

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Shaffer*, 2022 NSPC 20

Date: 20220614

Docket: 8450457, 8450458,

Registry: Kentville

Between:

Her Majesty the Queen.

v.

Derrick Shaffer carrying on business as Shaffer Enterprises AND
3144393 Nova Scotia Limited

Judge:	The Honourable Judge Ronda van der Hoek,
Heard:	May 26, 2022, in Kentville, Nova Scotia
Decision	June 14, 2022
Charge:	Section 158(H) of the <i>Environment Act</i> SNS 1994-95 c. 1, s. 1.
Counsel:	Brian Cox, for the Crown Bernie Conway, for the Defendants

By the Court:

Introduction:

[1] The defendants, 3144393 Nova Scotia Limited and Derrick Shaffer carrying on business as Shaffer Enterprises, entered guilty pleas to charges of contravening an Order, to wit: a Sentence Order dated August 22, 2018, contrary to section 158(h) of the *Environment Act* SNS1994-95 c. 1, s. 1. On that date in 2018, the defendants were ordered pursuant to s. 166 of the *Act* to complete site remediation, among other things, following a fire that burned for days at their storage property. The first step was submission of a plan acceptable to the regulator.

[2] A jointly recommended sentence sought fines of \$500.00 for each defendant and a new Sentence Order directed at achieving compliance with the terms of the original. After considering the submissions of counsel, the Court accepts the joint recommendation as it is in keeping with the sentencing imperatives for regulatory offences.

[3] While it is not the general practice of this Court to provide written reasons in such circumstances, there are very few available pursuant to this legislation and it

may also aid the administration of justice that the Sentence Order is appended hereto.

The Background Facts:

[4] On August 22, 2018, the defendants were sentenced before the Honourable Judge Tufts for an offence contrary to s. 158(f) of the *Environment Act* and s. 4(1) of the *Air Quality Regulations*. In addition to fines, they were ordered to comply with the terms and conditions of a Sentence Order. Lacking familiarity with that matter, the parties agreed that this Court could review the court recorded sentencing submissions and the unreported decision of Judge Tufts for added context.

[5] The Court determined the defendants had operated a construction and demolition business involving collection and proper storage of items for a limited time. Essentially, they operated a landfill for construction waste contained in sorted cells. One such cell caught fire and burned for 4-5 days. The cause of the fire was unknown, but designated materials, including plastics, burned resulting in the issuance of an air quality alert. The regulator investigated and determined there was a breach of the conditions of the company approval for cell construction, a failure to situate sheds and sort out illegal materials, no approval for storage of

certain materials, and cell capping had not been undertaken in aid of reducing the risk of fire. The defendants lacked an operational emergency response plan and in particular, their water tank was off site being repaired at the time of the fire and there were insufficient monitoring wells, no sorting pads, materials were stockpiled for too long, a lack of compliance with settling pond set-backs, unconstructed sheds, and roads were not laid out in accordance with the company operating approval.

[6] The defendants were convicted of burning designated materials without authorization.

The Offences before this Court:

[7] Following the 2018 sentencing, an engineer engaged by the defendants sent the environmental regulator a site assessment plan- the first step. Upon receipt and review, the environmental regulator advised the defendants that plan was not acceptable, and in December 2019 issued a Directive for completion of item 1 of the Order.

[8] By February 4, 2020, neither compliance with the Sentence Order of Judge Tufts nor the Directive had occurred, and the defendants were charged with contravening the Sentence Order on February 5, 2020.

Prior Environmental offences:

[9] The defendants' prior environmental offences include the following: (1) The situation leading to the Sentence Order imposed by Judge Tufts in 2018. (2) Between February 2008 and May 2009, a breach of s. 158(f) of the *Environment Act* for which they were sentenced in December 2010 to a \$500 fine and a Sentence Order directing removal of materials. (3) Between October 2004 and December 2005, a breach of environmental legislation for which they were sentenced in April 2008 to a \$500 fine.

