

ALBERTA ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – September 5, 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 an appeal filed by Devon Canada
Corporation with respect to the cancellation of *Environmental
Protection and Enhancement Act* Reclamation Certificate No.
00204365-00-00 by the Director, Northern Region, Environmental
Management, Alberta Environment.

Cite as: *Devon Canada Corporation v. Director, Northern Region, Environmental
Management, Alberta Environment*, (05 September 2008), Appeal No. 07-135-
DOP (A.E.A.B.).

I. BACKGROUND

[1] On October 2, 2007, the Director, Northern Region, Environmental Management, Alberta Environment (the “Director”), cancelled Reclamation Certificate No. 00204365-00-00 (the “Certificate”) issued on April 2, 2004 to Devon Canada Corporation under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, in relation to the ARL 1D Cecil 1-5-85-10 well near Cleardale, Alberta, in the Municipal District of Clearhills No. 21.

[2] On November 2, 2007, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Devon Canada Corporation (the “Appellant”), appealing the cancellation of the Certificate.

[3] On November 6, 2007, the Board wrote to the Appellant and the Director (collectively the “Participants”) acknowledging receipt of the Notice of Appeal, and notifying the Director of the appeal. The Board 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 motions hearing or a 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 14, 2007, the Board received a letter from the Appellant providing information on the landowners. The Board wrote to Mr. Frank and Ms. Marie Zacharias (the “Landowners”) on November 14, 2007, notifying them of the appeal, and requesting they advise if they wished to participate in the appeal.

[6] On November 21, 2007, the Board received a copy of the Record from the Director, and on November 29, 2007, provided a copy of the Record to the Appellant and the Landowners.

[7] On December 18, 2007, the Landowners advised the Board, via a telephone call, that they wished to participate in the appeal, and provided their available dates for a mediation meeting.

[8] On January 14, 2008, the Board wrote to the Participants and the Landowners, advising that the mediation meeting was scheduled for February 27, 2008. On January 25, 2008, the Board received an e-mail from the Director advising that he was no longer available for the February 27, 2008 mediation meeting. In response, the Board sent a letter to the Participants and the Landowners on January 25, 2008 requesting the Appellant and the Landowners provide their available dates for March 2008.

[9] On February 22, 2008, the Board received a letter from the Director, stating:

“Please be advised that Alberta Environment wishes to withdraw its agreement to mediate the above matter. We respectfully request that this matter be set for a hearing...”

[10] On February 26, 2008, further to the Director’s request and upon reviewing available dates provided by the Participants and the Landowners, the Board scheduled the hearing for March 26, 2008.

[11] The Board placed a Notice of Hearing in the Fairview Post on March 4, 2008, regarding the hearing. A news release was also forwarded to the Public Affairs Bureau, placed on the Alberta Government and Board websites, and distributed to 95 daily newspapers, radio stations and television stations within Alberta. The Notice of Hearing contained a deadline of March 14, 2008 for applications from others to make representations before the Board. The Board did not receive any intervenor applications.¹

[12] On March 5, 2008, the Board received a letter from the Appellant stating:

“It is our understanding that mediation is the first recommended avenue of dispute resolution when conflict occurs between parties. We feel that mediation in this case would allow an attempt to properly manage this dispute rather than a full hearing.

¹ The Board placed a further advertisement in the Fairview Post on June 17, 2008 regarding the re-scheduling of the Hearing. A news release was also forwarded to the Public Affairs Bureau, placed on the Alberta Government and Board websites, and distributed to 95 daily newspapers, radio stations and television stations within Alberta.

As Devon Canada Corporation was already investigated by AENV on this matter in January of 2006, we are not certain that a full hearing is further warranted at this time.

We feel that mediation in this case would be more likely to preserve a good relationship and hopefully maintain that good relationship to the benefit of all parties.

We respectfully request an explanation as to the reason for the withdrawal of Alberta Environment from mediation in favor of a hearing.”

The Board requested the Director provide his comments to the Board with respect to the Appellant’s letter. The Board’s March 5, 2008 letter stated:

“For your information, all participants are free to provide the Board with their requests for process and the Board will make the final decision on how it will proceed with an appeal. Mediation is a voluntary process which is only successful and productive if all participants are willing to participate. The Board scheduled the Hearing because Alberta Environment indicated they did not want to participate in mediation. The Board requests Mr. Bachelder provide any comments to the Board regarding Mr. Pelletier’s letter by March 7, 2008.”

[13] On March 11, 2008, the Board received a letter from the Director stating:

“While mediation is often an effective dispute resolution instrument, in this particular situation we do not believe that mediation would succeed. The Director has made a decision based on the fact that when Alberta Environment inspectors inspected the land in question, the reclamation efforts did not meet the requirements.

The Director is obligated to ensure that the land is properly reclaimed. There is simply no room to negotiate on regulatory standards. Either the company meets the established reclamation criteria for the land or it doesn’t, and in this case the criteria were not met.

The Director remains open to engaging in an informal dialogue with Devon Canada Corporation in order to more fully explain the department’s position.”

[14] On March 12, 2008, the Board received a letter from the Director requesting the Board adjourn the hearing. The Director’s letter stated:

- “...1. the Board has recently heard the matter of Talisman Energy Inc., Appeal No. 07-133, and a decision from the Minister will most likely not be released prior to the March 26, 2008 hearing of the Devon Canada appeal;
- 2. the decision in the Talisman hearing could have an impact upon the outcome of the Devon appeal;
- 3. an adjournment would facilitate informal discussion between the parties.”

The Board also received a letter from the Appellant on March 12, 2008 requesting an adjournment, and on March 14, 2008, the Board granted the adjournment and advised that the hearing would be re-scheduled as soon as possible. The Participants and Landowners were asked to provide their available dates for May and June 2008.

[15] On April 1, 2008, the Board provided the Participants and Landowners with a copy of its Report and Recommendations issued on March 18, 2008 in relation to the Talisman Energy appeal.²

[16] On May 9, 2008 the Board received a status report from the Appellant requesting the Board re-schedule the hearing for the fall of 2008. The Board granted the request, and on June 4, 2008, in consultation with the Participants, the Board re-scheduled the hearing for October 2, 2008. In its letter of June 4, 2008 to the Participants and the Landowners, the Board advised that further to a February 25, 2008 telephone conversation with the Landowners, the Board understood that the Landowners did not wish to participate in the hearing.

[17] On August 29, 2008, the Board received an e-mail from the Appellant withdrawing their appeal.

II. DECISION

[18] 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. 07-135 and closes its file.

Dated on September 5, 2008, at Edmonton, Alberta.

Dr. Steve E. Hrudey, FRSC, PEng
Chair

² *Talisman Energy Inc. v. Director, Northern Region, Environmental Management, Alberta Environment* (18 March 2008), Appeal No. 07-133-R (A.E.A.B.).