

ALBERTA ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – July 18, 2006

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 Husky Oil Operations Limited with respect to the decision of the Director, Land Use Operations Branch, Sustainable Resource Development to cancel Reclamation Certificate No. SE1-05-51538 issued to Husky Oil Operations Limited.

Cite as: *Husky Oil Operations Limited v. Director, Land Use Operations Branch, Sustainable Resource Development* (18 July 2006), Appeal No. 06-036-DOP (A.E.A.B.).

I. BACKGROUND

[1] On April 28, 2006, the Director, Land Use Operations Branch, Sustainable Resource Development (the “Director”), cancelled Reclamation Certificate No. SE1-05-51538 (the “Certificate”) issued to Husky Oil Operations Limited for the Renaissance Alderson 100/7-7-15-10 W4M.

[2] On May 9, 2006, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Husky Oil Operations Limited (the “Appellant”), appealing the Director’s decision.

[3] On May 10, 2006, the Board wrote to the Appellant and the Director (collectively the “Parties”) acknowledging receipt of the Notice of Appeal 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 this appeal, and that the Parties provide available dates for a mediation meeting, preliminary 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. Both boards responded in the negative.

[5] On May 23, 2006, the Board received a letter from the Director advising that the cancellation of the Certificate

“...was withdrawn due to an error in assessing that an un-reclaimed access road fell within the boundaries of the specified land under the Reclamation Certificate....[T]he un-reclaimed access falls outside the specified land at issue, and therefore, the Reclamation Certificate, as originally issued on September 12, 2005, is in effect as if it had been from the date of issuance....[T]he Director is of the opinion that the circumstances providing grounds for appeal no longer exist.”

[6] On May 24, 2006, the Board wrote to the Appellant requesting they provide comments with respect to the Director’s May 23, 2006 letter.

[7] The Board received comments from the Appellant on May 26, 2006, stating:

“...We would be delighted to withdraw our appeal, but are concerned that the Director may not have the power to withdraw its cancellation of the Reclamation Certificate...We have requested that Ms. Keehn direct us to the appropriate authority in support of that claimed power, but have not yet received a response.”

The Board acknowledged the Appellant’s letter on May 29, 2006, advising it would await further information on this matter.

[8] On June 6, 2006, as the Board did not receive any further information from the Parties, it wrote to the Parties requesting status reports. On June 8, 2006, the Board received a copy of a letter dated June 8, 2006, from the Director to the Appellant stating:

“You have expressed concern that the Director in the above matter lacks authority to reinstate a cancelled reclamation certificate. The Director is of the opinion that the power to do so is inherent to his powers under Part 6 of the *Environmental Protection and Enhancement Act*. The Director’s combined powers to cancel a reclamation certificate issued in error, and to correct a clerical error in a reclamation certificate both provide foundation for the conclusion that, should a reclamation certificate have been cancelled in error, the Director has the authority to correct the error and reinstate the certificate...”

[9] On June 15, 2006, the Board received a letter from the Appellant stating:

“...there is a risk to Husky if it accepts the Director’s position that the Director has the power to withdraw the cancellation of a Reclamation Certificate. The risk is that the landowner or occupant may take position at some time in the future that the Director did not have the power to do so and accordingly Husky owes lease payments...In the circumstances, we are willing to adjourn our appeal until confirmation is received from the landowner and occupant that they are not contesting the decision of the Director, or until the end of November, 2006, which is the time limit for the landowner or occupant to judicially review the Director’s decision. If the Director’s decision has not been challenged by the owner or occupant by then, I would propose to withdraw the appeal.”

[10] Upon review of the arguments presented by the Parties, the Board wrote to the Parties on July 6, 2006. The Board’s letter stated:

“The reclamation certificate was issued to Husky Oil Operations Limited based on the application to Alberta Environment. As part of the reclamation certificate process, Alberta Environment undertakes audits of sites that have been issued reclamation certificates. It appears from the information provided, that an audit was done of the site relating to Reclamation Certificate No. SE1-05-51538, and as a result of the audit, the reclamation certificate was withdrawn because the inspector incorrectly included an un-reclaimed access road as part of the site. When the error was discovered, the reclamation certificate was reinstated. Mr.

Owen raises the question whether this can be done without Ministerial consent.

Under section 139(1)(d) of the *Environmental Protection and Enhancement Act* (EPEA), the Director may correct a clerical error in a reclamation certificate. The Director has admitted there was an error in including the un-reclaimed access road as part of the specified land. The Director has corrected that error, as allowed under EPEA, and as a result, it appears he no longer has concerns regarding the reclamation certificate application.

Under section 139(1)(b) of EPEA, the Director can cancel a reclamation certificate issued in error. Ms. Keehn points to this provision to indicate the Director should clearly have the ability to re-issue a reclamation certificate cancelled in error.

It is unclear to the Board as to what Mr. Owen is now asking for, considering the purpose of the appeal was to have the Director reverse his decision and grant the reclamation certificate. The Director has done this and the reclamation certificate has been re-instated.

Under section 91(4)(b) of EPEA, the landowner or occupant has one year to file an appeal of the decision to issue the reclamation certificate. The landowner or occupant's rights have not changed with respect to filing an appeal. What may remain an issue is whether the time period in which the landowner or occupant can file an appeal started with the original decision to issue the reclamation certificate on September 12, 2005, or whether the time period starts on May 11, 2006, the date the certificate was re-instated. That is a matter that would have to be determined should an appeal be filed by the landowner or occupant.

The Board asks that if Mr. Owen is of the view that there is an issue that remains to be determined or if there is an issue that remains appealable, to file a request stating the matter that remains to be heard.

Mr. Owen is requested to notify the Board by July 14, 2006, as to whether he intends to file an application for the Board to consider, or whether he intends to withdraw the appeal.”

[11] On July 13, 2006, the Board received a letter from the Appellant withdrawing the appeal.

II. DECISION

[12] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c.E-12, and based on the withdrawal of the appeal by the Appellant, the Board hereby discontinues its proceedings in Appeal No. 06-036 and closes its file.

Dated on July 18, 2006, at Edmonton, Alberta.

“original signed by”

Steve E. Hruddy, D.Sc. (Eng.), P.Eng.
Chair