Legislative Framework:

[10] The provincial *Environment Act* is the regulatory vehicle used to obtain compliance with environmental initiatives in the province of Nova Scotia. Pursuant to s.158 of the *Act* it is an offence to contravene a Sentence Order. Section 166(1)(a)-(i) provides the Court a number of available orders "related to penalty that may be imposed in addition to any other penalty imposed pursuant to the Act". In that regard, Courts are directed, "having regard to the nature of the offence and the circumstances surrounding its commission" to make any of those various orders. In this case, s. 166(1)(i) authorizes an order "requiring the offender to comply with any other conditions the court considers appropriate in the

circumstances for securing the good conduct of the offender and for preventing the offender from repeating the offence or committing other offences”.

[11] Perhaps not surprisingly, the Court was not provided case law in support of the recommended sentence, likely due to the fact that such decisions are rarely reported. The Court did, however, locate and consider *R. v. Milligan* 2004 NSPC 42, a decision of Tufts ACJ, that reminds of the need to characterize the offence. That decision involved the removal of topsoil from a commercial property and Justice Warner, sitting as a summary conviction appeal court, considered the sentencing judge’s characterization and upheld the sentence decision: *R. v. Milligan* 2005 NSSC 22.

Analysis:

[12] General and specific deterrence are the primary sentencing principles applicable to environmental offences. The existence of previous convictions under the same legislative framework is an aggravating factor.

[13] In accordance with the *Act* and *Milligan*, this offence is best characterized as a failure to comply and not a continuation of the previous offence. The Court was told Mr. Shaffer aimed to comply with the 2018 Sentence Order, but ran into

difficulty locating and engaging the proper experts. Those efforts did not, however, rise to the level of a due diligence defence.

[14] There was no suggestion the defendants have not complied with the terms of past sentences noted above.

[15] The defendants plead guilty, and while those pleas may not be described as early, they did follow intensive work on the part of their counsel to arrange an outcome satisfactory to the regulator. Such is not unusual in the context of regulatory matters, and counsel submits there is no question the defendants should have immediately commenced compliance with the original Sentence Order, but they accept responsibility for their actions and are now well and truly engaged in compliance efforts.

[16] The Crown and defence urge acceptance of the jointly recommended sentence because it takes account of the defendants' environmental record, achieves the ultimate goal of returning the worksite to the proper state, and addresses completion of the original Sentence Order. While \$500.00 fines could be viewed as nominal for each defendant, the Court is asked to consider the significant minimal costs, \$80,000.00 to date, incurred by the defendants to engage

with the engineer/foreman to complete the remediation project. More costs will be incurred as the project advances to completion.

[17] The Court finds the jointly recommended fines proper in the circumstances. Section 166(1)(i) orders are meant to be imposed *in addition to any other penalty*, as such it is necessary a fine first be imposed to in turn authorize imposition of the necessary Sentence Order. Such fines, while nominal, do assist in achieving the environmental aims of the legislation.

[18] The Sentence Order, attached, achieves the legislative purpose and it too is accepted. It accords with the principles and purposes of sentencing and does not bring the administration of justice into disrepute.

[19] Judgement accordingly.

van der Hoek PCJ

CANADA
PROVINCE OF NOVA SCOTIA

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Her Majesty The Queen

v.

