fire Code (AFC) by Order with respect to removal of an underground storage tank (UST) from the Appellants place of business / property.

Appearances and Preliminary, Evidentiary or Procedural Matters:

1. Appearing for the Appellants, the Appeal Panel heard from legal counsel for the Appellant, and the owner of the truck rental company.
2. Appearing for the Respondent, the Appeal Panel heard from legal counsel for the Respondent, as well as two Fire Safety Codes Officers (SCO) from the Accredited Municipality.
3. At the commencement of the hearing, the Appellant and Respondent confirmed that there were no objections to any members of the hearing panel, and that the Safety Codes Council (Council) in general and the Appeal Panel in particular had jurisdiction to hear and decide the appeal.
4. At the onset of the hearing, the parties present confirmed receipt of the March 1998 engineering report, provided by the Appellant.
5. At the onset of the hearing the Appellants legal counsel presented a new document for consideration by the Appeal Panel. Upon review and discussion the Respondent's legal counsel indicated there were no objections to the submission. The document (accepted as Exhibit A) referred to accounting records and identifying fuel charges to customers.
6. The Chair then explained the process to be followed in hearing this appeal. The Appellant and Respondent confirmed that there were no objections to any of the written material submitted to the Appeal Panel prior to the hearing.

The Record:

7. The Appeal Panel considered, or had available for reference, the following documentation:
 - a) Copy of Order dated October 30, 2014 (pages 1 to 4)
 - b) Notice of Appeal and Request for Stay of Order dated December 10, 2014 (pages 5 to 25)
 - c) Acknowledgement Letter dated December 11, 2014 (page 26)
 - d) Stay of Order Letter dated December 17, 2014 (page 27)
 - e) Letter to Appellant and Respondent regarding Appeal status (page 28)
 - f) Appeal Hearing Brief Preparation Guide (page 29)
 - g) Written Notification of Appeal Hearing (pages 30 & 31)
 - h) Letter of Postponement of Hearing (page 32)
 - i) Change of Date Written Notification of Appeal Hearing (page 33)

- j) Brief of the Appellant (is the Notice of Appeal pgs. 5 to 23) with addition of an assessment report (page 34)
- k) Brief of the Respondent (pages 35 to 136)

Provisions of the Safety Codes Act:

- 8. The applicable legislation is the *Safety Codes Act* S-1, RSA 2000 (the Act). Further, as the Authority Having Jurisdiction used the existing legislation in making its decisions, the Appeal Panel will apply the *Safety Codes Act* in effect at the time of the Respondents order.

Section 5

The owner of anything, process or activity to which this Act applies shall ensure that it meets the requirements of this Act, that the thing is maintained as required by the regulations and that when the process or activity is undertaken it is done in a safe manner.

Section 49(2)

An order may be issued to a person who provides services that are the subject-matter of the order or to the owner, occupier, vendor, contractor, manufacturer or designer of the thing or to the person who authorizes, undertakes or supervises the process or activity that is the subject-matter of the order, or may be issued to any 2 or more of them.

Section 52(2) The Council may by order

- a) Confirm, revoke or vary an order, suspension or cancellation appealed to it and as a term of its order may issue a written variance with respect to any thing, process or activity related to the subject-matter of the order if in its opinion the variance provides approximately equivalent or greater safety performance with respect to persons and property as that provided for by this Act.

Provisions of the Alberta Fire Code 2006 (AFC 2006):

- 9. The Alberta Fire Code 2006 provides, *inter alia*:

Division B

Part 4 Flammable and Combustible Liquids

4.3 Tank Storage

4.3.16. Removal and Abandonment in Place of Underground Storage Tanks

- 1) Except as permitted in Article 4.3.16.2., when an *underground storage tank system* has no further use or has been out of service for 2 years
 - a) the *owner* shall notify the *authority having jurisdiction* in writing at least 30 days before the removal of an *underground storage tank system*,
 - b) *storage tanks* shall have all *flammable liquids* and *combustible liquids* removed from them,

- c) *storage tanks* shall be purged of vapours and removed from the ground (see Appendix A), and
- d) the associated piping shall be
 - i) purged of vapours and the ends permanently sealed by capping or plugging, or
 - ii) removed from the ground.
- 2) If soil surrounding the *storage tanks* described in Sentence (1) is found to be contaminated, the *owner* shall
 - a) notify the *authority having jurisdiction*,
 - b) when requested, provide a report showing the extent of the site soil contamination, and
 - c) remove, treat or replace the contaminated soil in a manner acceptable to the *authority having jurisdiction*. (See A-4.1.6.3. in Appendix A.)

