
ALBERTA ENVIRONMENTAL APPEALS BOARD

Report and Recommendations

Date of Mediation Meeting – May 31, 2005
Date of Report and Recommendations – June 13, 2005

IN THE MATTER OF sections 91, 92 and 95 of the
Environmental Protection and Enhancement Act, R.S.A. 2000, c.
E-12;

-and-

IN THE MATTER OF an appeal filed by Tartan Energy Inc. with
respect to *Environmental Protection and Enhancement Act*
Environmental Protection Order No. 2005/03-NR issued to Tartan
Energy Inc., by the Director, Northern Region, Regional Services,
Alberta Environment.

Cite as: *Tartan Energy Inc. v. Director, Northern Region, Regional Services, Alberta
Environment* (13 June 2005), Appeal No. 04-123-R (A.E.A.B.).

MEDIATION MEETING:

APPEARANCES:

Appellant: Mr. Donald McKechnie and Mr. Gordon Levang, Tartan Energy Inc. represented by Mr. Alan Harvie, Macleod Dixon.

Director: Mr. Albert Poulette, Director, Northern Region, Regional Services, Alberta Environment, and Mr. Jeff Toering, Investigator, Northern Region, Regional Services, Alberta Environment represented by Mr. Jeffrey Moore, Alberta Justice.

Board Staff: Mr. Gilbert Van Nes, General Counsel and Settlement Officer

EXECUTIVE SUMMARY

Alberta Environment issued an Environmental Protection Order with respect to five wells with contamination to Tartan Energy Inc.

The Board received a Notice of Appeal from Tartan Energy Inc. appealing Alberta Environment's decision to issue the Environmental Protection Order.

The Board directed staff to conduct a Mediation Meeting on May 31, 2005 in Edmonton, Alberta, following which an agreement was reached by the parties with respect to the Environmental Protection Order. The Board recommends that the Minister of Environment accept the agreement and vary the Environmental Protection Order.

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I. BACKGROUND

[1] On March 16, 2005, the Director, Northern Region, Regional Services, Alberta Environment (the “Director”), issued two Environmental Protection Orders No. EPO-2005/03-NR and EPO-2005/04-NR (the “EPO’s”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 to Tartan Energy Inc. (the “Appellant”) with respect to seven well sites in Sturgeon County, Alberta. This Report and Recommendations is with respect to EPO 2005/03-NR, dealing with five of the well sites.

[2] On March 23, 2005, the Environmental Appeals Board (the “Board”) received Notices of Appeal and a request for a Stay from Mr. Alan Harvie, Macleod Dixon, on behalf of Tartan Energy Inc. (the “Appellant”), appealing the EPO’s.

[3] On March 23, 2005, the Board wrote to the Appellant and the Director acknowledging receipt of the Notices of Appeal and application for a Stay, and notifying the Director of the appeal. The Board also requested the Director provide the Board with a copy of the records (the “Record”) relating to these appeals, and that the Appellant and the Director provide available dates for a mediation meeting or hearing.

[4] According to standard practice, the Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board asking whether this matter had been the subject of a hearing or review under their respective legislation. The Natural Resources Conservation Board responded in the negative. The Board received a letter from the Alberta Energy and Utilities Board (the “AEUB”) advising:

“...The AEUB is currently considering an application made by Tartan Energy Inc. For a review, pursuant to section 39 of the *Energy Resources Conservation Act*, of the AEUB’s decision made in 1997 granting the transfer of the following well licences from Legal Oil and Gas Ltd. to Tartan Energy Inc.

Licence

No. 0006000

No. 0005712

No. 0005071

Location

07-21-57-25 W4M

03-21-57-25 W4M

14-16V-57-25 W4M

No. 0006372

11-16V-57-25 W4M

No. 0003960

10-16V-57-25 W4M”

At the same time, the AEUB also advised the Board that a decision with respect to the application would be made in due course.

[5] On March 31, 2005, the Board received a letter from the Director advising that landowners, Mr. John Peet, Mr. Brian Cornelis, and Ms. Vivian Visscher (the “Landowners”), as well as the Orphan Well Association, may have an interest in these appeals. On April 21, 2005, the Board received further information from the Director advising that landowners Mr. and Mrs. Robert Halvorson (the “Landowners”), may also have in interest in the appeals. The Board wrote to the Landowners and the Orphan Well Association, advising them of the appeals and providing them with a copy of the Board’s file.

[6] On April 6, 2005, the Board wrote to the Appellants, the Director, the Landowners and the Orphan Well Association (the Participants”) advising that a Preliminary Meeting would be held in place of the written submissions process to address the Stay.

[7] On April 12, 2005, the Board received the Record from the Director, and on April 13, 2005 forwarded a copy to the Appellants, the Landowners and the Orphan Well Association. On April 14, 2005 the Board received a letter from Mr. and Mrs. Visscher, opposing the Stay and stating that the Stay would cause them serious prejudice. Mr. Cornelis and Mr. Peet, also opposed the Stay.

