ALBERTA
ENVIRONMENTAL APPEAL BOARD

Report and Recommendations

Date of Hearing - November 17, 1997
Date of Report and Recommendations - December 1, 1997

IN THE MATTER OF Sections 84, 85, 86, 87, 91, 92 and 93 of the *Environmental Protection and Enhancement Act,* (S.A. 1992, ch. E-13.3 as amended);

-and-

IN THE MATTER OF an appeal filed by Mr. Perry Nelson, with respect to Reclamation Certificate No. 33825 issued to Renaissance Energy Ltd., by Mr. Calvin Rakach, Inspector of Land Reclamation Division, Alberta Environmental Protection.

Cite as: Nelson v. Inspector of Land Reclamation Division, Alberta Environmental Protection

HEARING BEFORE		Dr. M. Anne Naeth, Panel Chair Dr. John P. Ogilvie Mr. Ron V. Peiluck
APPEARANCES	Appellant:	Mr. Perry Nelson, represented by Mr. Karl Zajes
	Other Parties:	Mr. David Day, Environmental Law Section, Alberta Justice, representing Mr. Bob Onciul, Director, Land Reclamation, Alberta Environmental Protection, and Mr. Doug Rawluk, Land Reclamation, Alberta Environmental Protection Mr. Tom Owen, representing Mr. Ian Proctor, and Mr. Terry Sharkey of Renaissance Energy Ltd. Mr. Thomas Nahirniak, representing the Alberta Surface Rights Federation

TABLE OF CONTENTS

I. BACKGROUND

[1] On July 17, 1997, the Environmental Appeal Board (the Board) received a Notice of Appeal from Mr. Perry Nelson (the Appellant). The appeal challenges Reclamation Certificate No. 33825 issued to Renaissance Energy Ltd. (Renaissance), certifying that the surface of the land held by Renaissance, within NE Sec. 13 Tp. 38 Rge. 4 W 4^{th} M., in connection with or incidental to Renaissance Provost 9A-13-38-4 well, complies with the conservation and reclamation requirements of Part 5 of the Act[1]. The Reclamation Certificate was issued July 18, 1996.

[2] On July 17, 1997, the Board requested copies of all related correspondence, documents and materials from the Department of Environmental Protection (the Department). On that same date the Board wrote to Renaissance informing them that an appeal had been filed and provided them with a copy of the appeal.

[3] All requested correspondence was received from the Department and a copy was sent to the Appellant on July 30, 1997. Along with the information sent, the Board requested comments to the following procedural issues from the Appellant and the Department:

1. In the event that the Board decides to proceed with this appeal, do you wish to have a mediation meeting under section 11 of the Environmental Appeal Board Regulation? If so, please provide your available dates for August and September, 1997. What would you contemplate to be the agenda for that meeting?

2. In your opinion, are there any other persons who have an interest in this matter?

[4] On July 30, 1997, the Board wrote to the Natural Resources Conservation Board (NRCB) and the Alberta Energy and Utilities Board (AEUB) asking whether this matter had been the subject of a hearing or review under their respective Boards' legislation.

---

[1] *Environmental Protection and Enhancement Act* (S.A. 1992, ch. E-13.3 as as amended).

[5] On August 5, 1997, the NRCB advised the Board that the appeal did not deal with a matter that had been the subject of a review under the provisions of the NRCB Act.

[6] On August 21, 1997, the AEUB advised the Board that the Notice of Objection, being the terms of the reclamation certificate, had not been the subject of an AEUB enforcement action, public review or hearing.

[7] All written representations were received from the parties. In a letter dated September 28, 1997, Mr. Thomas Nahirniak of the Alberta Surface Rights Federation (ASRF), requested attendance at the mediation meeting scheduled for October 20, 1997 and party status at any upcoming hearings. On October 9, 1997 the Board wrote to Mr. Nahirniak seeking clarification on their role at the mediation. It was stated that if their intentions are to observe the mediation, then consensus from all parties is required. The parties were requested to provide their comments on the Alberta Surface Rights Federation's attendance.

[8] In a letter to the Board dated October 14, 1997, Mr. David Day, Civil Law Branch, Environmental Law Section, Alberta Justice, stated their preference was that the limit of two representatives for each party be maintained and that there be no people in attendance that are not part of the mediation.

[9] On October 16, 1997, parties were advised that the Board would proceed directly to a hearing on November 17, 1997, and requested comments on the involvement of the Alberta Surface Rights Federation. On October 31, 1997, the Appellant responded to the Board's request stating his strong support of the ASRF's involvement in the hearing. No other responses were received.

[10] On November 7, 1997, the Board granted party status to Mr. Thomas Nahirniak of the Alberta Surface Rights Federation.