Division C

Part 2 Administrative Provisions

2.2 Administration

2.2.3. Approvals

2.2.3.1. Storage Tank Systems

- 1) Only individuals approved by the *Chief Fire Administrator* are permitted to install, remove, repair or conduct precision tests of *storage tank systems*. (See Appendix A.)
- 2) No person shall install or alter any *storage tank system* referred to in this Part, unless
 - a) required permits or approvals have been obtained from the *authority having jurisdiction*,
 - b) plans, drawings and specifications of the system or equipment have been examined and accepted by the *authority having jurisdiction*, and
 - c) the plans, drawings and specifications referred to in Clause (b) bear the stamp and seal of a professional engineer licensed to practice in Alberta.

Position of the Parties:

10. *The position of the Appellant is summarized as follows:*

- a) With respect to the June 19, 2014 inspection; the tank was in use at that time as supported by the records of fuel drops. They don't know why the inspector indicated the tank was not in use for two years.
- b) The order is based on the June 19, 2014 inspection. The inspector must have misunderstood what was going on with the tank. The owner did not advise at that time that there was no use of the tank for two years. The basis of the appeal was made on incorrect assumptions made by the Fire SCO in regards to usage of the tank.
- c) Documentation supports one half of the tank was still in use. The company was in business and there was a need to use the tank.

- d) When the inspection was done in June of 2014 the inspector did not examine the tank; he never asked for a dip reading.
- e) The application for registration with the Petroleum Tank Management Association of Alberta (PTMAA) in June of 2014 is further evidence the tank was in use. Why would the owner apply for a permit if the tank was not in use?
- f) The owner is in the final stages of selling the property.
- g) By way of correspondence dated November 29, 2014 the owner and potential new owner advised the Deputy Fire Chief of a plan scheduled to remove the tank.
- h) There was no reason for the owner to state the tank was not in use.

11. *The owner of the property at the hearing advised the following:*

- a) The potential new owner was operating the business at the property when the tank was taken out.
- b) The potential new owner took it upon himself to remove the tank. The potential new owner did not have a use for the tank.
- c) He indicated to the potential new owner he could remove the tank, but it had to be done properly.
- d) He was not involved in the day to day operations when the tank was removed.
- e) He had no involvement in the tank removal.
- f) It was a condition of the purchase that an environmental site assessment be carried out. This was arranged by the purchaser. He assumes there were no issues, as the purchase is proceeding.
- g) When he became aware the tank was not registered in June of 2014 he attempted to rectify the matter, with the required registration.
- h) In June and November of 2013 fuel was put in the tank.
- i) The company does not own an above ground cube tank; that reference would have been an error on the June 28, 2013 fuel receipt.
- j) He was on vacation out of the country, between February 3rd and March 21, 2015. Subsequently he was not on site until April 7, 2015 when he was advised there were things going on at the site.

- k) He has no knowledge if the tank was properly taken out of the ground.
- l) He, after the tank was removed, was looking for some direction from the Accredited Municipality on that issue with respect to what to do now, which did not occur.

12. *The position of the Respondent is summarized as follows:*

- a) A Land Title search was done within the last 48 hours and the Truck Rental Company and the Appellant remains the owner of the property; the ownership has not recently changed.
- b) The registered owner in accordance with the AFC, is responsible for what happens on site.
- c) The order was valid based on visual observations, documentation on file, and the owner's statements with respect to not using the tank.
- d) There was no physical checking of the equipment. Rather, they just looked at the equipment. The pump appeared antiquated or older and it was questionable whether there was power to it. The hoses were cracked.
- e) The documentary evidence does not support the tank was in use. The June 2013 fuel receipt relates to an above ground tank. The Appellant's fuel records don't exactly correspond with the fuel receipt of June 28, 2013 which refers to 1500 litres of fuel being delivered. They do correspond to the records but not on the precise date. On June 13th, the litre level was at 1642 from the previous 127. The invoice is June 28th though.
- f) The "fuel drop" records do not support that fuel to client vehicles came from the underground storage tank on the Owner's site.
- h) The fuel tank was removed shortly before April 7, 2015. The Respondent was not notified of the removal. It is certain the tank was not removed in accordance with the AFC.

13. *One Fire SCO at the hearing advised the following:*

- a) The permit request through PTMAA was not approved as there was a concern with respect to the lack of use with the tank. There was also a lack of knowledge of the history of the tank to consider approval.
- b) There are careless inventory records. The inventory records do not reflect what the actual fuel inventory is.

- c) The fuel receipt of June 28, 2013 refers to delivery to a “transcube tank”, which is an above ground storage tank.
- d) Initially, there was limited knowledge of the tank, its size and any testing done. Whether it was fibreglass or steel was not known.

