ALBERTA
ENVIRONMENTAL APPEALS BOARD

Report and Recommendations

Date of Report and Recommendations – January 10, 2012

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 Cenovus FCCL Ltd. with respect to Approval No. 48522-01-00 issued under the *Environmental Protection and Enhancement Act* to Cenovus FCCL Ltd. by the Director, Northern Region, Operations Division, Alberta Environment and Water.

Cite as: *Cenovus FCCL Ltd. v. Director, Northern Region, Operations Division, Alberta Environment and Water* (10 January 2012), Appeal No. 11-022-R (A.E.A.B).

MEDIATION MEETING BEFORE: Dr. Nick Tywoniuk, Board Member.

APPEARANCES:

Appellant: Mr. Mike Pittman, Cenovus FCCL Ltd., Ms. Nishi Thusoo, Cenovus FCCL Ltd., and Mr. Tony Jackson, Cenovus FCCL Ltd., represented by Mr. Ryan Rodier, Osler Hoskin & Harcourt.

Director: Mr. Patrick Marriott, Director, Northern Region, Operations Division, Alberta Environment and Water, Mr. Amit Banerjee, Alberta Environment and Water, and Ms. Ashton Stewart, Alberta Environment and Water, represented by Ms. Wendy Thiessen, Alberta Justice.

Board Staff: Mr. Gilbert Van Nes General Counsel and Settlement Officer.

EXECUTIVE SUMMARY

Alberta Environment and Water issued an Approval to Cenovus FCCL Ltd. for the Christina Lake enhanced recovery in-situ oil sands processing plant and oil production site, near Conklin, Alberta.

Cenovus FCCL Ltd. filed an appeal expressing concerns about the wildlife monitoring requirements contained in the Approval.

The Board held a mediation meeting on December 8, 2011, following which a resolution was reached and carried out by the participants. The Board recommends that the Minister of Environment and Water accept the resolution varying the conditions in the Approval.

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I. INTRODUCTION

[1] This is the Environmental Appeals Board's Report and Recommendations to the Minister of Environment and Water regarding the appeal by Cenovus FCCL Ltd.

[2] Alberta Environment and Water issued an Approval to Cenovus FCCL Ltd. for the Christina Lake enhanced recovery in-situ oil sands processing plant and oil production site. Cenovus FCCL Ltd. appealed the Approval objecting to conditions 1, 5, 8 and 12 in Schedule VIII Wildlife Monitoring of the Approval, citing that the obligations imposed are unreasonable and precludes or delays Cenovus FCCL Ltd. from carrying out activities, which are the subject of an Energy Resources and Conservation Board approval.

[3] The Board held a mediation meeting on December 8, 2011, following which a resolution was reached by the participants.

II. BACKGROUND

[4] On July 29, 2011, the Director, Northern Region, Operations Division, Alberta Environment and Water (the "Director"), issued Approval No. 48522-01-00 (the "Approval") under the *Environmental Protection and Enhancement Act,* R.S.A. 2000, c. E-12 ("EPEA"), to Cenovus FCCL Ltd. for the Christina Lake enhanced recovery in-situ oil sands processing plant and oil production site, located at 16-76-6-W4M, near Conklin, Alberta.

[5] On August 29, 2011, the Environmental Appeals Board (the "Board") received a Notice of Appeal from Cenovus FCCL Ltd. (the "Appellant") appealing the Approval. The Appellant expressed concerns about the wildlife monitoring requirements contained in the Approval.

[6] On August 31, 2011, the Board wrote to the Appellant and the Director (the "Participants") 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 Participants provide available dates for a mediation meeting, preliminary motions hearing, or hearing.

[7] On October 5, 2011, the Board received a copy of the Record from the Director, and on October, 2011 forwarded a copy to the Appellant.

[8] On October 14, 2011, in consultation with the Participants, the Board scheduled the mediation meeting for October 25, 2011, in Calgary, Alberta. On October 19, 2011, at the request of the Participants, the mediation meeting was re-scheduled to December 8, 2011.

III. MEDIATION MEETING

[9] Pursuant to section 11 of the Environmental Appeal Board Regulations, Alta Reg.114/93, the Board conducted a mediation meeting in Calgary, Alberta, on December 8, 2011, with Dr. Nick Tywoniuk, Board Member, as the presiding mediator (the "Mediator").

[10] In conducting the mediation meeting, the Mediator reviewed the appeal and the mediation process and explained the purpose of the mediation meeting. He then circulated copies of the Participants' Agreement to Mediate. All those in attendance signed the Participants' Agreement to Mediate.

[11] Following productive and detailed discussions, a resolution evolved at the mediation meeting, which was subsequently amended and finalized by the Participants on December 22, 2011 and is attached as pages 4 to 8 of this Report and Recommendations.

[12] The Participants carried out the substantive terms of the resolution. Then, in accordance with the resolution, in a letter dated December 22, 2011, the Appellant requested that the Board recommend to the Minister of Environment and Water that the conditions of the Approval be varied as detailed in the resolution. Finally, also in accordance with the resolution, in a letter dated December 22, 2011, the Director advised the Board he consented to the Appellant's request to vary the conditions in the Approval as detailed in the resolution.

IV. RECOMMENDATIONS

[13] In accordance with section 99 of the *Environmental Protection and Enhancement Act*, the Board recommends that the Minister of Environment and Water vary Approval No. 48522-01-00 in accordance with the resolution reached by the Participants.

[14] Further, with respect to sections 100(2) and 103 of EPEA, the Board recommends that copies of this Report and Recommendations, and the decision by the Minister, be sent to the following Participants:

- Mr. Mike Pittman, Cenovus FCCL Ltd.;
- Mr. Ryan Rodier, Cenovus FCCL Ltd.; and
- Ms. Wendy Thiessen, Alberta Justice, on behalf of Mr. Patrick Marriott, Director, Northern Region, Operations Division, Alberta Environment and Water.

Dated on January 10, 2012, at Edmonton, Alberta.

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Delmar W. Perras
Chair

V. RESOLUTION