

**1995 ABEAB 12**

**Appeal No. 94-010**

**June 29, 1995**

**IN THE MATTER OF** sections 84, 86, 87, 91, 92 and 93 of the *Environmental Protection and Enhancement Act*, (S.A. 1992, ch. E-E-13.3 as amended);

**-and-**

**IN THE MATTER OF** an appeal filed by Leonard and Elva Semack with respect to the reclamation certificate issued by the Inspector, Land Reclamation Division, Alberta Environmental Protection to PanCanadian Petroleum Ltd.

**Report and Recommendations**

Cite as: Leonard and Elva Semack v. Inspector, Land Reclamation Division, Alberta Environmental Protection.

**HEARING BEFORE:**        **Joan C. Copp, Chair**  
                                     **David H. Marko**  
                                     **Max A. McCann**

**APPEARANCES:**

Appellant:     Leonard and Elva Semack, represented by J. Darryl Carter, Q.C.

Other Parties: Inspector, Land Reclamation Division, represented by William McDonald  
                                 PanCanadian Petroleum Ltd., represented by Paul Murray

## **I. FACTUAL BACKGROUND**

On August 24, 1994, an Inspector with the Land Reclamation Division of Alberta Environmental Protection (the “Inspector”) issued Reclamation Certificate No. 29600 (the “Certificate”) to PanCanadian Petroleum Ltd. (“PanCanadian”) with respect to an abandoned well site located at NE1/4 17-74-4-W6M.

Leonard and Elva Semack (the “Appellants”) filed a notice of objection with the Board on September 14, 1994. They appealed the issuance of the Certificate because: “The said land will not grow a crop. The site soil is white lumps.”

On September 15, 1994, the Board wrote to the Director of Land Reclamation, Alberta Environmental Protection advising him that the appeal had been filed and requesting a copy of the Certificate as well as the application for it. Also on that date, PanCanadian was informed that an appeal had been filed. William McDonald, Barrister and Solicitor, Environmental Law Section, Alberta Justice responded to the Board on behalf of the Department of Environmental Protection and provided the documentation, as requested.

The board wrote to the three parties on October 3, 1994 asking several questions concerning the Appellants’ concerns and the circumstances surrounding the issuance of the Certificate. Responses were requested by October 28, 1994. Answers to the Board’s questions were provided within the deadline by PanCanadian and William McDonald, on behalf of the Inspector. An incomplete response was received from J. Darryl Carter of Carter, Lock & Repka, on behalf of the Appellants. The Board wrote to Mr. Carter to request further details which were provided on December 6, 1994.

The Board determined that the Appellants received a copy of the Certificate and filed their notice of objection within one year after receiving a copy of the Certificate; hence, their notice of objection was properly before the Board.

The Board made the determination to proceed with a hearing after the snow melted in the spring, and it adjourned consideration of the appeal until March 1, 1995 to set a date. Following consultations with the parties, the dates of May 30 and 31, 1995 were selected for the site visit and public hearing regarding this matter.

Written submissions, in accordance with section 10 of the Environmental Appeal Board Regulation, were filed with the Board by all three parties prior to the hearing.

## **II. THE EVIDENCE OF THE SEMACKS**

During the hearing, the Appellants testified that they had bought the property on which the well site was located in 1973 and cleared the land during 1975 and 1976. PanCanadian leased the surface of the land from them in 1988, drilled a well during that summer, abandoned it in the same year, and completed the reclamation of the land in the fall of 1988.

The Appellants stated that their concern regarding the well site first arose when the sump was pumped out. They indicated that they had signed a release for clear water to be pumped from this sump, but they questioned whether or not it was actually clear water. Following the pumping operation in August of 1988, a heavy rainstorm occurred and there was some erosion of the property. Their evidence is that before the land was disturbed and the sump was pumped out there was “nice black dirt” on the well site. After the drilling and the pumping had occurred, they were unable to grow good crops and there was “white stuff” on the land.

Counsel for the Appellants submitted as evidence aerial photos of the site taken on May 2, 1995 which show a white area across the property. He also relied on photos taken by a former inspector from the Department of Environmental Protection in March of 1992 which were purported to show evidence of salt accumulations on the surface of the soil in the area of the well site.

The Appellants were very unclear about the conduct of the well site reclamation inquiry and what took place at that time. Mr. Semack also indicated that he was asked to sign something during the inquiry and he had refused to do so.

Mrs. Semack testified that it was her understanding that the land was going to be at least as good as before, if not improved. Now, however, “the crop is not even worth combining.”

Under cross-examination, Mr. Semack was unable to provide information about the amount of topsoil on his property, how many acres he was seeding and harvesting, and what his crop production has been from year to year. He also indicated that he does not know what the “white stuff” is, whether the topsoil can be improved, and he advised that he has not taken any steps to find out whether it can be remediated.

### **III. THE EVIDENCE OF THE INSPECTOR**

Travis Ferguson, the Inspector employed by the Department of Environmental Protection, and Albert Tomshak, the local Inspector for the County of Grande Prairie, testified on behalf of the Department of Environmental Protection.

