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**DIRECTOR'S ORDER UNDER SECTION 157**

**OF THE *FAIR TRADING ACT***

**TO**

**ENVIRO PAVING CORPORATION**

**AND TO**

**ANY EMPLOYEE, REPRESENTATIVE, AGENT OR ASSOCIATE  
OF ENVIRO PAVING CORPORATION**

This Director's Order was issued under s. 157 of the *Fair Trading Act* in response to, in the opinion of the Director, contraventions of the Act. As mandated by s. 157.1 of the *Fair Trading Act*, this Director's Order is part of the public record.

For more information on the Fair Trading Act, business licensing in Alberta or to search for a licensed business, please click here:

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[Tipsheets](#)

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ENVIRO PAVING CORPORATION**

Enviro Paving Corporation operates as a registered business with a corporate registration in Alberta. The Director of Enviro Paving Corporation in Alberta is Jason Schoenau. The voting shareholder is 1883495 Alberta Ltd with 100% voting shares. Jason Schoenau is the sole Director of 1883495 Alberta Ltd. Enviro Paving Corporation is a franchise style business plan with Jason Schoenau being the Director of Enviro Paving Corporation in Alberta as the franchisee of Enviro Paving Corporation operating nationally in Canada. The franchisor is named Enviro Paving Corporation and operates in Alberta, British Columbia, Ontario and Quebec. The franchisor has one Director named Mary Katherine Ratchford. The franchisor is a registered corporation out of Ontario as an extra provincial corporation.

**ISSUES**

Service Alberta has investigated allegations related to prepaid contracting activities engaged in by Enviro Paving Corporation and has found evidence that:

1. Enviro Paving Corporation acted as a prepaid contracting business by taking money as a deposit from a consumer on a residential improvement when Enviro Paving Corporation was not licensed as a prepaid contracting business with Service Alberta.
2. Enviro Paving Corporation did not use a contract which meets the requirements of Section 35 of the *Fair Trading Act* as required by Section 10(2)(a) of the Prepaid Contracting Business Licensing Regulation.
3. Enviro Paving Corporation did not refund any of the amounts paid by the consumer within 15 days after the consumer cancelled the direct sales contract.

4. Enviro Paving Corporation did not complete the contracted work contained in the residential improvement contract.

Based on the evidence the Director of Fair Trading (as delegated) has formed the opinion Enviro Paving Corporation has violated the *Fair Trading Act* and the Prepaid Contracting Business Licensing Regulation.

## **LEGISLATION**

**The *Fair Trading Act* states that:**

**6 (3) It is an unfair practice for a supplier**

- (a) To enter into a consumer transaction if the supplier knows or ought to know that the consumer is unable to receive any reasonable benefit from the goods or services;

**(4) Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more potential consumers:**

- (a) A supplier's doing or saying anything that might reasonably deceive or mislead a consumer;
- (k) A supplier's representation that the supplier can supply goods or services if the supplier cannot;

**28 (2) A consumer may cancel a direct sales contract within one year from the date the direct sales contract is entered into,**

- (a) if the supplier was required to be licensed under Part 10 and was not licensed at the time the direct sales contract was concluded, or
- (b) if the direct sales contract does not include all the information required under section 35.

**(3) A consumer may cancel a direct sales contract within one year from the date the direct sales contract is entered into if the supplier**

- (a) does not deliver the goods within 30 days from the delivery date specified in the direct sales contract or an amended delivery date agreed on in writing by the consumer and the supplier, or
- (b) does not begin the services within 30 days from the commencement date specified in the direct sales contract or an amended commencement date agreed on in writing by the consumer and the supplier.

**31(2) Within 15 days after a direct sales contract is cancelled, the supplier must refund to the consumer all money paid by the consumer and return to the consumer's premises any trade-in or an amount equal to the trade-in allowance.**

**104(1)** No person may engage in a designated business unless the person holds a licence under this Act that authorizes the person to engage in that business.

**157(1)** If, in the opinion of the Director

- (a) a person is contravening or has contravened this Act or the regulations,
- (b) a regulated person is using any form, agreement, letter or other document that is misleading or contains a term that misrepresents this Act or the regulations, or
- (c) a print, broadcast or electronic publisher, including but not limited to a publisher of telephone directories and Internet listings, is publishing or has published an advertisement that is misleading or contains a term that contravenes this Act or the regulations,

the Director may issue an order directed to the person or publisher.

**(2)** An order may direct the person or publisher

- (a) to stop engaging in anything that is described in the order, subject to any terms or conditions set out in the order, and
- (b) to take any measures specified in the order, within the time specified in the order, to ensure that this Act and the regulations are complied with.

**The Prepaid Contracting Business Licensing Regulation (185/99) states that:**

**10 (2)** A person who is engaged in the prepaid contracting business must ensure that every prepaid contract that the person enters into

- (a) complies with the requirements of section 35 of the Act, and
- (b) sets out quality or types of materials to be used under the contract and the services and work to be carried out under the contract.

**The Designation of Trades and Businesses Regulation (178/99) states that:**

**5(10)(2)(a)** “construction or maintenance contract” means a contract for the purpose of

- (i) constructing, altering, maintaining, repairing, adding to or improving
  - (A) a building that is used or is to be used by the owner, occupier or person in control of it as the owner’s, occupier’s or person’s own private dwelling, or
  - (B) a structure that is to be used in connection with a building referred to in paragraph (A) and that is located on the same parcel as that building,

Or

- (ii) altering, maintaining or improving real property to be used in connection with a building or structure referred to in subclause (i), but does not include a contract referred to in subsection (3);
- (b) "prepaid contract" means a construction or maintenance contract in which all or part of the contract price is to be paid before all the goods or services called for in the contract are provided;
- (c) "prepaid contracting business" means the activities of soliciting, negotiating or concluding in person, at any place other than the seller's place of business, a prepaid contract.

### **ORDER**

- Enviro Paving Corporation individually or through any employee, representative, agent or associate, must immediately:
  - cease entering into prepaid contracts (accepting down payments, deposits or progress payments before the work is fully completed on contracts solicited, negotiated or concluded in person away from the company's place of business) with residential consumers until the licensing requirements have been met;
  - ensure that all prepaid contracts are in writing and include the terms required by the Prepaid Contracting Business Licensing Regulation and *Fair Trading Act*;
  - ensure full refunds are provided to consumers within 15 days who cancel as allowed by the *Fair Trading Act*; and
  - cease entering into consumer contracts when the contracted work cannot be completed or cannot be completed in a reasonable amount of time.

### **NON-COMPLIANCE WITH ORDER**

**ANY PERSON WHO FAILS TO COMPLY WITH AN ORDER OF THE DIRECTOR UNDER SECTION 157 OF THE *FAIR TRADING ACT* CONTRAVENES THIS ACT AND IS GUILTY OF AN OFFENCE AND MAY BE PROSECUTED PURSUANT TO SECTION 163 OF THE *FAIR TRADING ACT*.**



Scott Hood  
Director of Fair Trading (as delegated)  
November 18, 2015