II. THE HEARING

[11] On October 16, 1997, the Board wrote to all parties advising that a hearing would be held on November 17, 1997, and written submissions were requested from all parties and received. On November 17, 1997, the hearing took place at the Board office in Edmonton.

III. PRELIMINARY MATTERS

[12] At the outset of the hearing, Mr. Owen stated that his client, Renaissance had objections they wished to raise.

[13] The first objection was to the relief requested by the Appellant guaranteeing that it will not encounter financial liabilities if the well site is determined to be contaminated in the future. Mr. Owen stated this issue was beyond the jurisdiction of the Minister and hence beyond that of the Board. Further, down-hole abandonment raised by the Appellant as an issue in the appeal was also beyond these jurisdictions.

[14] The second objection was that the Alberta Surface Rights Federation was not properly a party to these proceedings since they are not directly affected by the decision that is being appealed.

[15] The Board agreed it did not have the jurisdiction to deal with the relief requested by the Appellant or with down-hole abandonment of a well site that is not **otherwise** linked to environmental concerns. The Board made it clear that these matters were not the subject of the appeal and would not be dealt with during the proceedings. The Board upheld the provision of party status to the ASRF, because Mr. Nelson, the Appellant had specifically requested that they be allowed to present evidence. However, the Board limited their involvement to presenting evidence only. They would not be permitted to cross-examine other parties, or be cross-examined and would only be questioned by the Board, should the Board wish to ask any questions of them.

[16] The preliminary submissions by the Appellant and the ASRF indicated that much of the evidence they had planned to present would be in connection with the potential financial liabilities the Appellant might be subject to, the attitude of lenders regarding potentially contaminated sites and problems arising at other well sites. Because this appeal involves a specific site, the Board ruled that evidence presented must deal with this specific site. The Panel Chair pointed out clearly that the purpose of the Appellant is to present evidence that shows that the Inspector did not act in a prudent manner when he issued the Reclamation Certificate and, therefore, it had been issued in error.

IV. STATEMENT OF ISSUES TO BE DECIDED

[17] The issue to be considered is whether the Land Reclamation Inspector erred in issuing Reclamation Certificate No. 33825 after the inquiry held on July 18, 1996.

V. SUMMARY OF THE EVIDENCE

The Appellant

[18] Mr. Nelson testified that he is not satisfied that the well site was properly reclaimed. He stated that, in his opinion, assurance of proper reclamation and hence, freedom from contamination, can only be provided if proper soil analyses are performed. He also indicated that the disposal of the drilling chemicals was inadequate. He referred to the potential financial liability he might be exposed to if he wished to either sell the land or use it as collateral for a loan. He intimated that a lender might, because an oil or gas well had been drilled on the land, require an environmental audit to be performed, the cost of which would be his responsibility.

[19] Under cross-examination by Mr. Day, Mr. Nelson stated that during the enquiry held on July 18, 1996, he had not expressed concerns regarding the quality or quantity of the soil that had

been used during reclamation. He did say that he had expressed concern regarding gas leakage around the casing and had asked for a gas test. He said that Mr. Rawluk, the Inspector of record, said that such testing was not the Department's responsibility and that he was not qualified to conduct a gas test.

[20] Mr. Day also asked Mr. Nelson about the inspection held on August 14, 1997 after Mr. Nelson had filed the appeal. Mr Nelson said that he was not at the entire meeting as he was busy and could only stay for about fifteen minutes. He said that the crop was somewhat greener on the well site than on the rest of the field but that the health was average over the whole field and the contouring was similar to that in existence before the well was drilled. In answer to a question he said that he had done no testing of either the soil or the crop on the site.

The Alberta Surface Rights Federation

[21] Mr. Nahirniak had come to the hearing prepared to testify regarding reclamation problems that had arisen on *other* well sites. However, since the Board had ruled that such evidence was inadmissible, he declined to testify.

The Department

[22] Mr. Day called Douglas Rawluk and Robert Onciul as a panel. Mr. Onciul reported the Inspector who had issued Reclamation Certificate No. 33825, Mr. Cal Rakach, had left the Department and so was not available to present evidence. Mr. Onciul had discussed the Inquiry Report of July 18, 1996 with Mr. Rakach who told him that the report reflected the minutes of the meeting. In Mr. Rakach's opinion there was no evidence of contamination on the site and the Reclamation Certificate was properly issued.

