

ALBERTA ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – June 16, 2008

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 appeals filed by Jens Peter Harwerth with respect to *Environmental Protection and Enhancement Act* Amending Approval No. 73534-00-06 issued to Imperial Oil Resources Limited, Amending Approval No. 68492-00-10 issued to EnCana Corporation, Amending Approval No. 68023-00-04 issued to EnCana Corporation, Amending Approval 11115-03-02 issued to Canadian Natural Resources Limited, Amending Approval No. 147753-00-02 issued to Husky Oil Operations Limited, and Amending Approval No. 78161-00-01 issued to Blackrock Ventures Inc. (now Shell Canada Ltd.), by the Director, Northern Region, Regional Services, Alberta Environment.

Cite as: *Harwerth v. Director, Northern Region, Regional Services, Alberta Environment, re: Imperial Oil Resources Limited, EnCana Corporation, Canadian Natural Resources Limited, Husky Oil Operations Limited, and Blackrock Ventures Inc. (now Shell Canada Ltd.)* (16 June 2008), Appeal Nos. 07-088-093-DOP (A.E.A.B.).

I. BACKGROUND

[1] On April 30, 2007, the Director, Northern Region, Regional Services, Alberta Environment (the “Director”), issued the following Amending Approvals (collectively the “Amending Approvals”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, to the following Approval Holders (collectively, the “Approval Holders”):

Amending Approval No. 73534-00-06 issued to Imperial Oil Resources Limited (“Imperial Oil”) authorizing the construction, operation and reclamation of the Cold Lake enhanced recovery in-situ oil sands or heavy oil processing plant and oil production site near Cold Lake, Alberta;

Amending Approval No. 68492-00-10 issued to EnCana Corporation (“EnCana”) authorizing the construction, operation and reclamation of the Foster Creek enhanced recovery in-situ oil sands or heavy oil processing plant and oil production site near Cold Lake, Alberta;

Amending Approval No. 68023-00-04 issued to EnCana authorizing the construction, operation and reclamation of the Foster Creek enhance recovery in situ heavy oil plant, near Cold Lake, Alberta;

Amending Approval No. 11115-03-02 issued to Canadian Natural Resources Limited (“CNRL”) authorizing the construction, operation and reclamation of the Primrose and Wolf Lake enhanced recovery in-situ oil sands and heavy oil processing plant and oil production site near Cold Lake, Alberta;

Amending Approval No. 147753-00-02 issued to Husky Oil Operations Limited (“Husky Oil”) authorizing the construction, operation and reclamation of the Tucker enhanced recovery in-situ oil sands or heavy oil processing plant and oil production site near Cold Lake, Alberta; and

Amending Approval No. 78161-00-01 issued to Blackrock Ventures Inc. (“Blackrock”) authorizing the construction, operation and reclamation of the Hilda Lake enhanced recovery in-situ oil sands or heavy oil processing plant and oil production site near Hilda Lake, Alberta.

The Amending Approvals incorporate the Lakeland Industry and Community Association Air Quality Monitoring Program network.

[2] Notices of Appeal, in relation to the Amending Approvals, were received by the Board on May 24, 2007, June 1 and June 8, 2007, from Ms. Gail Wolfe on behalf of herself and

the Cold Lake Fibromyalgia Support Group, Ms. Inez Stone on behalf of herself and the Ethel Lake Interveners, Ms. Sally Ulfsten, Ms. Rachel Stone, Mr. George Elchuk, Ms. Mary Anne Leroux, Mr. David Lee, Ms. Cathy Urlacher, Ms. Ruth T. Sywak, Mr. David Stone, Mr. Andy Leroux, Mr. David Yoshida, Mr. Jens Peter Harwerth, Ms. Marinda Stander and Ms. Barbara Johnson.¹

[3] This Discontinuance of Proceeding deals only with the Notices of Appeal filed by Mr. Jens Peter Harwerth (07-088-093) (the “Appellant”).

[4] The Board wrote to the Appellant, the Approval Holders and the Director (collectively the “Participants”) acknowledging receipt of the Notice of Appeal and notifying the Approval Holders, and the Director of the appeals. The Board also requested the Director provide the Board with a copy of the records (the “Record”) relating to the Amending Approvals, and that the Participants provide available dates for a mediation meeting, preliminary meeting or hearing. On July 23, 2007, the Board wrote to the Lakeland Industry and Community Association (“LICA”) notifying them of the appeals because the Amending Approvals incorporate the LICA Air Quality Monitoring Program network.

[5] 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.

[6] The Board received a copy of the Record on July 3, 2007, and provided a copy to the Participants on July 12, 2007.