Derrick Shaffer carrying on business as Shaffer Enterprises AND 3144393 Nova Scotia Limited

SENTENCE ORDER PURSUANT TO SECTION 166 OF THE ENVIRONMENT ACT:

BEFORE THE HONOURABLE JUDGE RONDA VAN DER HOEK a Judge of the Provincial Court of Nova Scotia:

WHEREAS on or about the 5th day of February, 2020, at or near 2181 North River Road, McGee Lake, Nova Scotia, also known as PID 55377253 (the "**Property**"), Derrick Shaffer of 2181 North River Road, McGee Lake, Nova Scotia, carrying on business as Shaffer Enterprises AND 3144393 Nova Scotia Limited (hereinafter referred to as the "**Offenders**") did commit an offence contrary to Section 158(h) of the *Environment Act*, SNS 1994-95, c 1 [**Act**];

AND WHEREAS the Offenders had previously been convicted of offences under s. 158(f) of the *Act* and s. 4(1) of the *Air Quality Regulations*, and been made subject to a sentence order of His Honour Judge A. Tufts, a judge of the Provincial Court of Nova Scotia, appended hereto and forming part of this Order at Schedule "B";

AND WHEREAS the Offenders operated at the Property a facility for disposing of construction and demolition debris qualifying as a solid waste management facility under the *Activities Designation Regulations* (the "**Facility**"), an accurate survey plan for which is appended hereto and forms part of this Order at Schedule "C" (the "**Survey**");

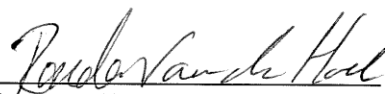
AND WHEREAS on the 14th day of June, 2022 at Kentville, Nova Scotia, the Offenders stand convicted of said offence and shall be sentenced according to law;


AND WHEREAS by virtue of subsection 166(1)(i) of the *Act*, the Court may make an order requiring an offender to comply with any other conditions the court considers appropriate in the circumstances for securing the good conduct of the offender and for preventing the offender from repeating the offence or committing other offences;

IT IS HEREBY ORDERED that the Offenders shall:

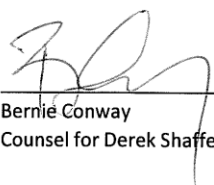
1. each pay a fine in the amount of \$500; and
2. comply with the terms and conditions, including times and schedules, set forth in Schedule "A" attached to and forming part of this Order.

Dated at Kentville, Nova Scotia this 14th day of June, 2022, at Kentville, Nova Scotia.


The Honourable Judge Ronda van der Hoek
Judge of the Provincial Court of Nova Scotia

 [signed electronically - 2022-06-02]

Brian Cox
Crown Attorney



Bernie Conway
Counsel for Derek Shaffer and 3144393 Nova Scotia Limited

SCHEDULE "A"

TERMS AND CONDITIONS

Upon the date of this Order, the Offenders shall abide by the following terms and conditions:

1. Within 270 days of the issuance of this Order, submit to Nova Scotia Environment and Climate Change (NSECC) a complete application to reclaim the Facility located on the Property in accordance the applicable laws of Nova Scotia and application requirements as outlined in NSECC's "Division 3 – Municipal Application for Approval form", appended hereto as Appendix "1";
2. Within 270 days of the issuance of this Order, submit to NSECC an updated environmental site assessment report in relation to the Property, in accordance with the *Contaminated Sites Regulations*. The report must be prepared by a site professional as designated under the *Contaminated Sites Regulations* and include, but not be limited to:
 - a. An update on current site features and activities at the Facility and Property, including:
 - i. an updated site plan including:
 1. the locations and itemization of materials stored; and
 2. the locations of current, former and proposed test sampling sites;
 - ii. an evaluation of the condition and composition of cell covers and berms;
 - iii. an assessment of whether pipes located under Cells 3A and 3B as depicted in the Survey have been properly sealed, and if so, when and by what method;
 - iv. an evaluation of the condition of any leachate collection ponds;
 - v. an evaluation of the condition of any monitoring well network; and
 - vi. a summary of activities that have been conducted at the Facility since August 2019;
 - b. A summary of background conditions at the Property, including geological conditions and surface water, groundwater, soil and sediment quality, including upgradient water quality. In preparation of the summary, the site professional may not rely on data or samples from monitoring well MW5 as depicted in the Survey to characterize upgradient water quality, given its proximity to activity at the Facility;
 - c. A summary of the results of all environmental sampling conducted at the Property after March 1, 2016;
 - d. An assessment of water quality within any holding or leachate ponds (*i.e.* leachate quality) at the Property;
 - e. An assessment of shallow bedrock aquifer water quality in the vicinity of any holding cells and holding ponds on the Property, to be completed by a professional hydrogeologist;

