
ALBERTA
ENVIRONMENTAL APPEAL BOARD

Decision

Date of Decision – March 16, 2001

IN THE MATTER OF Sections 84, 85, 87 and 89 of the *Environmental Protection and Enhancement Act*, S.A. 1992, c.E-13.3.

-and-

IN THE MATTER OF an appeal and Stay filed on January 14, 2000 by Mr. Dennis R. Thomas, Q.C., on behalf of Legal Oil and Gas Ltd. and Charles W. Forster, with respect to Environmental Protection Order No. 2000-01 issued on January 10, 2000, to Legal Oil and Gas Ltd. and Charles W. Forster, by the Manager, Enforcement and Monitoring, Northeast Boreal Region, Alberta Environment.

Cite as: *Legal Oil and Gas Ltd. and Charles W. Forster v. Manager, Enforcement and Monitoring, Northeast Boreal Region, Alberta Environment.*

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BACKGROUND

[1] On January 10, 2000, the Manager, Enforcement and Monitoring, Northeast Boreal Region, Alberta Environment (the “Director”), issued Environmental Protection Order No. 2000-01 (“EPO”) to Legal Oil and Gas Ltd. and Mr. Charles W. Forster with respect to contamination of a well known as LWS 3 LEGAL 3-21-57-25 (“3 of 21 site”) located on lands at LSD3-SW-21-57-25-W4M.

[2] On January 14, 2000, the Environmental Appeal Board (the “Board”) received a Notice of Appeal and application for Stay from Mr. Dennis Thomas, Q.C. of Fraser Milner Casgrain, on behalf of Legal Oil and Gas Ltd. and Mr. Charles W. Forster (the “Appellants”), appealing the EPO and requesting an interim Stay of the EPO.

[3] On January 19, 2000, the Board acknowledged receipt of the Notice of Appeal and application for Stay, and on that same date, requested a copy of all correspondence, documents and materials relative to the appeal (the “Records”) from the Department of Environment (the “Department”).

[4] According to standard practice, on January 19, 2000, the Board wrote to the Natural Resources Conservation Board (the “NRCB”) and the Alberta Energy and Utilities Board (the “AEUB”) asking whether this matter had been the subject of a hearing or review under their respective Board’s legislation. Replies were subsequently received from the NRCB on January 28, 2000 indicating that this matter had not been subject of a public hearing or review under their legislation. A reply was received from the AEUB on April 13, 2000, confirming that the matter was the subject of neither a hearing or review, however, the well was ordered closed by the AEUB on December 20, 1996. The AEUB further advised that, although no hearing was held, the Appellants were provided with an opportunity to make written submissions to the AEUB with regard to the closure of the well.

[5] On January 31, 2000, the Board received a letter from the Director. The letter advised that the materials relating to this appeal were the same documents as those being used in the Legal Oil and Gas Ltd. and Charles W. Forster appeal of Environmental Protection Order No. 98-01, Board appeal file no. EAB 98-006 (“EAB 98-006”), currently before the Board, and that further materials would be forwarded to the Board. The Director’s letter also stated:

“...the issues in this case appear identical to those found in the recent appeal by Legal Oil and Gas Ltd. respecting EPO 98-04 (Tieulie) [EAB File No. 98-009]. That matter has been made the subject of a judicial review by Legal. In the interests of resolving this matter expeditiously, the Director suggests that this appeal be withdrawn by Legal Oil and Gas Ltd., that enforcement of this EPO be stayed (informally) pending the judicial review of the Tieulie decision, that both Legal and the Director agree to be bound in this case by the decision of the Court in the Tieulie case.

Such a resolution seems appropriate to the Director as the legal issues are the same. If the Court concludes the decision in Tieulie is correct, the same law will apply in this case. If the Court concludes the decision in Tieulie was in error, this EPO will suffer a similar fate. In either event a further hearing would not add anything to the resolution of these matters.”

[6] The Board responded to the Director’s letter on February 2, 2000, forwarding a copy to the Appellants and requesting the Appellants provide their comments to the Board with respect to the Director’s letter.

