

Order No. 61/20

**RURAL MUNICIPALITY OF TACHÉ
LANDMARK WATER AND WASTEWATER UTILITY
LAGOON TIPPING FEES**

April 27, 2020

**BEFORE: Shawn McCutcheon, Panel Chair
Irene Hamilton, Q.C., Panel Member**

Table of Contents

1.0 Executive Summary 3

2.0 Background 3

3.0 Board Methodology..... 4

 Board Rules of Practice and Procedure..... 4

4.0 Application..... 5

5.0 Board Findings 7

6.0 IT IS THEREFORE ORDERED THAT: 10

1.0 Executive Summary

By this Order, the Public Utilities Board (Board) denies the Rural Municipality of Taché (RM), Landmark Water and Wastewater Utility's (Utility) application to vary Board Order No. 60/17.

The reasons for the Board's decisions are under Board Findings.

2.0 Background

On December 4, 2019, the Board received the first of eight written complaints against the RM of Taché. The complaint stated the RM had notified septic haulers it would implement new per load tipping fees at the Landmark wastewater lagoon (lagoon) effective January 1, 2020. The current rates and methodology consist of an annual flat fee charged to each septic hauler with access to the Landmark lagoon, plus an annual transfer from the RM to the Utility. There is no additional cost to the septic haulers to use the lagoon.

On December 6, 2019, the Board contacted the RM to inquire if the complaints were founded, as no application had been made to the Board to change the lagoon fees. The RM confirmed it had passed a By-law revising the rates on November 19, 2019.

The Board advised the RM approval from the Public Utilities Board must be received prior to the RM implementing revised lagoon tipping fees or methodology. The RM was presented with the choice of submitting a full application or requesting the Board Review and Vary the most recent Board Order.

On April 2, 2020, the Board received the RM's application to Review and Vary Board Order No. 60/17.

3.0 Board Methodology

Board Rules of Practice and Procedure

Section 36 of the Board Rules of Practice and Procedure outlines the process by which the Board may review, rescind, change, alter or vary any decision or order by it.

Should any person wish to request the Board review a decision, an application must be made in writing and contain:

- a) a clear and concise statement of facts relevant to the application;
- b) the grounds on which the application is made;
- c) a brief explanation as to the nature of the prejudice or damage that has resulted or will result from the order, decision or direction;
- d) a brief description of the remedy sought; and
- e) the applicant's name, address in Manitoba, telephone number, fax number and, if available, e-mail address.

The Board Rules of Practice and Procedure are available on the Board's website at www.pubmanitoba.ca.

4.0 Application

On April 2, 2020, the Board received the RM's application to Review and Vary Board Order No. 60/17, asking the Board to consider revising the current lagoon tipping fees. The rates approved in Order No. 60/17 include an annual flat rate of \$100 per septic hauler, plus an annual remittance of \$5,000 from the RM of Taché to the Landmark Utility. The transfer from the RM is in consideration of RM residents from outside of the LUD of Landmark using the lagoon. These residents are not connected to the wastewater collection system, and are responsible for contracting the services of a septic hauler to pump out their wastewater tanks, who then dispose of the wastewater in the Landmark lagoon.

The RM requested the Board vary the tipping fees to reflect the user fees outlined in By-law No. 12-2019, which was given third and final reading November 19, 2019. The RM confirmed to the Board on April 20, 2020 that it has not started charging the rates, which the RM has previously planned to make effective January 1, 2020.

The RM's application stated the RM by-law and environmental license limit usage of the lagoon to residents of the RM of Taché. The RM asserted this has been clearly communicated to the septic hauling companies registered with the RM to dump in the lagoon, but the septic haulers are not following the rules. The RM stated the septic haulers are dumping wastewater from outside of the RM and believes this is because the septic haulers do not pay a cost to use the lagoon as they do in the surrounding municipalities.

The request included a request to eliminate the \$100 annual fee to septic haulers. In response to Board queries, the RM advised the annual flat rate per septic hauler has been increased to \$200 annually without approval from the Board. The RM advised this increase took place "a couple years ago". This change was implemented by the RM "to help offset the cost of the computerized key" provided to the septic haulers to access the lagoon. The RM is able to track the number of times each key is used monthly and

proposed to charge the septic haulers based on the capacity of the truck and the number of times the lagoon was accessed.