- f. A summary of any new (2022) leachate, surface water, groundwater, soil and/or sediment sampling for petroleum hydrocarbons, metals, and/or any other contaminants of potential concern (COPC) (e.g. dioxins and furans) at the Property, as applicable to delineate the current extent of environmental impacts;
 - g. An analysis of current and historical environmental quality data, including spatial and temporal trends with a comparison to applicable guidelines and historical (baseline) data in tabular format with guideline exceedances highlighted.
 - h. A conceptual site model (CSM) presenting the biological, physical, and chemical processes that determine how contaminants move from sources through environmental media (e.g. soil, air and water) to sensitive receptors both human and ecological) and identification of which pathways are active with supporting information and rationale for the conclusions presented
 - i. An assessment of risk (including from total petroleum hydrocarbons, zinc, arsenic and any other COPCs) to potential receptors considering the CSM, current site conditions and any change from background conditions;
 - j. If Tier 1 EQS exceedances are to be designated as background, rationale and evidence from a contaminated site professional supporting that designation;
 - k. Recommendations pertaining to remedial action, interim mitigation measures and monitoring
3. Upon satisfactory completion of item (2.) as determined by NSECC in its sole discretion, within 30 days, submit to NSECC a remedial action plan prepared by a qualified professional.
 - a. The remedial action plan report must include, but not be limited to:
 - i. the name of the qualified professional who prepared the report;
 - ii. any identified adverse effects;
 - iii. a site remediation plan; and
 - iv. a schedule for the completion of site remediation as set out in the remedial action plan.
 - b. All information required in section (a.) above must be submitted to NSECC in a written report format and signed by the qualified professional. The report must be deemed acceptable by NSECC for this Order to be complied with. NSECC may request additional information if NSECC determines that the conditions above have not been met.
4. In order to comply with this Order, all compliance items above must be deemed acceptable by NSECC in accordance with the laws of the province of Nova Scotia. NSECC may request additional information or supporting documentation if NSECC determines that any of the compliance items above are incomplete, and such information or supporting documentation must be provided in order to comply with this Order.
5. This Order remains in effect for three (3) years commencing on the date of the Order.
6. Once NSECC has reviewed the remedial action plan and provided written authorization to proceed with the site remediation plan, the Offenders must carry out all requirements of the

site remediation plan authorized by NSECC and meet all deadlines in the authorized schedule for completion.

7. No later than 14 days upon completion of the site remediation, the Offenders must submit a final assessment report prepared by the qualified professional to NSECC for review. NSECC may request additional information or require additional actions if NSECC determines that site remediation has not been completed in accordance with this order. NSECC may also require additional reclamation if full closure of the site is sought.
8. In addition to those requirements set out above, and without limiting the generality of the foregoing, the Offender shall immediately notify NSECC in writing of the results of any phase of environmental site assessment completed at the Property.

Schedule "B"

CANADA
PROVINCE OF NOVA SCOTIA

IN THE PROVINCIAL COURT OF NOVA SCOTIA
HER MAJESTY THE QUEEN

versus

Shaffer Enterprises and 3144393 Nova Scotia Limited

SENTENCE ORDER PURSUANT TO
SECTION 166 OF THE ENVIRONMENT ACT

BEFORE THE HONOURABLE JUDGE TUFTS, a Judge of the Provincial Court of Nova Scotia;

WHEREAS Shaffer Enterprises and 3144393 Nova Scotia Limited stand convicted as of March 21st, 2018, of offences contrary to Section 158 (f) of the Environment Act and section 4(1) of the Air Quality Regulations;

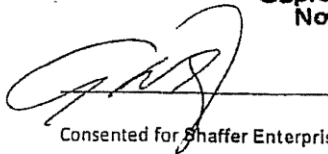
IT IS HEREBY ORDERED THAT Shaffer Enterprises and 3144393 Nova Scotia Limited shall:

1. Comply with the terms and conditions, including times, set forth in Schedule "A" attached to and forming part of this Order.