Mr. Ferguson gave a very thorough and satisfactory account of the procedures followed with respect to a reclamation inquiry and the type of evaluation which takes place during such an inquiry. He also testified with respect to the well site inquiry which took place on the Appellants’ property on August 24, 1994 and gave very clear evidence in this regard. He explained that the evaluation was concerned with soils, vegetation and topography. On the Semack property, he found that the vegetation was consistent both on site and off site and that topography was similar throughout the property. With respect to the soils, he testified that in the control samples taken off site, there were approximately 10 cm of topsoil and 50 cm of rich sub-soil. He indicated that the range on both the access road and the well site, the

areas which were reclaimed by PanCanadian, varied between 10 -15 cm of topsoil, well within the acceptable range.

The Inspector also gave evidence concerning his practice with respect to taking soil samples for analysis. He indicated that they are not taken as a matter of course; rather, they are only taken in situations where there appears to be an anomaly. He stated that he did take a sample on the Semack property near the access road where it looked as if the land had been sterilized. He said the results of that soil analysis indicated an overdoes of agricultural herbicide (Treflan), a chemical not generally used by oil companies.

With respect to the white deposits, the Inspector indicated that he did see them and that this condition is common in the area, not only on the Appellants' land. The Braeburn soil on the Appellants' land has characteristics which can cause it to appear white. It is created under poplar trees where topsoil is exposed following removal of the trees. He advised that both salt and lime often appear after rain, but that only salt is soluble. He said that PanCanadian does not use salt or lime in its drilling process in this area of Alberta. The company in no way caused these deposits; its drilling and reclamation had no effect on the site or surrounding areas. This condition is a naturally occurring phenomenon.

Mr. Tomshak, the local inspector, confirmed the procedures that had taken place during the reclamation inquiry at the Appellants' property and he stated that, in his opinion, the land was satisfactorily reclaimed. He advised that neither he nor Mr. Ferguson had asked Mr. Semack to sign anything at the time of the inquiry. He also indicated, based on his experience in the area, that this type of soil is not uncommon but that the crops on the Semack property were poorer than should be expected with this type of soil. He felt that this was the result of a fertilizer deficiency.

#### **IV. THE EVIDENCE OF PANCANADIAN**

Carl Jensen and Maynard Hotte testified on behalf of PanCanadian. They outlined the

reclamation that had taken place in the fall of 1988 and Mr. Hotte gave evidence concerning the reclamation which was conducted in 1988 and his attendance at the reclamation inquiry on August 24, 1994. He indicated that was the first time he had ever met Travis Ferguson. He testified that he did not ask Mr. Semack to sign anything nor did he see anyone else ask him to sign anything. He and Mr. Jensen stated that there was nothing used in their drilling operations or the subsequent pump-out of the sump which would cause the type of white deposits found on the soil.

## **V. RECOMMENDATIONS OF THE BOARD**

The Board considers that the issue before it in this hearing is whether or not the decision of the Inspector to issue the Certificate dated August 24, 1994 was reasonable and justified. The onus in an appeal such as this one is upon the Appellants to present evidence which would indicate that there are grounds to overturn the Inspector's decision. The Appellants have produced no evidence in support of their proposition that water pumped from the sump onto the land caused this white material which appears on the soil, nor do they offer any concrete evidence that this material has had any effect on their production. The evidence of the Appellants was anecdotal at best. Where their recollection of what took place at the inquiry contradicts that of the Inspector and the representatives of PanCanadian, the Board accepts the evidence of the Inspector and PanCanadian; their evidence was well presented, fully documented, and credible.

The Board will not interfere with a reclamation inspector's decision unless it is reasonable and justifiable to do so. The legislation imposes a duty on an inspector to determine on any independent basis whether or not, in his opinion, the land has been reclaimed to a satisfactory condition<sup>1</sup>. Accordingly, the standard is different from the one now in use under the *Environmental Protection and Enhancement Act*. The inspector is independent of the landowner, the company and the originating regulatory agency, the Energy Resources Conservation Board. While this Board has the power to accept a broad scope of evidence,

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<sup>1</sup>The application for this reclamation certificate was made under the former *Land Surface Conservation and Reclamation Act*.

including in some circumstances new evidence up to the time of the hearing, the Appellants have not made a case which would lead the Board to question the Inspector's decision.

The Board finds that the Inspector's action in issuing the Certificate was not only reasonable and justified; in this case, it was also correct. The Board recommends that the appeal of Leonard and Elva Semack with respect to the issuance of Reclamation Certificate No. 29600 be dismissed.

Further, with respect to section 92(2) of the Act, the Board recommends that copies of this Report and Recommendations and of any decision by the Minister be sent by the Board to the following parties:

- Leonard and Elva Semack  
c/o J. Darryl Carter, Q.C.;
- PanCanadian Petroleum Ltd.  
c/o Paul Murray, Senior Solicitor; and
- the Inspector, Land Reclamation Division,  
Alberta Environmental Protection  
c/o William McDonald, Alberta Justice.

Dated on June 29, 1995 at Edmonton, Alberta.

“original signed by”

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Joan C. Copp, Chair

“original signed by”

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David H. Marko

“original signed by”

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Max A. McCann

**ORDER**

I, Ty Lund, Minister of Environmental Protection, make the following Order:

I agree with the Recommendations of the Environmental Appeal Board.

I do not agree with the Recommendations of the Environmental Appeal Board

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Dated at Edmonton this 5<sup>th</sup> day of July, 1995.

“original signed by”

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Honorable Ty Lund  
Minister of Environmental Protection

Attachments

No attachments