[23] To explain the process used by the Inspector in assessing the reclamation of a well site, Mr. Day introduced the following documents: Conservation and Reclamation Information Letters Nos. C&R/IL/96-2 and C&R/IL/95-3 and the 1995 update of Reclamation Criteria for Well sites and Associated Facilities. (Exhibit 8)[2]. Mr Onciul stated that these documents set forth the procedure used by the inspectors in evaluating the effectiveness of the reclamation of a well site. He noted that the criteria used does not specify a requirement for soil analysis unless the presence of contamination is suspected, for example, as might be evidenced by the presence of bare patches. Since Mr. Rakach noted no signs of contamination nor saw any bare patches, he decided, according to the criteria, that soil analyses were unnecessary.

[24] On August 17,1997 (subsequent to the filing of the appeal), Mr. Onciul and Mr. Rawluk met with Mr. Nelson at the well site to inspect the site and determine if reclamation had been complete and satisfactory. Mr. Onciul referred to his memo of the meeting (Exhibit 5)[3] and noted that Mr. Nelson did not have a concern with vegetation, soil quality, soil quantity or landscape. His concern, as noted in the appeal, is that the well bore may leak gas in the future and he will be liable for the clean up. He wanted a guarantee that he would not be liable for such future costs. Mr. Rawluk testified that the surface of the site was fully reclaimed. He noted that the crop (wheat) was slightly greener on the well site than on the immediate surroundings, but when viewed on a field basis, similar greener patches could be found throughout the field. When asked how he would rate the reclamation on a scale of one to ten "where one is the site giving rise to very little concern based on your information, and ten was a site giving rise to serious concerns", he replied "one".[4]

---

[2] Information letter package dated June, 1996 on Conservation and Reclamation, C&R/IL/96-2.

[3] Memorandum from Mr. R. W. Onciul, Land Reclamation Division, Alberta Environmental Protection.

[4] Excerpt from hearing:

David Day: If you were to -- grade this site on a scale of one to ten, where one is the site giving rise to very little concern based on your information, and ten was a site giving rise to serious concerns, what number would you give to this site?

Doug Rawluk: A one.

[25] In answer to a question by the Board, Mr. Onciul reported that an oil company that successfully reclaims a well site continues to be responsible to remove any contamination that may arise whether due to buried material or to leakage from the well bore. However, such contamination must be established by an environmental assessment of the site, which does not have to be done by the oil company.

Renaissance Energy Ltd.

[26] Mr. Owen called Mr. Ian Proctor, Manager of Construction and Mr. Terry Sharkey, Vice President of Drilling for Renaissance as a panel. Mr. Proctor indicated that Renaissance occupied the lease on July 2, 1992, that the well was studded July 28, 1992 and abandoned on August 2 of that year. Two weeks later, the well bore was inspected for gas leakage and on August 17, 1992, the company received permission from the Alberta Energy Resources Conservation Board (as it was then known) to cut and cap the well. On August 30, 1992 the casing was cut and capped one metre below the ground surface and then buried. On September 1 the small sump or sucker pit was backfilled and on September 2 the lease land was backfilled with top soil and contoured.

[27] Mr. Sharkey testified that the drilling fluid used was Chem-Gel, a fresh water gel system which is a bentonite material, and that the only chemical added was a sack of caustic to raise the pH level. The drilling technology involved a closed loop system which allows the reuse of the majority of the fluid in the system, thereby eliminating the need for a large sump. Spent drilling material, mostly solids, can therefore be collected in a small pit called a sucker pit. The contents of the pit were disposed of off site by land spreading on a cultivated field after testing to ensure freedom from contaminants. With the site being tested and determined to be in satisfactory

---

David Day: Have you ever cancelled an inquiry, because, as a land inspector, you were not satisfied with the reclamation?
Doug Rawluk: Yes.

condition, Mr. Proctor said that it was seeded to barley in May 1993 and the land returned to Mr. Nelson. He was not aware of any complaints regarding the crop that year or in subsequent years.

[28] In cross-examination by Mr. Nelson, Mr. Proctor admitted that the inspection report Renaissance submitted to the Department was somewhat in error regarding the disposal of the drilling mud. He noted that, at the time, the definitions used for drilling mud disposal were changing and the wrong words may have been used in the report. He noted that the report indicated that the disposal location was "on site" whereas the actual location was not on the lease.

VI. FINAL ARGUMENTS

The Appellant

[29] Mr. Zajes argued that Reclamation Certificate No. 33825 should be cancelled because first, Renaissance admitted that the well site reclamation certificate application was misleading because clause 4 under Site History indicates in error that the drilling mud was disposed of "on site" and second, that the landowner, Mr. Nelson did not have an opportunity to observe the final inspection carried out by Renaissance before the application was submitted. He supported his argument by referring to Exhibit 8, the Conservation and Reclamation Information Letter No C&R/IL/96-2[5]. He quoted from that letter on page 3 "Where site conditions appear to be deliberately misrepresented, the inspector may immediately cancel the application ...".

