
ALBERTA ENVIRONMENTAL APPEAL BOARD

Report and Recommendations

Date of Report and Recommendations - August 13, 1998

IN THE MATTER OF Sections 84, 85, 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 appeals filed by Mr. George Miasnikoff and Urban Ore Farms Ltd., with respect to Environmental Protection Order No. 98-07 issued to Urban Ore Farms Ltd. and Mr. George Miasnikoff on March 13, 1998, by Mr. Chris Powter, Inspector of Land Reclamation, Alberta Environmental Protection.

Cite as: Miasnikoff and Urban Ore Farms Ltd. v. Inspector of Land Reclamation, Alberta Environmental Protection.

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MEDIATION MEETING BEFORE

Dr. John P. Ogilvie, Vice Chair

APPEARANCES

Appellant: Mr. George Miasnikoff and Urban Ore Farms Ltd.

Other Parties: Mr. Gilbert Van Nes, counsel, Alberta Justice representing Alberta Environmental Protection, Mr. Chris Powter, Inspector of Land Reclamation and Mr. Fred Schulte, Director of Pollution Control; Mr. Greg Balko and Mr. Scott Livingstone, Alberta Environmental Protection

Mr. Thomas Marriott, counsel, Brownlee Fryett, representing the County of Leduc; Mr. Bill Cowan, Reeve, County of Leduc and Mr. Eugene Lee

Mr. Bill Keller, Urban Ore Farms Ltd.

BACKGROUND

[1] On March 13, 1998, Mr. Chris Powter, Inspector of Land Reclamation, Alberta Environmental Protection (Inspector), issued Environmental Protection Order No. 98-07 (EPO) to Urban Ore Farms Ltd. and Mr. George Miasnikoff ordering that they undertake in the following:

- “1. Within 30 days of receipt of this Order, the Parties shall submit a report for acceptance by the Inspector, outlining the methods and equipment to be used, and a schedule of implementation (the “Schedule”) to carry out the following steps in the Reclamation Plan:
 - a) the excavation of calcium carbonate from each of the Ponds 1-4 & 9 as depicted on Appendix A,
 - b) the temporary storage, drying and relocation of calcium carbonate to the Sight and Sound Barrier locations depicted in Appendix B,
 - c) the contouring of the calcium carbonate Sight and Sound Barriers in accordance with the dimensions depicted in Appendix B,
 - d) the excavation of calcium hydroxide from ponds 5 & 8 as depicted in Appendix A and the temporary storage, drying, relocation and contouring of calcium hydroxide at the location depicted in Appendix B,
 - e) the covering of the calcium carbonate Sight and Sound Barriers and the calcium hydroxide storage area with subsoil to a minimum depth of 30 centimetres,
 - f) the filling, contouring and landscaping of Ponds 1 to 9 of Appendix A, the former coke fines storage (area 13) of Appendix A and lands within the disturbed region as designated in Appendix B,
 - g) the deep ripping, conditioning and rock removal of the subsoils within the disturbed region as designated in Appendix B,
 - h) the replacement of topsoil to achieve equivalent land capability within the disturbed region as designated in Appendix B,
 - i) preparation of adequate seed bed, revegetation and weed control of the disturbed region as designated in Appendix B.
2. The Schedule shall include the projected start and completion time for each of the steps in the Reclamation Plan and shall provide for commencement of the Reclamation Plan no later than May 1, 1998 and for completion of the Reclamation Plan no later than October 1, 1998.

3. The Parties shall implement the Reclamation Plan for the Site according to the Schedule accepted by the Inspector.
4. Reclamation activities referenced in clause 1 shall be undertaken in a manner to identify and conserve all topsoil located at the Site.
5. The Reclamation Plan shall be carried out under the supervision of a project manager acceptable to the Inspector, with experience directly related to land reclamation projects.
6. Commencing the second Friday following the service of this Order, the Parties shall submit a monthly status report to the Inspector, outlining the action taken to date to comply with this order and the action proposed for the next month. The monthly reports shall continue to be submitted until advised otherwise in writing by the Inspector.”

[2] On March 20, 1998, the Environmental Appeal Board (the Board) received a letter dated March 19, 1998, from Mr. George Miasnikoff, President, Urban Ore Farms Ltd. (the Appellant) advising that this was his Notice of Appeal and request for a Stay with respect to Environmental Protection Order No. 98-07.

[3] The Board wrote to Mr. Miasnikoff on March 20, 1998, acknowledging receipt of his appeal, and by copy of this letter, requested the Department of Environmental Protection (the Department) provide copies of all related correspondence, documents and materials related to this matter.