14. *The second Fire SCO at the hearing advised the following:*

- a) At the time of a December 5, 2014 meeting, the owner was advised what had to be done to remove the tank. The process of removal was discussed.
- b) From his review of the documentary evidence it appears the tank was not in use. There would have been a need to have witnessed fuel being put in and taken out of the tank to verify use.
- c) The site inspection of April 7, 2015 confirmed the tank had been removed. Fuel was in totes, some dirt had been removed from the site and there was a hole in the ground deeper than the size of a tank. There was a shine on the ground, indicative of contamination.
- d) There remains a requirement for someone from PTMAA to follow-up on the order. There are outstanding issues such as where is the tank; is it in a field, crushed, etc.

Evidentiary Findings and Reasons:

15. **On the balance of probabilities the Appeal Panel finds there to be a valid order for the following reasons:**

- a) The Appeal Panel based on the weight of evidence finds it reasonable to conclude the UST was abandoned and of no further use to the owner. The Appeal Panel references the Fire Code requirement in 4.3.16 which identifies two requirements for removal of UST's; when an underground storage tank system *has no further use “or” has been out of service for 2 years* (emphasis added). Either scenario warrants the removal to be in a manner that is in compliance with the Alberta Fire Code 2006, Article 4.3.16.
- b) The Appeal Panel finds that once the UST was removed from the ground whether ordered or voluntary, code compliance was warranted to ensure the site was safe.
- c) The Appeal Panel does not find the Appellant's records confirm the UST was in use. Only one fuel receipt was submitted for consideration which was dated June 18, 2013 for 1500 litres of fuel, described as being delivered to a transcube tank (an above ground tank). The Appellant's hand written fuel inventory records do not identify receiving 1500 litres of fuel in an UST on that date.

- d) The Appeal Panel acknowledges there is documentary evidence there were fuel charges to customers, however finds there to be no evidence fuel charges to customers were derived by the usage of fuel from an UST at the business site.
- e) The Appeal Panel finds it reasonable to conclude that if the UST was in use the appellant had the opportunity to demonstrate such to the Authority Having Jurisdiction (AHJ) by having pumped some fuel into a vehicle, at any given time, to clarify such operation. Inspections onsite were carried out on June 19, 2014, July 16, 2014, August 13, 2014 and December 19, 2014.
- f) The Appeal Panel places weight on the Safety Codes Officers initial notes identifying the UST was not in use. At the time of the initial inspection on June 19, 2014 the SCO recorded the owner's statement as, "the tanks had not been in use for approximately two years." The panel places more weight on the initial statement, as it was made at a time when the consequences of the code requirements may not have been known.
- g) The Appeal Panel finds that the weight of evidence supports the owner of the property had no further use of the UST as supported by the following compelling evidence:
 - i) An e-mail notification to the AHJ from PTMAA dated June 26, 2014 stating "there are plans to have this tank removed within the year".
 - ii) A notation in the Respondent's submission (undated) stating the Deputy Fire Chief had a discussion with the prospective buyer of the property and he stated he had knowledge of the tank and had no use for the tank.
 - iii) Correspondence was forwarded to the Deputy Fire Chief from the owner and prospective owner dated November 29, 2014 outlining a schedule for the removal of the tank.
 - iv) Notes of a meeting with the owner, Fire Marshal, Captain and Safety Codes Officer dated December 5, 2014 indicating the owner stated repeatedly there was no intended further use of the tank.
 - v) The UST was removed from the ground within several days prior to April 7, 2015.

The Appeal Panel finds the Appellant has a responsibility to comply with the AFC's requirements for the removal of the UST, as stipulated in the Order.

- h) The panel is aware and notes the matter of compliance is being considered after the fact. The evidence establishes the tank was removed and the Appeal Panel finds there to be no evidence to support the tank was removed in compliance with the AFC. The original Order referred to the removal process, which has not been complied with.
- i) At the hearing the property owner acknowledged that he did not know if the tank was purged of vapours, if the piping was sealed, what was done with the fuel, what was done with the tank or if environmental aspects of the removal were adhered to. In summary, he had no knowledge if the tank was properly taken out of the ground.

- j) Section 2.2.1.1 of the Alberta Fire Code 2006 states that the owner or the owner's authorized agent is responsible for carrying out provisions of the Code. The Appeal Panel notes that while the owner advises he was not aware of the tank removal, he is still responsible for code compliance.

The Order is Varied with respect to the date for compliance with the AFC. The *owner* of the property is required to address the requirements of the AFC, specifically the requirements identified in Division ***B Part 4 Flammable and Combustible Liquids 4.3 Tank Storage 4.3.16. Removal and Abandonment in Place of Underground Storage Tanks*** and ***Division C Part 2 Administrative Provisions 2.2 Administration 2.2.3. Approvals 2.2.3.1. Storage Tank Systems*** to the satisfaction the AHJ, to ensure safety has been addressed.

Dated at Edmonton, Alberta this 19th day of October 2015.

Chair, Fire Sub-Council Appeal Panel