[7] On February 18, 2000, the Board received a letter from the Appellants. The Appellants agreed with the suggestion to use the documents provided in the appeal of EPO 98-01 for the current appeal. The Appellants also agreed with the Director’s suggestion to hold this appeal in abeyance pending the outcome of the judicial review in EPO 98-04.

[8] On February 24, 2000, the Board by letter to the parties, agreed to use the existing documents, provided in EAB 98-006 for this appeal and also granted an abeyance pending the outcome of the judicial review of Board appeal file no. EAB 98-009 (“EAB 98-009”). The Board requested the parties provide a status report by May 17, 2000.

[9] A status report was not received by May 17, 2000, and on May 30, 2000, the Board again wrote to the parties requesting they provide the Board with a new reporting date. On May 30, 2000, the Board received an e-mail from the Director advising that a decision of the Court of Queen's Bench, Judicial District of Edmonton, Action No. 0003-01251, would likely be issued in June and requested that the matter remain in abeyance until the decision had been issued. On June 1, 2000, the Board received a letter from the Appellants advising that they too wished the file to be held in abeyance pending the issuance of the Court decision, and suggested a further reporting date to be set for the last week of June. The Board responded to the parties by letter of June 2, 2000, requesting the parties provide their status report by July 7, 2000.

[10] On June 9, 2000 Mr. Justice Clackson denied the judicial review of EPO 98-04. The Board subsequently wrote to the parties on June 23, 2000, requesting the parties advise how they wished to proceed with their appeal. On June 29, 2000, the Board received a letter from the Director requesting the appeal be withdrawn or dismissed, as in the Director's view, this appeal raised no new issues which had not already been dealt with in the appeal of EPO 98-04. On July 12, 2000, the Board received a letter from the Appellants, in response to the Board's letter of June 23, 2000 and Director's letter of June 29, 2000. The Appellants disagreed with the Director's request arguing that the background in each of the appeals was different and requested a full hearing.

[11] On July 26, 2000, the Appellants filed a Notice of Appeal with the Court of Appeal with respect to the outcome of the judicial review of EPO 98-04. The Board subsequently wrote to the parties on September 14, 2000, asking if the parties would like to have the current appeal held in abeyance until the Court of Appeal had rendered its decision.

[12] On September 26, 2000, the Board received a letter from the Appellants suggesting that the current appeal be held in abeyance pending the outcome of the decision of the Court of Appeal. The Board granted the abeyance and requested a status report on November 8, 2000.

[13] Nothing happened on November 8, 2000, and after several attempts to contact the parties, the Board received a letter from the Appellants who advised that he no longer represented Legal Oil and Gas Ltd. and Mr. Charles Forster.

[14] On January 5, 2001, the Board received a letter from the Director requesting that the current appeal be dismissed. The Director requested, that should the Board decide not to dismiss the appeal, that a hearing be scheduled.

[15] On February 9, 2001, the Board wrote to the parties. The Board's letter stated:

“The Board requests that Mr. Forster and Legal Oil and Gas Ltd. clarify your position regarding this appeal. The Board held the appeal in abeyance pending Court of Appeal action no. A0003 0346AC *Legal Oil and Gas Ltd. vs. HMQ*, which the Board now understands, was discontinued on February 5, 2001. As the Director maintains that matters raised in the above noted appeal have been decided by the Board in Decision 98-009 dated July 23, 1999 and confirmed by the Minister on August 25, 1999, the Board requests that you indicate whether you wish to proceed with this appeal. The Board requests that you forward your response to this office on or before **February 15, 2001**. Please note that pursuant to section 87(5)(a)(ii) of the *Environmental Protection and Enhancement Act*, the Board has the jurisdiction to dismiss an appeal should an appellant fail to respond to a written notice.” (Emphasis in original.)

[16] The Appellant responded on February 15, 2001 indicating that he did not agree with the Director's motion to dismiss the appeal on the basis that the matter had been decided in a previous decision made by the Board. He stated

“...the surface/mineral lease situation for the 3 of 21 site is completely different from the 11 of 13 site, the subject of the 98-009 decision. I would like to have an opportunity to explain of this to the Board at a hearing of this appeal.”

