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# ALBERTA ENVIRONMENTAL APPEAL BOARD

## Decision

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Date of Decision – September 28, 2001

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

**-and-**

**IN THE MATTER OF** an appeal filed by Ms. Sherrill L. DeMarco on behalf of Landemarc Farming Ltd. with respect to Reclamation Certificate No. 40475 issued by the Inspector, Northeast Boreal region, Regional Services, Alberta Environment, to Grey Wolf Exploration Inc., regarding Pacalta Woodland 2-6-60-19 Well, SE-6-60-19-W4M (LSD2).

Cite as: *Landemarc Farming Ltd. v Inspector, Northeast Boreal Region, Regional Services, Alberta Environment.*

## **EXECUTIVE SUMMARY**

The Environmental Appeal Board received an appeal from Ms. Sherrill DeMarco of Landemarc Farming Ltd. regarding concerns with a Reclamation Certificate issued to Grey Wolf Exploration Ltd.

The Appellant advised the Board on August 28, 2001 that she wished to have her appeal held in abeyance for one year in order to review the growth of grass at the site. Grey Wolf Exploration Inc. did not object to the abeyance, however the Inspector did object. The Inspector submitted that to hold the appeal in abeyance for one year would result in a “regulatory uncertainty”. The Inspector requested the Appellant withdraw her appeal, on a without prejudice basis, and should the Appellant be dissatisfied with the growth of grass at the site next spring, her right to appeal would remain in tact.

Upon review of the file, the Board has decided to dismiss the appeal on a without prejudice basis, as the Board has determined that Ms. DeMarco’s appeal is not properly before the Board in that her intention is to preserve her right to appeal rather than proceed with the appeal. Ms. DeMarco still has the right to file another appeal in this matter, at the appropriate time, and before July 12, 2002.

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## **I. BACKGROUND**

[1] On July 16, 2001, Reclamation Certificate No. 40475 (the “Reclamation Certificate”), was issued by the Inspector, Northeast Boreal Region, Regional Services, Alberta Environment (the “Inspector”) to Grey Wolf Exploration Ltd. (the “Certificate Holder”) for SE Sec. 6, Tp 60, Rge 19, W4M, incidental to Pacalta Woodland 2-6-60-19 Well near Smoky Lake, Alberta.

[2] On August 28, 2001, the Environmental Appeal Board (the “Board”) received a Notice of Appeal from Ms. Sherrill L. DeMarco on behalf of Landemarc Farming Ltd. (the “Appellant”) with regard to the Reclamation Certificate. In the Notice of Appeal, the Appellant expressed concern regarding the condition of the land and the growth of the vegetation. The Appellant asked the Board to hold the appeal in abeyance for one year in order to review the growth of the grass on the site. Thus, she did not intend to proceed on the merits of her complaint.

[3] On August 28, 2001, the Board acknowledged the receipt of the Notice of Appeal filed by the Appellant. On the same date the Board also provided copies of the Notice of Appeal to the Director and the Certificate Holder and requested the Director provide all documents (the “Record”) related to the Appeal to the Board.

[4] According to standard practice, on September 10, 2001, the Board wrote to the Natural Resources Conservation Board (the “NRCB”) and the Alberta Energy and Utilities Board (the “EUB”) asking whether this matter had been the subject of a hearing or review under their respective Boards legislation. On September 13, 2001, the NRCB responded in the negative.

[5] On August 28, 2001, the Board received a further letter from the Appellant requesting an abeyance for one year in order to review the grass growth at the site. On September 4, 2001, the Board wrote to the parties advising that they would grant the abeyance pending any objections from the other parties to the appeal. The Certificate Holder advised that he did not have any objections to the abeyance. However, on September 4, 2001, the Inspector

wrote to the Board advising that he did object to the appeal being held in abeyance for one year.

The Inspector's letter stated:

“...should the Board decide to hold Ms. DeMarco's appeal in abeyance for one year, a situation of regulatory uncertainty would result...we recommend that the appellant withdraw her current appeal on a without prejudice basis. If the Appellant is not satisfied with the growth of grass next spring, she could file a subsequent notice of appeal prior to July 16, 2002.”

## **II. DECISION**

[6] Upon review of the file, the Board has determined that the Appellant's appeal is not properly before the Board in that the Appellants intention is to preserve her right to appeal, rather that to proceed with her appeal (see her letter of August 28, 2001).

[7] The Board therefore dismisses this appeal under section 87(5)(a) of the *Environmental Protection and Enhancement Act*, S.A. 1992 c. E-13.3 *without prejudice* to Ms. DeMarco's right to file another appeal in this matter, before July 16, 2002.

Dated on September 28, 2001 at Edmonton, Alberta.

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William A. Tilleman, Q.C.