



**LABOUR RELATIONS FILE NO. 029-22**

**IN THE MATTER OF AN APPEAL TO AN ADJUDICATOR  
PURSUANT TO**

***S. 3-56 of The Saskatchewan Employment Act***

**BETWEEN**

**SaskEnergy Incorporated**

**APPELLANT**

**AND**

**Occupational Health and Safety Branch**

**RESPONDENT**

**ADJUDICATOR: Terrance Chinn**

**APPELLANT COUNSEL: Matthew Schmeling**

**RESPONDENT COUNSEL: Alyssa Phen**

## DECISION

### BACKGROUND

[1] A Notice of Contravention, File Number 1-00018669, was served on SaskEnergy Incorporated (SaskEnergy) on October 26, 2021 by the Occupational Health and Safety Branch (OHS). This was a result of an inspection by an Occupational Health Officer of OHS which was made the same day. There were two stated contraventions of *The Occupational Health and Safety Regulations, 2020* (Regulations) pursuant first to *sections 17-7(1)(a) and 17-7(6)*, and then secondly a contravention of *section 3-6*.

[2] On November 15, 2021, SaskEnergy appealed the Notice of Contravention to the Executive Director of the OHS.

[3] On January 24, 2022, the Executive Director provided his decision and response to the appeal of the Notice of Contravention. He agreed partly with the Appeal and amended the Notice of Contravention so that section 17-7(6) of the *Regulations* was removed from the first contravention. That still left a contravention of section 17-7(1)(a) in the first contravention. The second contravention under *section 3-6* of the *Regulations* was cancelled in whole.

[4] SaskEnergy appealed the Notice of Contravention, as amended.

[5] The Parties agreed to my being the Adjudicator in this matter and that I have jurisdiction in all regards.

[6] A conference call with the Parties occurred on March 27, 2023, to discuss further steps, issues, and related matters. There was an issue raised in the appeal concerning “due diligence” as a defence to the remaining contravention. Before proceeding to a hearing, it was agreed that the Parties would provide written submission on whether “due diligence” was available in law for SaskEnergy to argue and if so, was there sufficient evidence to show “due diligence” by SaskEnergy.

[7] The Parties subsequently chose not to provide written submissions on “due diligence”. Instead, they have agreed in an email provided to me on

April 20, 2022, to a consent order without proceeding to an actual hearing of the matter and without my determining the issue of “due diligence.”

## **FACTS**

[8] According to section 4-4(4) of *The Saskatchewan Employment Act* an Adjudicator is allowed to find facts as necessary and the Parties have agreed to me doing so. I am relying on some of the facts as set out in the file provided to me by OHS and more specifically stated in the January 24,2022 Decision of the Executive Director of OHS.

[9] The only pertinent facts surround the first contravention in the January 24,2022 Decision.

[10] The contraventions concerned trenching work carried on by SaskEnergy in Saskatoon, Saskatchewan. An OHS Officer observed what were considered safety issues in which three workers were at risk. The first contravention provided that there was an observation of a straight cut trench. The SaskEnergy supervisor of the workers advised that the trench was 1.8 metres deep. It was later determined to be 1.27 metre deep. The walls were not cut back as required by section 17-7(1)(a) of the *Regulations*.

[11] SaskEnergy, in its December 16,2021 appeal to OHS, agreed that it was guilty of a strict contravention of *section 17-7(1)(a)* of the *Regulations* and confirmed this in their April 20,2022 agreement to a consent order.

## **CONCLUSIONS**

[12] By agreement of the Parties, and as I find, there was a trench made by SaskEnergy that was 1.8 metres deep where the walls were not cut back. SaskEnergy workers were in that trench. This is a violation of *section 17-7(1)(a)* of the *Regulations*.

[13] There is no finding that SaskEnergy does not value safety or that SaskEnergy does not have an attitude and culture where safety is paramount.

[14] The issues as to whether a “due diligence” defence is available to SaskEnergy and, if so, whether SaskEnergy met its “due diligence” requirement are not being determined.

[15] This may be considered a variance of the Executive Director’s January 24,2022 Decision and Notice of Contravention, as amended. I am allowed to do so by *section 4-6(1)(a)(i) of The Saskatchewan Employment Act*.

[15] On finding that there was a strict contravention of *section 17-7(1)(a) of the Regulations*, the appeal by SaskEnergy of the January 24,2022 Notice of Contravention, as amended, is dismissed.

Dated this 27<sup>th</sup> day of April,2022 at Regina, Saskatchewan.

A handwritten signature in black ink, appearing to read "Terry Chinn". The signature is fluid and cursive, with a large initial "T" and a stylized "C".

Terrance Chinn, Adjudicator