[17] The Board acknowledged the Appellants letter and provided a copy to the Director. In addition, in a letter dated February 26, 2001, the Board asked the parties to address two questions in relation to the issues raised by both the Appellant and the Director. The questions were:

1. Do factual and legal differences, as raised in Mr. Thomas' letter of July 12, 2001 (attached) between the 11 of 13 site and the 3 of 21 site exist?
2. Are the issues raised and decided upon in the Board's decision of Appeal #98-009 and confirmed by a Judicial Review Decision (Action No. 0003-01251) dated June 9, 2000, the same as those issues raised in the Notice of Appeal regarding the 3 of 21 site?..."

The letter stated that these issues had been raised in past correspondence (which was attached to the letter) but that submissions were not requested at the time pending the outcome of a Court of Appeal application initiated by the Appellant (see paragraphs 10 and 11).

[19] The Board received confirmation that the application had been discontinued and therefore posed the above noted questions to the parties. Initial submissions were due March 9, 2001 with responses due March 16, 2001. Again, parties were informed that "...failure to comply with the timelines stated may result in the dismissal of the appeal..."

[20] On March 9, 2001, the Board received the Director's submission and a copy was forwarded to the Appellant on March 13, 2001 by courier. The letter stated that

"The Board would like to remind Mr. Forster and Legal Oil and Gas Ltd. to forward their initial submission that was due March 9, 2001, the Board immediately. **Please be advised that failure to provide the Board with your written submission as requested by Wednesday, March 14, 2001 may result in the dismissal of your appeal** (emphasis in the original)."

The Board confirmed that the courier packages had been delivered on March 13, 2001 at two addresses listed for the Appellant. By the close of business on March 14, 2001, a submission had not been received from the Appellant.

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[21] The Appellant had wanted to address the factual and legal issues associated with the 3 of 21 site versus the 11 of 13 site (which the Board had already decided). The Board provided this opportunity on February 26, 2001. Written submissions were due on March 9, 2001.

[20] The Appellant is familiar with the Board's practices having gone through Appeal #98-009. In addition, the Appellant was aware through three separate letters¹ from the Board, that failure to respond to a written notice (section 85 of the *Act*) may result in the dismissal of his appeal (section 87 (5)(a)(ii) of the *Act*).²

[21] The Board can confirm that the February 26, 2001 letter from the Board, requesting the initial submission from the Appellant by March 9, 2001, was sent successfully to a fax number provided by the Appellant. Board staff also confirmed to me that the letter sent on March 13, 2001 requesting, for a second time, the Appellant's submission by the close of business on March 14, 2001, was placed in business post office box and residential mail box belonging to the Appellant. The Board also attempted to fax the letter on several occasions throughout the day on March 13, 2001 but were unsuccessful in all attempts. As the Appellant failed to respond to the Board's initial request for a submission and to the Board's *second* request for the submission, the Board exercises its discretion to dismiss the appeal.

¹ Letters referenced in paragraphs 15, 17 and 18 of this Decision.

² Section 85 and 87(5)(a) of the *Act* state:

85 Where the Board received a notice of appeal it may by written notice given to the person who submitted the notice of appeal require the submission of additional information specified in the written notice by the time specified in the written notice.

87(5) The Board

(a) may dismiss a notice of appeal if

- (i) it considers the notice of appeal to be frivolous or vexatious or without merit
- (i.1) in the case of a notice of appeal submitted under section 84(1)(a)(iv) or (v), (g)(ii) or (j), the Board is of the opinion that the person submitting the notice of appeal is not directly affected by the decision or designation,
- (i.2) for any other reason the Board considers that the notice of appeal is not properly before it,
- (ii) the person who submitted the notice of appeal fails to comply with a written notice under section 85,
- (iii) the person who submitted the notice of appeal fails to provide security in accordance with an order under section (89)(3)(b)

[22] Accordingly, the Board is dismissing EAB appeal No. 00-003 under section 87(5)(a)(ii) of the *Act* for failure to respond to a written notice pursuant to section 85 of the *Act*.

Dated on March 16, 2001, at Edmonton, Alberta.

Dr. William A. Tilleman