[30] He noted that the Reclamation Certificate had been granted based on visual examination alone and that no environmental audit had been done. He said that visual examination does not provide sufficient evidence that there is no contamination present. He said that lenders such as banks require that land used as collateral for a loan be free from contamination "without a shadow of a doubt" and may require an environmental audit, at the expense of the landowner, to ensure such

---

[5] Information letter package dated June, 1996 on Conservation and Reclamation, C&R/IL/96-2.

freedom. He suggested that lending institutions may refuse to accept a reclamation certificate as proof of the absence of contamination.

[31] In his closing argument he reiterated the need for an environmental audit to ensure that there will be no future liability or problems that may cost Mr. Nelson money.

The Department

[32] Mr. Day argued that the conditions of the site met all the requirements of the criteria for vegetation, landscape and soil. If the Appellant was worried about soil contamination, he could have had analyses done on samples taken from suspected areas. He did no such analyses. Mr. Day noted that the Appellant had failed to prove that the Inspector acted improperly in issuing Reclamation Certificate No. 33825. He said the appeal should be dismissed.

Renaissance Energy Ltd.

[33] Mr. Owen referred to Section 2 of the Conservation and Reclamation Regulation 115/93 which provides:

> The objective of conservation and reclamation on specified land is to return the specified land to an equivalent land capability.
>
> Section 1(w) defines "specified land" and section 1(i) defines "equivalent land capability"
>
> 1(w) "specified land" means land that is being or has been used or held for or in connection with
> (I) the construction, operation or reclamation of a well;
> ...
> 1(i) equivalent land capability" means that the ability of the land to support various land uses after conservation and reclamation is similar to the ability that existed prior to an activity being conducted on the land, but that the individual land uses will not necessarily be identical;

[34] Mr. Owen said that there was no evidence contradicting the decision that the inspector made to issue the reclamation certificate. He noted that Mr. Rawluk, an inspector, rated the site as

number one on a scale of one to ten with one indicating the least concern.[6] He also noted that Mr. Nelson has had the land under his control since 1993 and has not complained about the quality of the crop produced on the land.

VII. CONSIDERATIONS OF THE BOARD

[35] As pointed out previously, the issue before the Board is: did the Land Reclamation inspector err when he issued Reclamation Certificate 33825 according to the current criteria following the inquiry on July 18, 1996? In this regard, the Appellant failed to produce any evidence that the land had not been returned to its original capability. In effect, his concerns were with what might happen if contamination was found on the land at a later date and the possible expense he might incur in that event. Mr. Nelson had control of the land for five growing seasons and had not reported any concerns regarding crop growth or soil conditions. The evidence presented by the Department and by Renaissance strongly supports that the site was properly reclaimed and that the Inspector did not err when he issued the reclamation certificate.

[36] Mr. Nelson expressed concern that there might be gas leakage from the well bore in the future. While the Board recognizes that this might occur, down-hole events and particularly gas leakage not directly linked to environmental concerns are outside the Board's jurisdiction. Therefore, this appeal must focus on the surface reclamation which is under the jurisdiction of the Department and hence properly before the Board.

VIII. CONCLUSIONS

---

6 *Supra*, note 4.

[37] The Appellant has not convinced the Board that the inspector acted incorrectly in issuing Reclamation Certificate No. 33825. The decision should be allowed to stand and the appeal of Mr. Nelson should be dismissed.

IX. RECOMMENDATIONS

[38] The Board recommends that the appeal of Mr. Nelson be dismissed.

[39] With respect to section 92(2) and 93 of the *Environmental Protection and Enhancement Act*, the Board recommends that copies of this Report and Recommendations be sent to the following parties:

- Mr. Perry Nelson
- Renaissance Energy Ltd.
- Mr. David Day, Environmental Law Section, Alberta Justice, representing the Director of Land Reclamation, Alberta Environmental Protection
- Mr. Thomas Nahirniak, representing the Alberta Surface Rights Federation

Dated December 1, 1997, at Edmonton, Alberta.

"original signed by"
Dr. M. Anne Naeth

"original signed by"
Dr. John P. Ogilvie

"original signed by"
Mr. Ron V. Peiluck

ORDER

I, Ty Lund, Minister of Environmental Protection:

__yes__ Agree with the Recommendations of the Environmental Appeal Board and order that they be implemented.

____ Do not agree with the Recommendations of the Environmental Appeal Board and make the alternative Order set out below or attached.

_____

_____

_____

_____

Dated at Edmonton this 3rd day of December, 1997.

"original signed by"
Honourable Ty Lund
Minister of Environmental Protection

___ Refer to Attachments (only if applicable)