

PUBLIC HEALTH APPEAL BOARD

**IN THE MATTER OF THE *PUBLIC HEALTH ACT*
R.S.A. 2000 c. P-37 AND THE REGULATIONS**

**AND IN THE MATTER OF THE APPEAL OF THE ORDER OF
AN EXECUTIVE OFFICER ISSUED BY ALBERTA HEALTH
SERVICES, ZONE 2, DATED JULY 13, 2023**

PANEL: Kevin Kelly, Chair
Paul M. Bourassa, Member
Dr. Theresa Chika-James, Member

BETWEEN:)	
)	
)	
GERALD A. SICKEL)	Self-Represented
)	
(Appellant))	
)	
- and -)	
)	
ALBERTA HEALTH SERVICES)	Kyle Fowler,
)	Alberta Health Services,
(Respondent))	for the Respondent
)	
)	
)	
)	Heard: August 29, 2023

DECISION AND REASONS FOR DECISION

The Appeal

[1] On July 24, 2023, the Public Health Appeal Board (the Board”) received a notice of appeal (the “Appeal”) to reverse an order of an Executive Officer (“EO”), provided verbally on July 12, 2023, and in writing on July 13, 2023 (the “Order”).

[2] The Order required the food establishment, Sickel's Meats, located at 4093 Ogden Road SE, Calgary, Alberta (the "Premises") be closed until the work required in the Order was completed by the Premises' owner (the "Owner").

[3] The Owner, Mr. Gerald A. Sickel, is the Appellant and is asking the Board to reverse the Order.

Board Decision

[4] The Board heard the Appeal on August 29, 2023 at the Appeal Hearing and rendered its decision in a letter to the parties on August 31, 2023 to confirm the Order.

Background

The Order was issued pursuant to the *Public Health Act* (the "Act"), regarding violations of the *Food Regulation* AR 31/2006 Section 3(1) and the *Nuisance and General Sanitation Regulations* AR 243/ 2003 Section 2(1) at the Premises. The EO ordered and directed that:

1. The Premises be immediately closed.
2. The Owner immediately undertake and diligently pursue the completion of the following with regard to the Premises, namely:
 - a. obtain a valid food handling permit from Alberta Health Services.
 - b. remedy the odour and pest presence by ceasing all food operations, removing all foods and waste from the facility, and obtaining the services of a pest management company as needed.
3. The Premises remain closed until such time as the work in the Order is completed to the satisfaction of an Alberta Health Services Executive Officer.

Timing of Appeal

[5] Section 5(3) of the Act requires the Appellant to serve the notice of an appeal within 10 days after receiving notice of the decision being appealed.

[6] On July 12, 2023, the Owner received a verbal order, and on July 13, 2023, the Order. The Notice of Appeal was received by the Board on July 24, 2023.

[7] Section 5(3) of the Act requires the Owner to have served the Notice of Appeal in the prescribed form on the Board and Alberta Health Services within 10 days after receipt of notice of the decision complained of.

[8] Ten (10) days from the verbal order of July 12, 2023, was Saturday, July 22, 2023. As such, the Board's office was closed on this day and the following day, Sunday, July 23, 2023.

[9] Pursuant to section 22(2) of the *Alberta Interpretation Act*, the time for service of the Notice of Appeal is extended to the next following day on which the office of the Board was open:

(2) If in an enactment the time limited for registration or filing of an instrument, or for the doing of anything, expires or falls on a day on which the office or place in which the instrument or thing is required to be registered, filed or done is not open during its regular hours of business, the instrument or thing may be registered, filed or done on the day next following on which the office or place is open.

Accordingly, the deadline for service of the Notice of Appeal was July 24, 2023. Therefore, the Notice of Appeal was served on time.

Grounds of Appeal

[10] In the Notice of Appeal, the Appellant states that he does not dispute the “necessity of obtaining the permit/license that is referenced”. Rather, the grounds of the Appeal are that the Order as it concerns the spoiled meat was made based upon the EO’s factual findings at the Premises, which were incorrect, including that:

- (a) The meat was potentially from an unapproved source; and
- (b) The Owner was unable to provide documentation proving the source of the meat.

