

ALBERTA
ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – August 7, 2007

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 Bruce Francis with
respect to *Environmental Protection and Enhancement Act*
Reclamation Certificate No. 219021-00-00 issued to Petrofund
Energy Trust (now Penn West Energy Trust) by the Director,
Southern Region, Regional Services, Alberta Environment.

Cite as: *Francis v. Director, Southern Region, Regional Services, Alberta Environment re: Petrofund Energy Trust (now Penn West Energy Trust) (07 August 2007), Appeal No. 05-046-DOP (A.E.A.B.)*.

I. BACKGROUND

[1] On October 17, 2005, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”), issued Reclamation Certificate No. 00219021-00-00 (the “Certificate”), under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 to Petrofund Energy Trust (now Penn West Energy Trust) (the “Certificate Holder”) with respect to the Tikal Nycan Turin well located at NE 16-36-10-18-W4M (the “Site), near Taber, Alberta.

[2] On November 14, 2005 the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Mr. Bruce Francis (the “Appellant”) appealing the Certificate. In his Notice of Appeal the Appellant also requested a site visit.

[3] On November 14, 2005, the Board wrote to the Appellant, the Certificate Holder and the Director (collectively the “Participants”) acknowledging receipt of the Notice of Appeal and notifying Certificate Holder and 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 Participants 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 December 2, 2005 the Board received a copy of the Record from the Director, and on December 14, 2005, forwarded a copy to the Appellant and the Certificate Holder. The Board advised that further to its review of the file, and the request from the Appellant for a site visit, it had decided to proceed to a mediation meeting, and requested the Participants provide their available dates to the Board by January 17, 2006.

[6] On December 15, 2005, the Board received a copy of a letter from the Certificate Holder to the Appellant, requesting a meeting to address the outstanding issues, and stating:

“...the best way to address issues such as this is to deal directly with you to develop a mutually acceptable plan designed to identify the concerns and take the necessary steps to resolve the problem...”

The Board acknowledged receipt of the letter and requested the Appellant and Director advise the Board by December 30, 2005, whether the Certificate Holder's proposal was satisfactory, and if so it requested the Appellant and Certificate Holder provide the Board with a status report on January 30, 2006.

[7] On December 21, 2005, the Board received a letter from the Director advising he is pleased there are positive discussions taking place between the Appellant and Certificate Holder and looked forward to receiving their status report. On December 29, 2005, the Board received a letter from the Appellant advising the proposal is satisfactory. The Board acknowledged the Director's and the Appellant's letters and requested the Certificate Holder and Appellant provide status reports to the Board on January 30, 2006.

[8] On January 31, 2006 the Board received a copy of a letter addressed to the Appellant from the Certificate Holder, proposing a work plan to address the problems at the Site. The Board acknowledged the letter on February 2, 2006 and asked the Appellant to provide his comments by February 15, 2006.

[9] On February 16, 2006, the Board received a letter and telephone call from the Appellant, agreeing to the proposed work plan, and requesting the Board hold the appeal in abeyance until the end of the growing season in 2006, so that he could review the results of the work. The Board granted the Appellant's request for an abeyance and requested the Participants provide status reports to the Board by September 1, 2006.

[10] On September 12, 2006, the Board wrote to the Participants advising it had not received status reports which were due on September 1, 2006, and requesting they provide their status reports to the Board by September 19, 2006.

[11] On September 15, 2006, the Board received a telephone call from Penn West Energy Trust, advising they now owned Petrofund Energy Trust and were unaware of this appeal

until they received the Board's letter of September 12, 2006. In response, the Board provided the new Certificate Holder with a copy of its file in this matter, and requested they contact the Board by September 25, 2006 to discuss the appeal.

[12] On September 21, 2006, the Board received a letter from the Certificate Holder providing a status of the work that had been completed on the Appellant's land in 2006, as well as an outline of action to be taken in spring and summer of 2007. The Certificate Holder also advised they are committed to ensuring that the Appellant is satisfied with the reclamation of the site. On September 27, 2006, the Board acknowledged the Certificate Holder's letter and requested the Participants provide status reports to the Board by October 31, 2006.