[8] On April 15, 2005, the Board wrote to the Participants advising that the Preliminary Meeting would be held in Edmonton, Alberta on April 27, 2005 to deal with the following issues.

1. The participation of the Landowners, and the Orphan Well Association, in these appeals;
2. The Appellant’s request for a Stay;
3. The issues to be dealt with at a future hearing of these appeals; and
4. Whether the Hearing of these appeals should be held via written submissions and Agreed Statement of Facts.

[9] On April 25, 2005, the Board wrote to the Participants and advised of telephone conversations with Mr. Peet, who indicated that he would not be attending the Preliminary Meeting, and Mr. Cornelis who advised that if he could not attend the Preliminary Meeting that he would give the Board a letter allowing Mr. and Ms. Visscher to represent him. Mr. Halvorson confirmed that he would attend the Preliminary Meeting, and that he reserved his right to attend and participate in the hearing of these appeals to ensure that his concerns were heard. Mr. Halvorson advised the Board that he takes no position with respect to the Stay.

[10] On April 26, 2005, the Board received an e-mail from the Orphan Well Association advising that their participation in the Preliminary Meeting would be by written submissions only and that they would not be present at the Preliminary Meeting.

[11] The Board held the Preliminary Meeting on April 27, 2005 and on April 28, 2005, the Board wrote to the Participants, advising of the Board's decision with respect to the Preliminary Meeting. The decision of the Board was: (1) the Landowners, being Mr. and Mrs. Visscher, Mr. Cornelis, Mr. Peet and Mr. and Ms. Halverson, and the Orphan Well Association will be full parties for the purpose of these appeals; (2) the request for a Stay of EPO No. 2005/03-NR was denied; (3) the request for a Stay of EPO No. 2005/04-NR was granted until June 1, 2005; and (4) the Board also advised that it would hold an oral hearing on May 30 and 31, 2005 to hear submissions on the following issues:

1. Were the Environmental Protection Orders properly issued?
2. Is rescission an available remedy in these circumstances to nullify the regulatory authority underlying the Environmental Protection Orders?

[12] On May 2, 2005, the Board placed advertisements in the Edmonton Journal, the Morinville Mirror, the Morinville Free Press, the St. Albert Gazette and the Saint City News, advising that the Hearing of these appeals would take place on May 30 and 31, 2005 in the Board Office. The Board's advertisements also set a deadline of May 16, 2005 for others to make representations before the Board at the Hearing. The Board did not receive any intervenor applications. On May 10, 2005, the Board also issued a news release containing the same details as the advertisements, and listing the issues to be addressed at the Hearing. The Board also sent a copy of the file to the Morinville public library for viewing.

[13] On May 24, 2005, the Board was advised by the Appellant and the Director, that they were working on an agreement. Due to the possibility of an agreement, the Board wrote to the Participants advising that the Hearing had been adjourned as settlement discussions were continuing between the Appellant and the Director. The Board scheduled a mediation meeting for May 31, 2005, between the Appellant and the Director, facilitated by the Board's General Counsel to discuss a potential resolution.

II. MEDIATION MEETING

[14] Pursuant to section 11 of the Environmental Appeal Board Regulation, A.R. 114/93, the Board conducted a mediation meeting in Edmonton, Alberta on May 31, 2005 with Mr. Gilbert Van Nes, General Counsel and Settlement Officer, for the Board.

[15] An Interim Agreement was reached with respect to EPO No. 2005/04-NR (EAB Appeal No. 04-124). The Appellant and the Director will be providing the Board with status reports with respect to EAB Appeal No. 04-124 by September 14, 2005.

[16] Following productive and detailed discussions, a Resolution evolved with respect to EPO No. 2005/03-NR (EAB Appeal No. 04-123). This document is attached as pages 6 and 7.

III. RECOMMENDATIONS

[17] In accordance with section 99 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (the "Act"), the Board recommends that the Minister of Environment order that Environmental Protection Order No. 2005/03-NR be varied to reflect the Resolution. Attached for the Minister's consideration is a draft Ministerial Order implementing the recommendations.

[18] Further, with respect to section 100(2) and 103 of the Act, the Board recommends that copies of this Report and Recommendations, and of any decision by the Minister, be sent to the following persons:

- Mr. Alan Harvie, Macleod Dixon, representing Tartan Energy Inc.;

- Mr. Keith Wilson, Wilson Law Office, representing Mr. and Ms. Visscher;
- Mr. Bradley Gilmour, Bennett Jones, Representing the Orphan Well Association;
- Mr. Jeffrey Moore, Alberta Justice, representing Mr. Albert Poulette, Northern Region, Regional Services, Alberta Environment;
- Mr. John Peet;

- Mr. Brian Cornelis: and
- Mr. and Mrs. Robert Halverson.

