

**NOTICE OF NON-COMPLIANCE  
Section 126 of the Impact Assessment Act**

17 May, 2023

IAA Registry #: 80123

Alberta Transportation  
Province of Alberta  
c/o Yvonne Carignan  
Director, Water Management  
2nd Floor, Twin Atria Building  
4999 98 Avenue  
Edmonton, AB  
T6B 2X3

**BY E-MAIL, FOLLOWED BY A HARD COPY SENT BY REGISTERED MAIL WITH  
ACKNOWLEDGEMENT OF RECEIPT**

**RE: Alleged Non-Compliance by the Province of Alberta with the Decision Statement  
issued for the Springbank Off-Stream Reservoir Project**

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Yvonne Carignan:

I, Steven Fraser, am designated as an enforcement officer under the *Impact Assessment Act* (the IAA). I am issuing this Notice of Non-Compliance to inform you that I have reasonable grounds to believe that Alberta Transportation has contravened the IAA and condition 5.9 of the Decision Statement for the Springbank Off-Stream Reservoir Project.

The Minister of Environment and Climate Change issued a decision statement (the Decision Statement) for the Springbank Off-Stream Reservoir Project (the Project) under section 54 of the *Canadian Environmental Assessment Act, 2012*, on July 8, 2021. The proponent of the project is the Province of Alberta. As per section 184 of the IAA, the Decision Statement for the Project is now considered to be a decision statement issued under the IAA and is subject to the provisions within it.

## FACTS

In accordance with condition 5.9 of the Decision Statement, the Impact Assessment Agency of Canada (the Agency) received a letter dated January 28, 2022, from the proponent, depicting wetlands to be permanently removed, and those that will be avoided during construction.

On July 12, 2022 (via email), the Agency received from the proponent the Independent Environmental Monitor's Report for June 2022. This provided the following notification regarding condition 5.9 of the Decision Statement related to wetland clearing that took place on June 16, 2022:

*"An avoided wetland, within the construction boundary, was stripped near Highway 22 and west of Springbank Road. The event was reported to Alberta Environment and Parks. Plans were executed to mitigate future construction in no-go areas. The contractor is currently installing perimeter protection (e.g., silt fences) at avoided wetlands that intersect the project. Follow up and additional monitoring is required."*

On July 14, 2022, the undersigned responded by email and requested that a post-incident report be submitted to the Agency on the incident.

On July 21, 2022, the Agency received a response letter from Alberta Transportation (Water Management Environmental Specialist – Springbank) respecting conditions 5.6 and 5.7 of the Decision Statement. The proponent copied Environment and Climate Change Canada and Indigenous groups on the letter. The letter included the following information related to the removal of wetland:

*"Date/time: June 16, 2022, 1700hr*

*Location: NE-22-24-4-W5M*

*Summary:*

*The sub-contractor working in this quarter section was conducting soil stockpiling activities outside of the construction boundary. The stockpiling activities disturbed approximately 0.39 ha of wetlands that were not approved under the Water Act Approval (DAUT0008702). The incident was reported to AEP following the Prime Contractors' investigation on June 16, 2022, and in accordance with the Water Act Approval.*

*Status:*

*Following the incident, the Prime Contractor issued a stop-work order within NE22, and a field crew was dispatched on-site to flag off the wetland polygon boundary and implementation of a 10m buffer between the wetlands and construction activities. AEP Compliance is in the process of reviewing this incident and construction activities cannot go within the wetland boundary until an agreement has been reached with AEP Compliance on their preferred mitigation. As the wetland disturbance is currently under review by AEP Compliance, Alberta Transportation is required to wait for directions on the next steps. As such a wetland replacement plan to compensate for the loss of wetlands and their functions is not available at this time."*

On August 12, 2022, the Agency received an email from the proponent containing additional information further to my July 14, 2022 email.

On November 2, 2022, Enforcement Analyst Katherine Hess and the undersigned attended the Springbank project site to carry out an inspection in order to verify compliance with the Decision Statement. During the inspection the disturbed wetland area was isolated to prevent further disturbance, but was still awaiting corrective action.

On November 15, 2022, the undersigned sent an email to the proponent, including a request for a copy of the restoration plan for the disturbed wetland recently approved by Alberta Environment and Parks.