Legal Issues

[11] On August 16, 2023, at a Preliminary Application Hearing, AHS made an application to the Board to narrow the issues in the Appeal. On August 17, 2023 the Board provided its decision to the parties, narrowing the legal issues to the following:

- (a) That the Appellant obtain a valid food handling permit from Alberta Health Services;
- (b) That the Appellant remedy the odour and pest presence at the Premises by ceasing all food operations, removing all foods and waste from the facility, and obtaining the services of a pest management company as needed; and
- (c) That the Premises remain closed until such time as the above work is completed to the satisfaction of an Executive Officer.

[12] The Board must decide the following issue: should the Board confirm, reverse or vary the Order of an Executive Officer dated July 13, 2023?

Jurisdiction

[13] The grounds of the Appeal are within the Board’s jurisdiction under the Act as they relate to the EO’s factual findings, which the Appellant submits were incorrect, and resulted in the Order.

Documents/Exhibits

[14] At the Appeal Hearing, the following documents were entered as exhibits by agreement of the parties:

- (a) Exhibit A – Appellant Disclosure (5 documents)
- (b) Exhibit B – AHS Disclosure (49 pages)

- (c) Exhibit C – AHS Submissions (8 pages and 3 appendices)
- (d) Exhibit D – AHS Photo of Slide Rail

Submissions of the Appellant

[15] The Appellant has been operating a meat business at a booth at the Crossroads Market, located at 119-1235 25 Avenue SE, Calgary, Alberta (the “Crossroads Location”), and at the Premises. He assumed that the food handling permit he obtained for the Crossroads Market applied to the Premises, but recognizes he was incorrect.

[16] The Appellant is not disputing the Order that directs the Appellant to obtain a food handling permit from AHS for the Premises.

[17] In addition, the Appellant does not dispute the need to remedy the odour and pest presence at the Premises by ceasing all food operations and obtaining the services of a pest management company as needed while the Premises remain closed.

[18] The Appellant is not disputing the work in the Order to be done, including cooler temperature logs, the completion of a food safety course, completing a list of meat suppliers, a pest management plan, food preparation logs, among others.

[19] The Appellant is requesting the Board reinspect the reports and closures associated with the Order, consider financial damages sustained, and review of AHS’ checklist for reopening.

[20] The Appellant noted that, in accordance with the Order, the Premises has remained closed, and will remain so until he receives permission to reopen it.

Submissions of the Respondent

[21] The Respondent outlined that the evidence before the Board was that there is no contest as to whether or not the Premises was without a food handling permit, such as the spoiled meat and the presence of flies, among other findings in the Order, at the time of the inspection by the EO on July 12, 2023.

[22] The Respondent commended the steps that the Appellant has taken since the Order was issued.

[23] The Respondent submitted that the decision under review, as narrowed following the Preliminary Application, is whether to confirm, reverse or vary the Order that provided for three directives:

- (a) That the premises be closed, of which we acknowledge compliance by the appellant.
- (b) That the performance of certain work was done, which included obtaining a food handling permit, of which the application is in progress, and addressing the pest infestation.
- (c) That the Premises remain closed until the work in the Order is completed to the satisfaction of the EO.

[24] Following the evidence presented, the Respondent's final submission to the Board was to confirm the substance of the Order.

Analysis and Reasons

[25] Matters of public health are of the utmost importance in Alberta. The Legislature of the Province of Alberta passed the Act and declared that the protection and preservation of the health and safety of the public is the single most important issue under its legislative purview, except where it conflicts with the Alberta Bill of Rights.

[26] AHS EOs have been provided with statutory protections and powers to enable them to safeguard and enforce the Regulations in public places as defined in the Act, some of which include:

- (a) requiring the closure of the place or any part of it;
- (b) requiring the doing of work specified in the order in, on or about the place;
- (c) requiring the removal from the place or the vicinity of the place of anything that the order states causes a nuisance; and
- (d) prohibiting or regulating the selling, offering for sale, supplying, distributing, displaying, manufacturing, preparing, preserving, processing, packaging, serving, storing, transporting or handling of any food or thing in, on, to or from the place;
- (e) among others.