Dated on June 13, 2005, at Edmonton, Alberta.

“original signed by”

William A. Tilleman, Q.C
Chair

IV. RESOLUTION

In the matter of the mediation of the appeal of the decision of the Director, Northern Region, Regional Services, Alberta Environment (the “Director”), to issue Environmental Protection Order No. 2005/03-NR (the “EPO”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, to Tartan Energy Inc. (“Tartan”).

All participants to the appeals have agreed to the following terms and conditions:

1. The EPO is amended by adding immediately after clause 11, the following:

“12. The Company is responsible under this Order to undertake work with respect to the following:

Well Sites	Lease Areas
Site 10 of 16	1.70 acres
Site 11 of 16	0.17 acres
Site 14 of 16	0.72 acres
Site 3 of 21	0.26 acres
Site 7 of 21	1.39 acres

The Lease Areas are based on surveys of the well sites, including the survey attached.

13. The Company is responsible under this Order to undertake work with respect to the road associated with the Sites from the boundary between LSD 3 and 6 in 21-57-25-W4M to the south and east to the highway, which includes: LSD 3 in 21-57-25-W4M, LSD 14 in 16-57-25-W4M, and LSD 9, 10 and 11 in 16-57-25-W4M.”

2. THAT in consideration of the foregoing, the Appellant, Tartan Energy Inc., agrees to withdraw their Notice of Appeal (04-123).

RESOLUTION AGREED TO BY:

“original signed by”

Mr. Donald McKechnie, Tartan Energy Inc.
represented by Mr. Alan Harvie,
Macleod Dixon.

Date: May 31, 2005

“original signed by”

Mr. Albert Poulette, Director, Northern Region

Date: May 31, 2005

Regional Services, Alberta Environment
Represented by Mr. Jeffrey Moore,
Alberta Justice.

V. DRAFT ORDER

**Ministerial Order
/2005**

Environmental Protection and Enhancement Act
R.S.A. 2000, c. E-12

**Order Respecting Environmental Appeals Board
Appeal No. 04-123**

I, Guy Boutilier, Minister of Environment, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeals Board Appeal No. 04-123.

Dated at the City of Edmonton, in the Province of Alberta, this ____ day of _____, 2005.

Guy Boutilier
Minister

Draft Appendix

Order Respecting Environmental Appeals Board Appeal No. 04-123

With respect to the decision of the Director, Northern Region, Regional Services, Alberta Environment (the “Director”), to issue Environmental Protection Order No. EPO 2005/03-NR I, Guy Boutilier, Minister of Environment:

1. Order that the decision of the Director to issue EPO 2005/03-NR is confirmed subject to the following variations.
2. EPO 2005/03-NR is amended by adding immediately after clause 11, the following:

“12. The Company is responsible under this Order to undertake work with respect to the following:

Well Sites	Lease Areas
Site 10 of 16	1.70 acres
Site 11 of 16	0.17 acres
Site 14 of 16	0.72 acres
Site 3 of 21	0.26 acres
Site 7 of 21	1.39 acres

The Lease Areas are based on surveys of the well sites, including the survey attached.

13. The Company is responsible under this Order to undertake work with respect to the road associated with the Sites from the boundary between LSD 3 and 6 in 21-57-25-W4M to the south and east to the highway, which includes: LSD 3 in 21-57-25-W4M, LSD 14 in 16-57-25-W4M, and LSD 9, 10 and 11 in 16-57-25-W4M.”



ALBERTA ENVIRONMENT
Office of the Minister

**Ministerial Order
17/2005**

Environmental Protection and Enhancement Act
R.S.A. 2000, c. E-12

**Order Respecting Environmental Appeals Board
Appeal No. 04-123**

I, Guy Boutilier, Minister of Environment, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeals Board Appeal No. 04-123.

Dated at the City of Edmonton, in the Province of Alberta, this 30 day of June, 2005.

“original signed by”

Guy Boutilier
Minister

Appendix

Order Respecting Environmental Appeals Board Appeal No. 04-123

With respect to the decision of the Director, Northern Region, Regional Services, Alberta Environment (the “Director”), to issue Environmental Protection Order No. EPO 2005/03-NR I, Guy Boutilier, Minister of Environment:

1. Order that the decision of the Director to issue EPO 2005/03-NR is confirmed subject to the following variations.
2. EPO 2005/03-NR is amended by adding immediately after clause 11, the following:

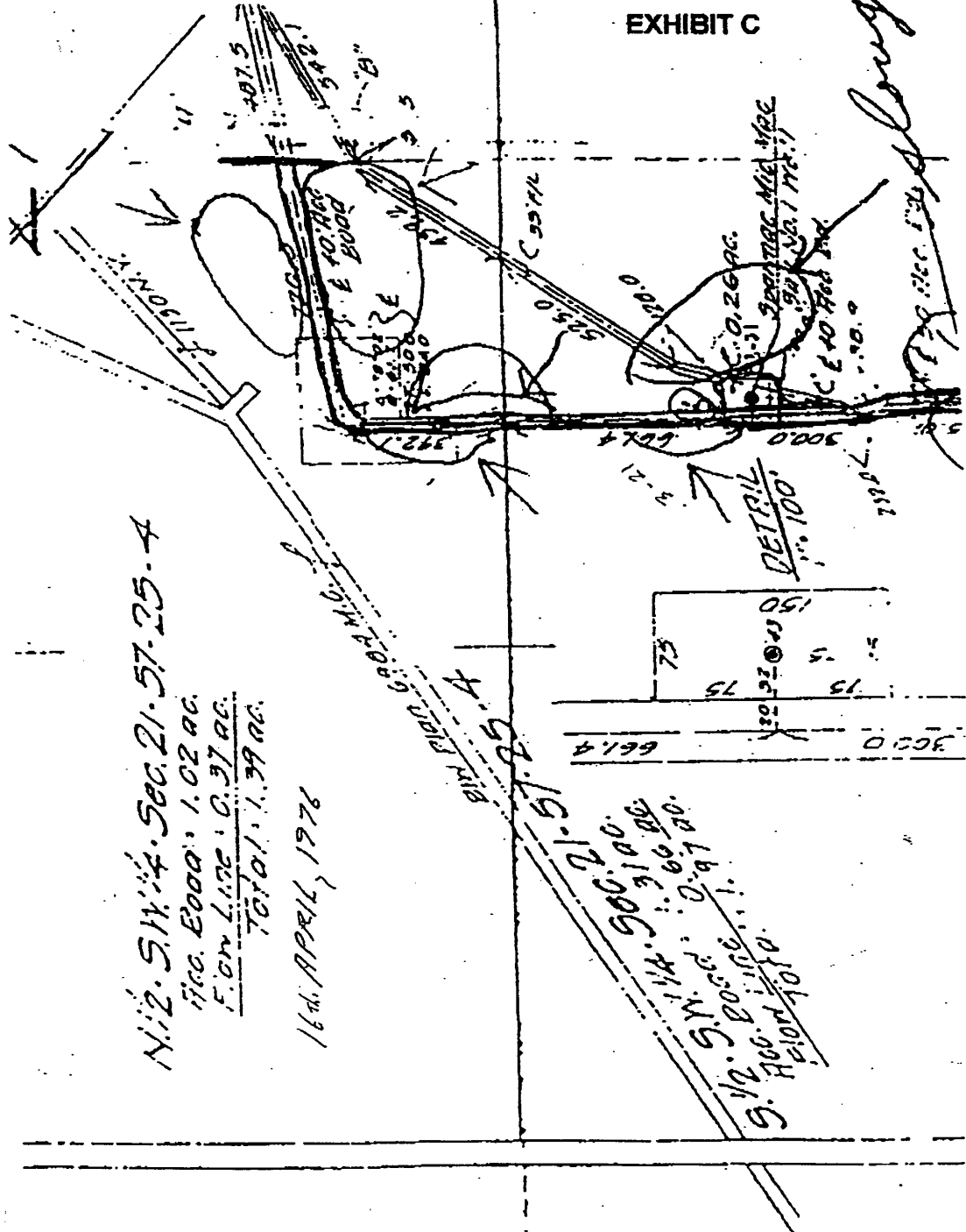
“12. The Company is responsible under this Order to undertake work with respect to the following:

Well Sites	Lease Areas
Site 10 of 16	1.70 acres
Site 11 of 16	0.17 acres
Site 14 of 16	0.72 acres
Site 3 of 21	0.26 acres
Site 7 of 21	1.39 acres

The Lease Areas are based on surveys of the well sites, including the survey attached.

13. The Company is responsible under this Order to undertake work with respect to the road associated with the Sites from the boundary between LSD 3 and 6 in 21-57-25-W4M to the south and east to the highway, which includes: LSD 3 in 21-57-25-W4M, LSD 14 in 16-57-25-W4M, and LSD 9, 10 and 11 in 16-57-25-W4M.”

EXHIBIT C



N: 2. S. 1/4. Sec. 21. 57. 25. - 4
 ACC. EOOD: 1.02 AC.
 F. ON L. 1.22. C. 37 AC.
 TOTAL: 1.39 AC.

16d. APRIL, 1976

S. 1/2. S. 20. Sec. 21. 57. 25. - 4
 ACC. EOOD: 1.02 AC.
 F. ON L. 1.22. C. 37 AC.
 TOTAL: 1.39 AC.

Long