

ALBERTA ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – August 13, 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 Clive Palichuk with
respect to *Environmental Protection and Enhancement Act*
Reclamation Certificate No. 00199105-00-00 issued to
TransCanada Pipelines Limited by the Director, Northern Region,
Regional Services, Alberta Environment.

Cite as: *Palichuk v. Director, Northern Region, Regional Services, Alberta Environment,*
re: *TransCanada Pipelines Limited* (13 August 2007), Appeal No. 05-043-DOP
(A.E.A.B.).

I. BACKGROUND

[1] On August 11, 2005, the Director, Northern Region, Regional Services, Alberta Environment (the “Director”), issued Reclamation Certificate No. 00199105-00-00 (the “Certificate”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, to TransCanada Pipelines Limited (the “Certificate Holder”) in connection with or incidental to the Smoky River Meter Station in SE 9-59-17-W4M (the “site”) near Smoky Lake, Alberta.

[2] On October 28, 2005 the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Mr. Clive Palichuk (the “Appellant”) appealing the Certificate.

[3] On October 28, 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 the 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 November 17, 2005, the Board received a copy of the Record from the Director, and on November 21, 2005, forwarded a copy to the Appellant and the Certificate Holder.

[6] On November 29, 2005, the Board received a letter from the Director advising:

“...there may be some confusion about the land to which Reclamation Certificate No. 00199105-00-00 may apply. Clarifying this issue may make an appeal regarding the Reclamation Certificate unnecessary. To that end, Alberta Environment’s Reclamation Inspector has arranged to meet with Mr. Palichuk and a representative of TransCanada Pipelines Limited to gain a common understanding of the boundaries of the site to which the Reclamation Certificate applies...”

The Board acknowledged the Director’s letter, and requested the Director provide a status report to the Board by December 14, 2005.

[7] On December 12, 2005, the Board received a telephone call from the Director advising that during a recent site inspection of the Appellant's land, the Participants determined that the Certificate Holder is responsible for the site to which the Certificate applies. The Director advised the Board that the Participants would like to schedule a mediation meeting in the spring of 2006 so that a site visit could also be conducted.

[8] On December 15, 2005, the Board received a letter from the Certificate Holder requesting the Board hold the appeal in abeyance until August 2006 to allow the Participants to conduct an assessment of the site. The Board granted the abeyance and requested the Participants provide status reports by August 15, 2006, advising whether the appeal is being withdrawn or whether the Participants wish to proceed to a mediation meeting.

[9] On August 15, 2006, the Board received letters dated August 14 and 15, 2006, from the Certificate Holder and the Director, advising that the Participants attended at the site and collected soil samples for sterilitant analysis. The Certificate Holder and the Director requested the Board hold the appeal in abeyance pending the outcome of both the analytical results, and subsequent discussions between the Certificate Holder and the Appellant. The Board granted the request for the abeyance and requested the Participants provide status reports by September 8, 2006.

[10] On September 8, 2006, the Board received status reports from the Director and the Certificate Holder. The Director advised that the results indicated that none of the six sterilitants analyzed for were found at any detectible concentrations in the soil samples. The Certificate Holder advised the Board that they had reviewed the analytical results, and advised that the conditions found on the site are believed not to be caused by the presence of any soil sterilitant. The Certificate Holder advised the Board that they did not believe that there is a requirement for further assessment, however in the 2007 growing season, the Certificate Holder proposed to conduct further investigations, and work closely with the Appellant to implement minor remedial actions such as the application of organics to increase the vigor of the soil. The Certificate Holder also advised the Board that they would continue to communicate all information, and work along side of the Appellant. The Board acknowledged both letters, on September 12, 2006, and requested the Appellant provide a status report by September 18, 2006.

[11] On September 12, 2006, the Board received a further letter from the Director advising he did not see any value in continuing to hold the appeal in abeyance and looked forward to the direction of the Board in moving this file to mediation or a hearing. The Board acknowledged the Director's letter and advised it would await the Appellant's status report which was due September 18, 2006.

[12] On September 15, 2006, the Board received a status report from the Appellant stating:

“...TransCanada came to the site, and saw the dead plants. Soil samples were taken to check for sterilents, but maybe not deep enough because the plants live until they root deep. In September the test results showed no sterilents at the surface. Thirteen years of rain may be leaching the chemicals deeper...TransCanada said that they will monitor it again in 2007, which I felt fixes nothing and would waste another year...”

The Appellant went on to say he had spoken to the Certificate Holder and it was suggested that the Appellant spread manure on the site in an effort to “bring up the organic matter and bind the poison to the soil.” It was arranged that a land agent would pay the Appellant for his time and that the Certificate Holder would check “next summer” to see if the “site grows.”

[13] On October 10, 2006, the Board wrote to the Participants advising that the presiding Board Member (the “Mediator”) had reviewed the file and would like to contact the Participants via telephone conference to discuss the appeal. In consultation with the Participants, the Board began the mediation process by scheduling individual conference calls between the Mediator and the Participants for October 20, 2006.

[14] On November 30, 2006, the Board received a letter dated October 26, 2006 addressed to the Certificate Holder from the Director, advising that Alberta Environment had conducted a surface audit of the site and as a result of the audit, cancelled the Certificate. The Board acknowledged receipt of the letter on December 1, 2006 stating that it was in the process of mediating this appeal and was not aware that an audit had been conducted on the site. The Board requested the Participants advise the Board if they would like to continue with their mediation discussions with the Mediator. The Board also asked the Certificate Holder if they would be filing a Notice of Appeal with the Board in relation to the cancellation of the Certificate.

[15] On December 7, 2006, the Board received a letter from the Certificate Holder advising that they wished to continue discussions with the Mediator, and would not be appealing the cancellation of the Certificate.

[16] On December 21, 2006, further to the October 20, 2006 conference calls with the Mediator, and the December 7, 2006 letter from the Certificate Holder, the Board wrote to the Participants advising that a mediation meeting would be conducted via conference call between the Appellant, Certificate Holder and the Director. The Board also prepared a Participants' Agreement to Mediate which was sent to all Participants for their signature on December 21, 2007. All Participants signed the Participants' Agreement to Mediate and returned their respective copies to the Board.

II. MEDIATION MEETING

[17] Pursuant to section 11, of the Environmental Appeal Board Regulation, A.R. 114/93, the Board conducted a mediation meeting by conference call on February 16, 2007, with the Mediator.

[18] In conducting the mediation meeting, the Mediator reviewed the appeal and the mediation process and explained the purpose of the mediation meeting.

[19] Following productive and detailed discussions during and after the mediation meeting the Participants reached an agreement. As agreed to by the Participants, the Board subsequently forwarded a Resolution to the Certificate Holder and the Appellant for their signatures. The Certificate Holder and the Appellant signed the Resolution on July 10 and 18, 2007 and returned their respective copies to the Board. In signing the Resolution, the Appellant withdrew his appeal.

III. DECISION

[20] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, and based on the withdrawal of the appeal by the Appellant, the Board hereby discontinues its proceedings in Appeal No. 05-043 and closes its file.

Dated on August 13, 2007, at Edmonton, Alberta.

Steve E. Hrudey, FRSC, PEng
Chair