[4] According to standard practice, 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. Replies were subsequently received from both the NRCB and the AEUB stating that they did not hold any hearing or review under either of their Boards’ legislation.

[5] Correspondence dated April 17, 1998, requested by the Board from the Department was received and provided to the Appellant on April 20, 1998. Additional correspondence dated May 28, 1998, received from the Department was also provided to the Appellant on this date.

[6] On April 20, 1998, the Board received a letter dated April 17, 1998, from Mr. Thomas Marriott, counsel for the County of Leduc stating:

“We are the solicitors for the County of Leduc. We understand that appeals have been filed with respect to the above referenced Environmental Protection Orders situated within the County. The County of Leduc has been involved for some years in attempts to have Urban Ore Farms Ltd. and Mr. Miasnikoff reclaim the lands which are subject of the Orders.

The County of Leduc is very interested in seeing the Environmental Protection Orders upheld and would respectfully request the if Mr. Miasnikoff and/or Urban Ore Farms Ltd. are to be given an opportunity to make representations to the Board, that the County be given an opportunity to respond to those representations ...”

[7] Mr. Marriott on behalf of the County of Leduc wrote to the Board on May 7, 1998, responding to the Board’s request for clarification of the nature of the representation which they sought, advising that the County of Leduc is requesting that the Board recognize it as a full party, which was granted on May 13, 1998.

[8] Mr. Gilbert Van Nes, counsel for the Inspector wrote to the Board on May 11, 1998, advising that:

“... With respect to the stay, we would suggest that it likely that we can come to some agreement. As stated, the Director and Inspector will not take any steps to enforce the orders without appropriate notice to the various parties. However, we remain of the view that the work prescribed in the orders must be done by this fall. ...”

[9] On May 28, 1998, the Board wrote to all parties informing them that a mediation would be held on June 8, 1998.

THE MEDIATION MEETING

[10] The Board conducted two mediation meetings in Devon. These meetings were held on June 8 and August 12, 1998, with Dr. John Ogilvie as the presiding Board member.

[11] According to the Board's standard practice, the Board called the mediation meetings in an attempt to mediate or facilitate the resolution of this appeal, or failing that, to structure procedural arrangements for the oral hearing. The Board invited representatives from each party to participate in the mediation meetings.

[12] In conducting both of the mediation meetings, Dr. Ogilvie reviewed the appeal and mediation process and explained the purpose of the mediation meeting. He then circulated copies of the "Participants' Agreement to Mediate" in which all parties signed.

[13] Following productive and detailed discussions, the attached resolution evolved at the meeting held on August 12, 1998 and was signed (see page 5 of this report).

(14) RESOLUTION OF APPEAL NO. 98-022 REGARDING ENVIRONMENTAL PROTECTION ORDER NO. 98-07 ISSUED TO URBAN ORE FARMS LTD. AND GEORGE MIASNIKOFF.

All parties to the appeal have agreed to the following terms and conditions:

1. THAT Alberta Environmental Protection agrees to extend the date for complying with section 2 of EPO 98-07 from October 1, 1998 to October 1, 1999.
2. THAT Mr. George Miasnikoff and Urban Ore Farms Ltd. will adhere to a remediation agreement drafted by Alberta Environmental Protection as agreed to by the parties (attached).
3. THAT the Appellants, Mr. George Miasnikoff and Urban Ore Farms Ltd., agree to withdraw their Notices of Appeal.

RESOLUTION AGREED TO BY:

“original signed by”
Mr. George Naisnikoff and
Urban Ore Farms Ltd.