Septic haulers are required to keep records of the locations they have serviced and submit them monthly. The RM stated it has caught septic haulers falsifying these records by not reporting the full load. The RM also submitted that it is difficult to prove anything definitive without physically following the trucks.

The RM advised the Board it first informed the septic haulers of the proposed change in tipping fees and methodology in the fall of 2018. The RM submitted it met with all of the septic haulers that have access to the lagoon to discuss the issues the RM is experiencing with illegal dumping in the lagoon, and to advise it would begin enforcing the licensing requirements to not allow dumping in the lagoon during the winter, except for emergency cases. The RM stated the septic haulers were also informed a user fee would be implemented at the end of 2019. The RM did not provide the Board with any evidence of written notice provided to the septic haulers.

The RM proposed the existing charges be changed to a \$200 refundable deposit for the computer activated key septic haulers require to access the lagoon. The RM also proposed to eliminate the \$5,000 transfer from the RM to the utility, and collect disposal fees per load instead. The proposal was \$30 per load for trucks with a capacity of 1,500 gallons or less and \$60 per load for trucks with a capacity greater than 1,500 gallons. These rates are to be charged from June 1 to October 15 of each year. Outside of that period, tipping is for emergency cases only, and the RM proposed a fee of \$75 per load. This was calculated by using the Utility's minimum sewage commodity charge of \$20.25 plus a \$9.75 service charge for small loads and doubling that charge for large loads. The minimum commodity charge is calculated on a quarterly basis, using a minimum of 15 cubic meters, or 3,300 gallons. The RM did not provide any information regarding the average number of loads per household.

By-law No. 12-2019 also included two clauses allowing residents to claim refunds for septic tank cleanings meeting its criteria. Properties within the LUD of Landmark on the

current Utility system are entitled to a refund of \$15 per septic tank cleanout, upon production of a valid invoice from an approved septic hauler discharging within the Landmark Lagoon. Properties within the RM currently on a holding tank system, between the dates of October 15 and May 30, are entitled to a refund of \$35 per septic tank cleaning upon production of a valid invoice from an approved septic hauler discharging within the Landmark Lagoon. Aside from the By-law, the RM did not comment on these refund amounts in its communication with the Board, and no supporting calculations were provided.

The RM's application submitted that in August 2019 the lagoon accepted 159 loads of 1,500 gallons or less and 37 loads over 1,500 gallons, which would equate to revenues of \$6,990 for one month at the proposed rates. The RM did not submit any further historical information about the volume of wastewater hauled into the lagoon, or any further estimates of the revenue expected from the revisions proposed.

The RM stated the \$5,000 annual transfer to the Utility amounts to \$.57 per person annually, and is inadequate. The RM explained that due to the Provincial requirements to treat for phosphorus the Utility's anticipated Treatment and Disposal costs went from \$1,500 in 2015 to \$93,000 in 2020.

5.0 Board Findings

The Board considered the RM's request to Review and Vary Board Order No. 60/17, and agreed to review the decision in light of the RM's proposal to revise the tipping fees; this Order is the result of that review.

Having considered the RM's filing, reviewed the complaints received from septic haulers and residents of the RM of Taché, the Board finds it appropriate to conduct a paper review process.

The Board denies the RM's request to vary the lagoon tipping fees, largely because it is unable to determine whether the requested revisions are reasonable or not based on the

evidence provided. The Board has long been a proponent of the user pay principle, and would support the implementation of a per load methodology in charging tipping fees. The RM's initial application dated April 2, 2020 gave its rationale for the revision as the costs of the lagoon were being borne, in large part, by the approximately 1,300 residents of the LUD of Landmark rather than the 8,625 residents being service by the lagoon.

This assertion does not provide enough information, particularly in terms of who is contributing how much to the volume of wastewater being treated in the lagoon. In the context presented to the Board, it would appear the LUD ratepayers are paying far too much at the current rates.

The RM explained that due to the Provincial requirements to treat for phosphorus the Utility's anticipated Treatment and Disposal costs went from \$1,500 in 2015 to \$93,000 in 2020.

As per the Utility's 2016 rate study, actual costs for Treatment and Disposal in 2015 were \$2,254. Forecasts from the same rate study for 2017 to 2019 averaged approximately \$60,000 per year. The 2018 audited financial statement, Schedule 9A, shows a budget of \$99,668 and actual of \$53,489 for the same expense line.