[27] A nuisance is defined in section 1(ee) of the Act and section 1(f) of the *Nuisance and General Sanitation Regulation* as “a condition that is or that might become injurious or dangerous to the public health, or that might hinder in any manner the prevention or suppression of disease.”

[28] Section 1(k) of the *Food Regulation* defines “contamination” to include foreign matter, including filth or a pest. Section 1(ff) of the *Food Regulation* defines pest as including (i) “rodents, cockroaches, flies or other insects or other vermin.”

[29] Section 21 of the *Food Regulation* addresses pest control measures in food handling premises, and states that a commercial food establishment must be kept free of pests and of conditions that lead to the harbouring or breeding of pests. Further, section 21(1.1) states that any surrounding area, premises or facilities supporting a commercial food establishment, including any outdoor food handling areas of the commercial food establishment must be kept reasonably free of pests and of conditions that lead to the harbouring or breeding of pests, while section 21(2) states that a written record of all pest control measures used in the commercial food establishment and surrounding area must be maintained.

[30] Section 3 of the *Food Regulation* states that no person shall operate a food establishment unless: (a) the person is an operator who holds a valid and subsisting permit for the operation of the food establishment, and (b) the food establishment is identified on the permit as approved by the regional health authority that issued the permit. Section 3(2) further states that no person shall handle food except in an approved food establishment.

[31] The purpose of regulatory legislation is to prevent harm by imposing minimum standards of care. It is essential for the protection of vulnerable parties. The Act and its related regulations and standards serve to protect the public in various situations, including ensuring safe food handling procedures are in place.

Findings and Conclusion

[32] The Notice of Appeal and records submitted for the Appeal identify a clear animosity by the Appellant towards AHS Environmental Public Health, and specifically the EO. However, the Appellant's grievances are not relevant to the legal issues in the Appeal.

[33] As noted herein:

- (a) there is a statutory prohibition on any persons from performing food handling services unless they are conducted in an approved facility with the required permits.
- (b) the Regulations require the Appellant to address the pest issue to remove a nuisance from the Premises, and to maintain pest management records.
- (c) It is statutorily justified to close an establishment where there is evidence of a nuisance that is or that might become injurious or dangerous to the public health arising from spoiled meat and a pest infestation.

[34] With respect to the Order, the EO performed their statutory duties in a fair and professional manner. Their recorded observations from the July 12, 2023 inspection are uncontested, were contemporaneously recorded, and the inspection was authorized under section 59 of the Act. There was no deviation from standard practice in dealing with the Premises on July 12, 2023 or in the EO's decision to issue the Order at that time.

[35] With respect to whether the Appellant operates a business that requires a food handling permit, there is no contest that Sickel's Meats is subject to the *Food Regulation*. As the Appellant stated, "I don't dispute the necessity of obtaining the permit/license that is referenced", and as expanded on by the Appellant in an attachment to an email submitted for the Appeal, the Appellant admitted "I made an honest mistake in assuming the approved paperwork I obtained when I was at my 34th Avenue location followed me to my Ogden store. Now this has been brought to my attention, I am actively engaged in getting all of the necessary paperwork in place."

[36] Given the Appellant's admissions that the Premises did not have the required permit when the inspection occurred, and the prevailing statutory scheme, there is no question that the Appellant is required to obtain a valid food handling permit and should be prohibited from performing food handling services at the Premises until such time as he obtains the required permit.

[37] Given the EO's observations regarding the existence of pests during the July 12, 2023 inspection, there were, and remain, reasonable and probable grounds for the EO to believe that a nuisance exists in the form of a pest infestation.

[38] Given the above, as the Premises remains an unapproved facility, and as there was evidence of a nuisance at the Premises, the premises should remain closed to the public.

[39] After reviewing the evidence and submissions made by the parties, the Board confirms the Order, which shall remain in force until such time as AHS rescinds the order in accordance with the Act.

--Original Signed--
Kevin Kelly, Chair
On behalf of the Hearing Panel of the
Public Health Appeal Board

Date: December 30, 2023