Date: August 12, 1998

“original signed by”
Director, Alberta Environmental Protection

Date: August 12, 1998

“original signed by”
Inspector, Alberta Environmental Protection

Date: August 12, 1998

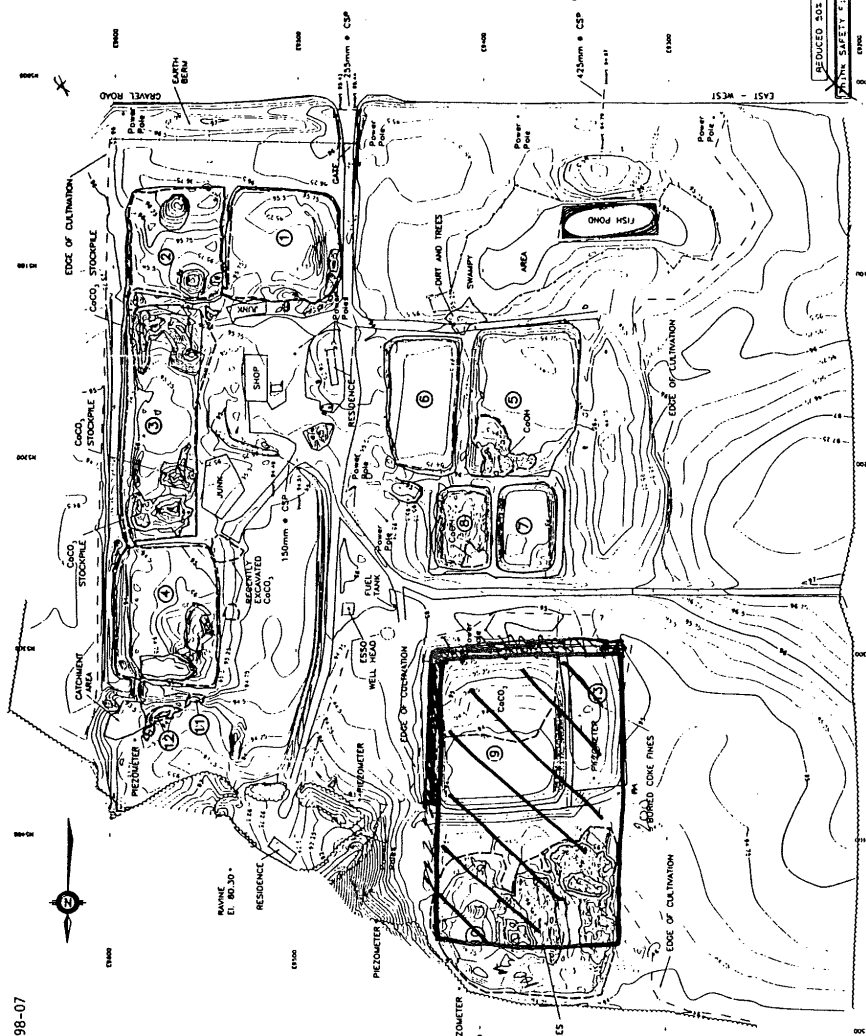
APPENDIX A TO ENVIRONMENTAL PROTECTION ORDER NO. 98-07

URBAN ORE FARMS
EXISTING SITE CONDITIONS

MATERIAL VOLUMES (m³)

1	CaCO ₃ SETTLING POND	3,145
2	CaCO ₃ SETTLING POND	3,555
3	CaCO ₃ SETTLING POND and CaCO ₃ STORAGE PILES	7,805
4	CaCO ₃ SETTLING POND and CaCO ₃ STORAGE PILES	4,125
5	EMPTY POND	---
6	CaCO ₃ SPARE EVAPORATION POND	1,425
7	CaCO ₃ MAIN STOCKPILE	9,300
8	CaCO ₃ STOCKPILE	10
9	CaCO ₃ STOCKPILE	75
TOTAL CaCO ₃		29,240
10	POND WITH COOH	485
11	COOH SETTLING POND	60
TOTAL COOH		545
12	COKE FINES DEPOSIT	3,000

sample storage pile
- mine 2m from existing
ground level at south
end of site. 37 m
- burn to site sounds aesthetic
value



NO.	DATE	BY	DESCRIPTION
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			

DATE OF SURVEY: September, 1987
SURVEYED BY: CHALLENGER SURVEYS & SERVICES LTD.

URBAN ORE FARMS RECONSTRUCTION
CONTOUR PLAN
EXISTING SITE CONDITIONS
SCALE: 1:5000
DATE: 11/20/87
BY: J. J. J. J.

ALBERTA PROFESSIONAL ENGINEER
SUBMITTED: []
DATE: []
DESIGNED: []
CHECKED: []
DATE: []
BY: []

URBAN ORE FARMS RECONSTRUCTION
CONTOUR PLAN
EXISTING SITE CONDITIONS
SCALE: 1:5000
DATE: 11/20/87
BY: J. J. J. J.

RECOMMENDATIONS

[15] The Board recommends that the Minister of Environmental Protection approve the conditions of the Resolution contained herein.

[16] Further 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 and of any decision by the Minister be sent to the following parties:

- Mr. George Miasnikoff, Urban Ore Farms Ltd.;
- County of Leduc, represented by Mr. Thomas Marriot, counsel, Brownlee Fryett; and
- Inspector, Alberta Environmental Protection, represented by Mr. Gilbert Van Nes, counsel, Alberta Justice.

Dated August 13, 1998, at Edmonton, Alberta.

"original signed by"

Dr. John P. Ogilvie

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 18 day of August 1998.

“original signed by”
Honourable Ty Lund
Minister of Environmental Protection

_____ Refer to Attachments (only if applicable)