¹ The appeals of Ms. Gail Wolfe, Ms. Cathy Urlacher, Ms. Ruth Sywak, Mr. David Lee, and David Yoshida were withdrawn. See: *Wolfe et al. v. Director, Northern Region, Regional Services, Alberta Environment, re: Imperial Oil Resources Limited, EnCana Corporation, Canadian Natural Resources Limited, Husky Oil Operations Limited, and Blackrock Ventures (now Shell Canada Ltd.)* (07 August 2007), Appeal Nos. 07-022-027, 034-039 and 094-099-DOP (A.E.A.B.); *Lee. v. Director, Northern Region, Regional Services, Alberta Environment, re: Imperial Oil Resources Limited, EnCana Corporation, Canadian Natural Resources Limited, Husky Oil Operations Limited, and Blackrock Ventures (now Shell Canada Ltd.)* (29 October 2007), Appeal Nos. 07-082-087-DOP (A.E.A.B.); *Yoshida v. Director, Northern Region, Regional Services, Alberta Environment, re: Imperial Oil Resources Limited, EnCana Corporation, Canadian Natural Resources Limited, Husky Oil Operations Limited, and Blackrock Ventures Inc. (now Shell Canada Ltd.)* (25 February 2008), Appeal Nos. 07-076–081-DOP (A.E.A.B.); and *Johnson v. Director, Northern Region, Regional Services, Alberta Environment, re: Imperial Oil Resources Limited, EnCana Corporation, Canadian Natural Resources Limited, Husky Oil Operations Limited, and Blackrock Ventures Inc. (now Shell Canada Ltd.)* (25 April 2008), Appeal Nos. 07-106–111-DOP (A.E.A.B.).

[7] The Board received a letter dated July 2, 2007, from the Appellant requesting a Stay in relation to the Amending Approvals. The Board responded to the Appellant's letter on July 9, 2007, requesting a response to the following questions in relation to the Stay:

- “1. What are the serious concerns that the Appellants have that should be heard by the Board?
2. Would the Appellants suffer irreparable harm if the Stay is refused?
3. Would each of the Appellants suffer greater harm if the Stay was refused pending a decision of the Board, than Imperial Oil Resources Limited, EnCana Corporation, Canadian Natural Resources Limited, Husky Oil Operations Limited and Shell Canada Ltd., would suffer from the granting of a Stay?; and
4. Would the overall public interest warrant a Stay?”

[8] A response was received in relation to the Stay request however, on October 4, 2007, at the request of the Participants, the Board put the Stay into abeyance and proceeded to schedule a mediation meeting.

[9] On November 20, 2007, the Board wrote to the Participants advising that the Board had set the mediation meeting for February 5, 2008. However, on January 31, 2008, the mediation meeting was postponed to allow time for a “Network Review” to be completed. The Network review was to provide an independent review of the LICA Air Quality Monitoring Program, including a review of the existing Network, a statistical analysis for each monitoring station and a list of draft recommendations and changes for the network. Participants were asked to provide their available dates for the mediation meeting for March and April 2008, by February 15, 2008.

[10] Between February 5, 2008 and March 4, 2008, the Board received available dates for the mediation meeting from the Participants, and on March 4, 2008 the Participants as well as the Board received a copy of the Network Review of the LICA Air Quality Monitoring Program. On March 4, 2008, the Board advised the Participants to hold April 11, 2008 for the mediation meeting and acknowledged receipt of the Network Review report.

[11] On March 10, 2008, the Board confirmed the mediation meeting would be held on April 11, 2008, and stated that the April 11, 2008 date was chosen as it was the date most commonly available to among those who provided the Board with their schedules.

[12] Pursuant to section 11 of the Environmental Appeal Board Regulation, A.R. 114/93, the Board conducted the mediation meeting on April 11, 2008 in Cold Lake, Alberta, with Mr. Ron Peiluck, Vice-Chair, as the presiding Mediator (the “Mediator”).

[13] In conducting the mediation meeting, the Mediator reviewed the appeals and the mediation process and explained the purpose of the mediation meeting. He then circulated copies of the Participants’ Agreement to Mediate. The Participants signed the Agreement and discussions ensued.

[14] The mediation meeting was unsuccessful and on April 16, 2008, the Board wrote to the Participants advising that the Board has ended the mediation process and proceeded to formally address the appeals. The Participants were requested to provide any preliminary motions by April 28, 2008.

[15] Preliminary Motions were received and the Board scheduled a written submission process, requesting initial submissions by June 11, 2008, response submissions by June 25, 2008, and rebuttal submissions by July 9, 2008.

[16] The initial submission was received on June 12, 2008, however, the Board also received a letter from the Appellant advising he had sold his property and “... cannot any longer be part of the mediation/hearing process.”

II. DECISION

[17] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, and based upon the withdrawal of the appeals by Mr. Jens Peter Harwerth, the Board hereby discontinues its proceedings in Appeal Nos. 07-088-093 and closes those files.

Dated on June 16, 2008, at Edmonton, Alberta.

“original signed by”

Dr. Steve E. Hrudey, FRSC, PEng
Chair