

MANITOBA) Order No. 100/14
)
THE PUBLIC UTILITIES BOARD ACT) September 9, 2014

BEFORE: Marilyn Kapitany, B.Sc. (Hons.), M.Sc., Acting Chair
The Hon. Anita Neville, P.C., B.A. (Hons.), Member

TOWN OF MINNEDOSA
REQUEST TO REVIEW AND VARY
BOARD ORDER No.70/14

Summary

By this Order, the Public Utilities Board (Board) varies the effective date set in Order 70/14, from June 1, 2013 to October 1, 2014.

Rates are noted below:

	Rates set on Board Order No. 30/13		Effective October 1, 2014	
	Minimum (4.54m ³)	Per kilolitre (m ³)	Minimum (4.54m ³)	Per kilolitre (m ³)
Tipping charges				
Residents within Town limits	\$ 31.78	\$ 7.00	\$ 5.00	\$ 0.84
Non-Residents outside Town limits	\$ 31.78	\$ 7.00	\$ 8.75	\$ 1.65

These rates can also be found in Schedule "A".

Application

This Board Order is best read in conjunction with Board Order Nos. 30/13 and 70/14.

In Board Order 31/11, issued March 2, 2011, the Board ordered the Town to limit access to the lagoon, and apply to the Board for approval of lagoon tipping fees, with a requested submission date of October 31, 2011.

The Board approved the tipping fees as applied for by the Town in Board Order No. 30/13, issued March 21, 2013.

On June 26, 2013 the Town notified the Board by phone of their intention to file an application to request that the Board review the decision in the Order. The Town was instructed by email to make the filing in writing. This application was received October 15, 2013. The Board's understanding at this time was that the Town was already charging the rates set in Board Order No. 30/13, as they had been in effective since June 1, 2013.

The Board issued Order No. 70/14 on June 20, 2014 approving the revised tipping fees. The Board made the revised rates retroactive to June 1, 2013, which would allow the Town to credit back the septic hauler for the overcharges based on the rates that were in effect from Order No. 30/13.

On June 23, 2014 the Town contacted the Board by letter and requested that the Board defer the Order; the Board has the authority to rescind an Order. The Town's request was denied. The Town's reasoning was that a new rate study was in the final stages of completion, and that the tipping fees included in the rate application would change again.

The Board had ordered that the Town submit a rate application on or before June 30, 2014. On July 16, 2014, the Town requested a two month extension to that deadline, which was approved by the Board, making the deadline for the rate application August 31, 2014. On August 25, 2014 the Town emailed the Board and once again requested an extension on the submission of the rate application. The Board approved the second extension request, with the warning that further requests will be denied, and that the Town will be required to submit their rate application on or before September 30, 2014.

The Board denied the Town's request to vary Order No. 30/13, in large part because of the belief that the Town had been charging the higher rates since June 1, 2013.

The Town sent a letter and a Council Resolution on July 23, 2014 which advised the Board that Council had reviewed Board Order Nos. 30/13 and 70/14, and had decided to start charging the tipping fees effective October 1, 2014. The Board then contacted the Town to inquire as to the status of the tipping fees approved in Board Order No. 30/13, which were to come into effect June 1, 2013. The Town advised the Board at that time that they had not implemented any tipping fees at any time.

The Board advised the CAO (Mr. Ken Jenkins) and Assistant CAO (Mr. Chris Yuen) of the Town of Minnedosa that they were in contravention of Board Order No. 30/13. The Town submitted to the Board that they thought once they advised the Board of their intention to request a review and vary on June 24, 2013 they were no longer required to charge the rates as directed by the Board in Order No. 30/13. Mr. Jenkins advised the Board at that time that Council would be rescinding the Council Resolution submitted July 23, 2014, and that the Town would await the decision of the Board on how to proceed.

Board Findings

The Board, after reviewing the Town's application and the previous Orders, will vary the effective date of the tipping fees set on Board Order No. 70/14. The rates will come into effect October 1, 2014.

Upon reviewing the file for the Town of Minnedosa, the Board is troubled by the lack of compliance and understanding of the roles of the Public Utilities Board, the Town's administrative staff and Town Council. The Town has a responsibility to its ratepayers to either comply with the Order as set out by the Board, or appeal the decision in a timely and correct fashion, as set out in the Board's Rules of Practice and Procedure. The Town does not have the authority to pick and choose which directives it wishes to comply with and which it does not.

While the Board is very sensitive to the resource constraints that many municipalities in Manitoba are facing, the Town of Minnedosa does not appear to be making any attempt to comply with the directives issued by the Board. The Town has failed on many occasions to provide complete and adequate information with its applications; has failed to meet imposed deadlines and has made multiple extension requests; and has on more than one occasion attempted to explain matters of non-compliance as nothing more than a misunderstanding. Any one of the incidents on its own would be acceptable; it is when reviewing the file in aggregate that the pattern emerges.

Pursuant to the *Public Utilities Board Act*, the Board has available enforcement methods and can apply penalties. The Board will consider utilizing the means at its disposal if the Town fails to comply with this or any future Orders.

The Board urges the Town and Council to review its internal processes to determine how this matter was handled. The Town's actions have resulted in the utilization of resources best spent elsewhere. It is the Board's fervent hope that the Town will take this opportunity to gain a new understanding and respect for the Board's role as a regulator.

Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with Section 36 of the Board's Rules of Practice and Procedure (Rules). The Board's Rules may be viewed on the Board's website at www.pub.gov.mb.ca.

IT IS THEREFORE ORDERED THAT:

1. The tipping fees for the Town of Minnedosa lagoon, as set out in Schedule "A" to this Order, **BE AND ARE HEREBY APPROVED** with rates to be effective October 1, 2014.
2. The Town of Minnedosa submit By-law 2534 to the Public Utilities Board once it has received third and final reading.
3. The Town of Minnedosa file a rate application with the Public Utilities Board no later than September 30, 2014.

Fees payable upon this Order - \$500.00

THE PUBLIC UTILITIES BOARD

"MARILYN KAPITANY, B.Sc.(Hons.), M.Sc"
Acting Chair

"JENNIFER DUBOIS, CMA"
Acting Secretary

Certified a true copy of
Order No. 100/14 issued by
The Public Utilities Board

"Original Signed By Jennifer Dubois"

Acting Secretary

SCHEDULE "A"

October 1, 2014

1.0--SCHEDULE OF INITIAL TIPPING FEES

A schedule of rates per Kilotitre (cubic metre):

Tipping charges	Minimum (4.54m ³)	Per kilolitre (m ³)
Residents within Town limits	\$ 5.00	\$ 0.84
Non-Residents outside Town limits	\$ 8.75	\$ 1.65