An overall review of the financial results of the water and wastewater utility in 2018 shows a surplus of \$85,850, when calculated for regulatory purposes. Further analysis of only the wastewater revenues and expenses, less the capital grant amortization, shows that wastewater accounts for \$47,870 of that surplus.

The information provided suggests the cost of operating the lagoon may not be appropriately allocated between the connected ratepayers and the users found outside of the LUD; however, the solution proposed increases the costs to the users outside of the LUD without providing any relief to the connected ratepayers. At the rates being charged today, the Utility is already experiencing a substantial operating surplus.

The RM did not provide any explanation or justification for calculating the tipping fees for a load of up to 1,500 gallons using the minimum quarterly charge, which is calculated

based on double that volume. The service charge of \$9.75 was not substantiated in any way. The Utility currently charges a quarterly customer service charge of \$32.71. Tipping fees are typically calculated using a formula similar to bulk water rates, based on a per cubic meter charge, not the quarterly minimum charge used for connected customers. The RM also did not provide any information as to the expected number of loads per residence. This can vary significantly dependant on the type of system, with holding tanks requiring a frequent pump out and those with a septic tank requiring only the occasional pump out for accumulation of solids. This also makes using the minimum quarterly charge as the basis for the tipping fee untenable.

Assuming the RM's projection based on August 2019 can be extrapolated to calculate projected revenues for the Utility over the period of June 1 to October 15, this would mean the Utility would have increased revenues of \$6,990 x 4.5 months = \$31,455, less the \$5,000 transfer from the RM and the \$200 annual fee per hauler. This also does not account for the revenues from the emergency calls, which were described as a "disproportionate number", or any offsetting expenses for the refunds promised in By-law 12-2019, as no estimates or detailed information was provided for the Board to review.

When calculating wastewater rates using the Board's recommended guidelines, any tipping fee revenue should be included as an offsetting revenue in determining the rate revenue requirement. The RM's submission did not contemplate any impact on the wastewater rates, and the potential revenue from these tipping fees is significant and material.

The RM was instructed, in writing, by the Board to submit any requests for retroactive rates, had the RM put through any increase to the rates approved on Board Order No. 60/17. The RM's submission did not include any such request, despite the fact that the RM has increased the annual fee charged to registered septic haulers from \$100 to \$200 without the Board's approval. The RM only provided the Board with this information when asked directly, and did not provide the date this change began. Due to this, the Board is

unable to approve a retroactive adjustment to the annual fee and it remains at \$100 per year.

The Board recognizes the need for an adequate notification period in implementing a complete change of methodology when collecting lagoon tipping fees. Septic haulers must be given ample notice of upcoming rates to allow the adjustment of their own prices, and appropriate notice to be given in turn to their own customers, in addition to a reasonable period to respond to the Public Utilities Board regarding the proposed changes.

The RM's concern that septic haulers are disposing of waste from outside of the RM due to the cost savings of using the Landmark Lagoon is credible; however, the RM states it is difficult to prove. The Board is not convinced the hasty implementation of tipping fees would resolve these concerns, and would only serve to pass the additional costs on to RM residents.

The April 2, 2020 submission from the RM stated the Utility will be undergoing a Utility Rate Study in the near future. The Board finds it would be appropriate to delay a change in methodology and lagoon fees until a proper review of the Utility's revenue requirements has been completed.

6.0 IT IS THEREFORE ORDERED THAT:

1. The proposed variation to the lagoon tipping fees for the Rural Municipality of Taché – Landmark Water and Wastewater Utility, BE AND ARE HEREBY DENIED.
2. The Rural Municipality of Taché – Landmark Water and Wastewater Utility, is to continue to charge the rates as approved in Board Order No 60/17.
3. The Rural Municipality of Taché rescind By-law No. 12-2019 to reflect the decisions in this Order, and submit confirmation to the Board.

4. The Rural Municipality of Taché – Landmark Water and Wastewater Utility, is to submit a rate study to the Public Utilities Board on or before June 30, 2021.

Fees payable upon this Order - \$500.00

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. The Board's Rules may be viewed on the Board's website at www.pubmanitoba.ca.

THE PUBLIC UTILITIES BOARD

"Shawn McCutcheon"
Panel Chair

"Jennifer Dubois, CPA, CMA"
Assistant Associate Secretary

Certified a true copy of Order No. 61/20
issued by The Public Utilities Board



Assistant Associate Secretary