On November 25, 2022, a response was received from Alberta Transportation (Water Management Environmental Specialist – Springbank) depicting elements of the restoration plan including: summary, contouring, soil placement, revegetation, monitoring and maintenance, Lessons Learned, including completed actions and those items yet to be implemented:

*“Integration of the environment project team members with the construction project team members; for example, attending weekly construction update meetings and bringing forward environmental and regulatory considerations including, proactive meetings for upcoming work to ensure environmental sensitivities are confirmed and taken into account, inclusion of environmental considerations (e.g., demarked wetlands cannot be disturbed or impacted) in site orientation, and during site wide safety meetings, the environment team is given time to present a topic relevant to the current construction activities.”*

On December 13, 2022, the Independent Environmental Monitoring Report for November 2022 was forwarded to the Agency by Mark Svenson. It communicated the following:

*“The topsoil from the stripped wetland was returned in November 2022 and monitoring will be conducted throughout the next year to determine if wetland reclamation is on the correct trajectory. A 15 meter buffer has been placed around the wetland.”*

## **RELEVANT PROVISIONS OF THE ACT, THE REGULATIONS, OR CONDITIONS OF THE DECISION STATEMENT**

The relevant provisions of the Decision Statement and the IAA are set out below:

### **Decision Statement**

**5.9** The Proponent shall submit to the Agency, prior to construction, a map of all wetlands that will be permanently removed for the construction for the Designated project and shall not grub vegetation when undertaking construction work in wetlands except for those wetlands that will be permanently removed.

### ***Impact Assessment Act, SC 2019, c 28, s 1***

**7 (3)** The proponent of a designated project may do an act or thing in connection with the carrying out of the designated project, in whole or in part, that may cause any of the effects described in subsection (1) if

(...)

(b) the proponent complies with the conditions included in the decision statement that is issued to the proponent under [section 65](#) with respect to that designated project and is not expired or revoked; or

(...)

The full text of the Decision Statement for Springbank Off-Stream Reservoir Project can be found online at <https://iaac-aeic.gc.ca/050/documents/p80123/139551E.pdf>.

The full text of the IAA can be found online at <https://laws.justice.gc.ca/eng/acts/i-2.75/index.html>.

## **CONCLUSION**

Based on the above information, I have reasonable grounds to believe that, as of June 16, 2022, the Province of Alberta was not in compliance with condition 5.9 of the Decision Statement related to this project, which requires you to not grub vegetation in wetlands, except for those to be permanently removed. Thus, I hereby issue to the Province of Alberta this Notice of Non-compliance pursuant to section 126(1) of the IAA.

In so doing, the Province of Alberta has allegedly contravened section 7(3)(b) of the IAA, therefore allegedly committing an offence contrary to section 144(1) (a) and (b) of the IAA, punishable on summary conviction and liable, for a first offence to a fine of not more than \$4,000,000 and for any subsequent offence, to a fine of not more than \$8,000,000. Section 146(1) further states if an offence of contravening section 7 or section 144(1)(b) is committed or continued on more than one day, it constitutes a separate offence for each day on which it is committed or continued. Section 147 of the IAA provides that where a corporation or entity commits an offence, any senior officer of the corporation or entity who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence, and is liable on conviction to the penalty provided for by this Act for an individual whether or not the corporation or entity has been prosecuted. The IAA further provides at section 148 that every senior officer must take all reasonable care to ensure that the corporation or entity complies with this Act and any order issued by an enforcement officer or review officer.

This Notice of Non-compliance is not a finding of guilt or civil liability, and is not an administrative action. It alleges non-compliance with the IAA. If, during the future the same non-compliance or additional non-compliance is identified, the undersigned, or the enforcement officer carrying out the inspection may take further enforcement action.

If you have comments regarding this Notice of Non-compliance, you may submit them to the undersigned in writing no later than June 05, 2023. The Agency will consider your comments and determine whether to maintain this Notice of Non-compliance, amend it, or withdraw it. Once a decision is made, I will communicate the decision to you. If this Notice of Non-compliance is amended, I will send you a revised text. If the Agency chooses to maintain or withdraw the Notice of Non-compliance, I will send you written notice of this.

The Agency will retain your comments, and the action that I take after considering your comments, in the compliance file for the Project. Should you require additional information on this matter, please contact me by e-mail at [enforcement-applicationdelaloi@iaac-aeic.gc.ca](mailto:enforcement-applicationdelaloi@iaac-aeic.gc.ca)

Please note that as required by section 152 of the IAA, the Agency will publish this Notice of Non-compliance on the Agency's Compliance Promotion and Enforcement website at [www.canada.ca/en/impact-assessment-agency/corporate/compliance-promotion-enforcement.html](http://www.canada.ca/en/impact-assessment-agency/corporate/compliance-promotion-enforcement.html).

## <Original signed by>

**Steven J. Fraser**  
Senior Enforcement Officer  
Enforcement Operations  
Impact Assessment Agency of Canada

**cc:** enforcement-applicationdelaloi@iaac-aeic.gc.ca