[13] On October 25, 2006, the Board received a letter from the Certificate Holder advising they had met with the Appellant on October 18, 2006, at the site, and discussed both the work completed, and the work proposed for 2007. The Certificate Holder's letter stated:

“...The proposed work for 2007 included Echo Environmental and Mr. Francis re-visiting the above mentioned site the spring of 2007 to determine if more Downey Brome has emerged. If additional Downey Brome is discovered, then further weed eradication will be necessary for 2007....”

On November 8, 2006, the Board acknowledged receipt of the Certificate Holder's letter and requested the Participants provide status reports by April 30, 2007.

[14] On April 30, 2007, the Board received a letter from the Certificate Holder advising they had spoken with the Appellant, that they had come up with a work plan for 2007, and that their objective is to ensure the Appellant is satisfied that the former lease is properly reclaimed and is capable of sustaining a vegetative cover similar to that found in the immediate surrounding pastureland.

[15] Because it appeared to the Board that the Certificate Holder and the Appellant had reached an agreement, the Board wrote to the Participants, on April 30, 2007, and asked the Appellant to advise by May 14, 2007, if he would be withdrawing his appeal.

[16] On May 25, 2007, the Board received a letter from the Appellant advising the Board that the Certificate Holder had been in contact with him and were attempting to set a date to meet on the Site to continue with a plan for further reclamation. However, due to weather, a

site visit had not been arranged. The Appellant requested that his appeal continue to be held in abeyance.

[17] On June 1, 2007, the Board wrote to the Participants requesting the Appellant and the Certificate Holder advise the Board once a meeting date was set. The Board's letter also stated:

“...Once the meeting takes place, Mr. Francis will be expected to advise the Board if he is satisfied with the plan and if he is withdrawing his appeal. If Mr. Francis does not withdraw his appeal, the Board will proceed to a mediation meeting or a hearing, in order to bring this matter to a close....”

[18] On June 5, 2007, the Board received a letter from the Certificate Holder advising that a meeting between the Appellant and the Certificate Holder had been set for June 7, 2007. The Board acknowledged receipt of the letter, and requested the Appellant advise the Board by June 14, 2007, if he would be withdrawing his appeal.

[19] On June 8, 2007, the Board received a letter from the Appellant advising that he was working with the Certificate Holder, and at that time was satisfied with the work plan and arrangements for the Certificate Holder to have the Downey Brome hand picked, and pay an annual fee to the Appellant for a temporary work space until the weed problem had been corrected. He also advised that their next meeting would be held during the month of May, 2008, and requested the file be put into abeyance until that time.

[20] On June 13, 2007, the Board acknowledged receipt of the Appellant's letter, and asked the Participants to provide their available dates for a mediation meeting in August or September 2007, in order to bring this matter to a close. However, upon further review of the file and the agreement that had been reached between the Certificate Holder and the Appellant, it appeared to the Board that a mediation meeting may not be necessary. The Board's Associate Counsel contacted the Participants by telephone to ask if they would like the Board's assistance in reaching a final resolution. The Participants agreed, and in consultation with the Participants, the Board forwarded a Resolution to the Certificate Holder and the Appellant on July 10, 2007. The Appellant and Certificate Holder were asked to review the Resolution, and if they agreed to

it, to return their respective signed copies to the Board. The Board advised that once the Resolution was signed, the appeal would be withdrawn.

[21] The resolution was revised at the request of the Appellant and the Certificate Holder on July 20 and 24, 2007. On July 25, 2007 the Board received the signed resolution from the Appellant, and on July 26, 2007 the Board received the signed resolution from the Certificate Holder.

[22] In signing the resolution, the Appellant withdrew his appeal.

II. DECISION

[23] 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. 05-046 and closes its file.

Dated on August 7, 2007, at Edmonton, Alberta.

Dr. Steve E. Hrudehy, FRSC, PEng
Chair