DATED at Kentville, Nova Scotia this 22 day of August, 2018.



Consented for the Crown
J. Robert Morrison
A Barrister of the
Supreme Court of
Nova Scotia

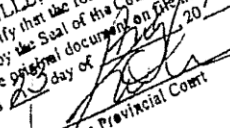


Consented for Shaffer Enterprises and 3144393 Nova Scotia Limited

JUDGE/CLERK OF THE PROVINCIAL COURT

A. TUFTS

ALAN T. TUFTS
Judge of the Provincial Court

IN THE PROVINCIAL COURT
KENTVILLE, NOVA SCOTIA
I hereby certify that the foregoing document,
identified by the Seal of the Court, is a true
copy of the original document on file hereof
Dated this 22 day of August, 2018

Clerk of the Provincial Court

SCHEDULE "A"

TERMS AND CONDITIONS

Shaffer Enterprises and 3144393 Nova Scotia Limited

Upon service of this order, Shaffer Enterprises and 3144393 Nova Scotia Limited shall :

1. Hire a qualified professional (Professional Engineer or Professional Geoscientist licensed to practice in the Province of Nova Scotia) to carry out a site assessment of the site (PID 55377253) and submit a site assessment report to Nova Scotia Environment (NSE) within 90 days of the issuance of this order. The site assessment report must include but not be limited to:
 - i) A detailed analysis of all water quality monitoring and sediment monitoring completed since March 01, 2016. The analysis shall include a comparison to relevant guidelines and baseline conditions
 - ii) An analysis and identification of both onsite and offsite receptors and the potential risk to those receptors;
 - iii) Updated well conditions of the monitoring wells;
 - iv) Updated water control measures onsite;
 - v) Recommendation and implementation of any mitigation measures necessary to prevent adverse effect;
 - vi) Recommendations for site monitoring moving forward. Rationale must be provided for any proposed changes to the monitoring plan;

All information required in section 1 above must be submitted to NSE in a written report format and be signed by the qualified professional. The report must be deemed acceptable by NSE for this order to be complied with. NSE may request additional information if NSE determines that the conditions above have not been met.

2. Submit to the Kentville District Office of NSE for review, a written remedial action plan report of the site within 120 days of the issuance of this order. The remedial action plan report must include, but not be limited to;
 - i) the name of qualified professional who prepared the report,
 - ii) any identified adverse effects,
 - iii) a site remediation plan,
 - iv) a schedule for the completion of the site remediation plan.
3. All information required in section 2 above must be submitted to NSE in a written report format and signed by the qualified professional. The report must be deemed acceptable by NSE for this order to be complied with. NSE may request additional information if NSE determines that the conditions above have not been met.

4. Once NSE has reviewed the remediation action plan and provided written authorization to proceed with the site remediation plan, Shaffer Enterprises must carry out all requirements of the site remediation plan authorized by NSE and meet all deadlines in the authorized schedule for completion.
5. No later than 14 days upon completion of the site remediation, Shaffer Enterprises must submit a final assessment report prepared by the qualified Professional to NSE for review. NSE may request additional information or require additional actions if NSE determines that site remediation has not been completed in accordance with this order. NSE may also require additional reclamation if full closure of the site is sought.

Nova Scotia Environment Contact is:

Inspector Jacquelyn Burneau
136 Exhibition Street
Kentville, NS
B4N 4E5

Phone: (902) 679-6086
Fax: (902) 679-6186

