

ALBERTA  
ENVIRONMENTAL APPEAL BOARD

Report and Recommendations

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Dates of Mediations – March 30 and June 25, 2001  
Date of Report and Recommendations – July 9, 2001

**IN THE MATTER OF** sections 84, 85 and 87 of the  
*Environmental Protection and Enhancement Act*, S.A. 1992, c.E-  
13.3;

**-and-**

**IN THE MATTER OF** an appeal filed by Talisman Energy Inc.  
with respect to the refusal of Mr. Russell Bardak, Inspector,  
Northwest Boreal Region, Alberta Environment, to issue a  
reclamation certificate for wellsite and access road on SE 8-74-7  
W6M.

Cite as: *Talisman Energy Inc. v. Inspector, Northwest Boreal Region, Alberta  
Environment.*

**MEDIATION MEETING BEFORE**

Dr. M. Anne Naeth

**APPEARANCES**

Appellant: Mr. Nevin Wolf, Talisman Energy Inc., Mr. Rob Staniland, Talisman Energy Inc., and Mr. Jeff Beigel, Sharp Environmental (2000) Ltd.

Inspector: Mr. Russell Bardak, Inspector, Northwest Boreal Region, Alberta Environment, Mr. Gary Sasseville, Approval Manager, Alberta Environment, Mr. Randy Didrikson, Alberta Justice, Mr. Darin Stepaniuk, Alberta Justice.

Others: Mr. Peter Eggers (land occupant), Mr. Leonard Leskiw (non-party expert).

Board Staff: Ms. Lisa Awid.

## **EXECUTIVE SUMMARY**

Following an inquiry, the Inspector, Northwest Boreal Region, Alberta Environment refused to issue a reclamation certificate to Talisman Energy Inc. for a wellsite and access road on SE 8-74-7 W6M, near LaGlance, Alberta. The Inspector indicated that the reclamation certificate was refused due to landscape parameters failing to meet reclamation criteria. Talisman Energy Inc. appealed this decision.

In consultation with the parties, including the land occupant, Mr. Peter Eggers, the Board held a Mediation meeting/settlement conference in Grande Prairie, Alberta and a continued Mediation meeting/site inspection near LaGlance, Alberta following which an agreement was reached by all parties. The agreement indicates that the land reclamation criteria has been met and that a reclamation certificate should be issued.

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## **I. BACKGROUND**

[1] On December 13, 2001, the Inspector, Northwest Boreal Region, Alberta Environment (the “Inspector”) refused to issue a reclamation certificate to Talisman Energy Inc. (“Talisman”) for a wellsite and access road on SE 8-74-7 W6M, near LaGlance, Alberta. The Inspector indicated that as a result of an inquiry held on September 20, 2000, the Reclamation Certificate was refused due to landscape parameters failing to meet reclamation criteria<sup>1</sup>.

[2] On January 15, 2001, the Environmental Appeal Board (the “Board”) received a Notice of Appeal dated January 12, 2001, regarding the refusal to issue the Reclamation Certificate from Mr. Nevin Wolf on behalf of Talisman Energy Inc. The Board acknowledged receipt of the Notice of Appeal on January 15, 2001, and at that time requested a copy of all correspondence, documents and materials relevant to this appeal (the “Record”) from the Department.

[3] According to standard practice, the Board wrote to the Natural Resources Conservation Board (the “NRCB”) and the Alberta Energy and Utilities Board (the “AEUB”) asking whether this matter had been the subject of a hearing or review under their respective Boards’ legislation. Both Boards responded in the negative.

[4] On January 29, 2001, the Board received a copy of the Record and forwarded a copy to Talisman. The parties were asked if they wished to participate in a Mediation meeting under section 11 of the Environmental Appeal Board Regulation<sup>2</sup> and if there were any other persons that may have an interest in this appeal.

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<sup>1</sup> Inspector’s Inquiry Results dated 11 December 2000 state “Contour and roughness of wellsite access road does not conform or blend with adjacent contours or is consistent with present or intended land use.”

<sup>2</sup> Section 11 of the Environmental Appeal Board Regulation AR 114/93 states:  
11 Where the Board has determined the parties to the appeal, the Board may, prior to conducting a hearing of the appeal, on its own initiative or at the request of any of the parties, convene a meeting of the parties and any other interested persons the Board considers should attend, for the purpose of  
(a) mediating a resolution of the subject matter of the notice of appeal, or  
(b) determining any of the matters referred to in section 13.

[5] On January 31, 2001, the Board wrote to the registered landowner, Mr. Oscar Nordhagen, to notify him of the appeal, provide him a copy of the appeal documents and ask if he wished to be involved in this matter. After discussions with Board staff of February 8, 2001, Mr. Nordhagen advised that he did not wish to be involved in a Mediation or hearing, but would like to be copied on all correspondence for his information only.

[6] On February 5, 2001, Talisman advised the Board that it would be agreeable to a Mediation meeting and submitted available dates. Talisman also provided the Board with a proposed agenda and lastly, indicated that in its opinion, the land occupant, Mr. Peter Eggers, would have an interest in the appeal.

[7] On February 14, 2001, legal counsel for the Inspector advised that it would be willing to participate in a Mediation meeting/settlement conference and agreed that Mr. Eggers would have a direct interest in this matter. The letter referred to Mr. Wolf's proposed agenda, stating: "The Department does not accept the scope of the contemplated agenda set out by Mr. Wolf. Notably, mediation should not be restricted to considerations of the well site access road, but must also include the well site." Lastly, the letter requested the Board to advise if Talisman would provide the Inspector with any additional on-site biophysical data subsequent to the September 20, 2000, inquiry if collected. The Board acknowledged this letter on February 20, 2001, and also requested comments by Talisman by February 28, 2001.

[8] On February 20, 2001, the Board wrote to Mr. Eggers to notify him of the appeal, provide him a copy of the appeal documents and ask if he wished to be involved in this matter. After discussions with Board staff on March 5, 2001, Mr. Eggers confirmed that he wished to participate in this appeal and any Mediation meeting/settlement conference if held in Grande Prairie, Alberta.

[9] The Board received a letter of February 26, 2001, from Talisman in response to the Inspector's letter of February 20, 2001. Talisman disagreed with expanding the scope of the

Mediation beyond the extent of the Decision and indicated that the "...access road contour and roughness is the only issue which should be discussed at any Mediation meetings." Regarding the requested biophysical data, Talisman's letter advised that the data should only be of concern as it relates to specific information regarding landscape discussion on the access road and that since the vegetation parameter was ultimately determined to meet the criteria, the data are not relevant to this Mediation regardless of how positive the results were. The Board acknowledged Talisman's letter on March 5, 2001, and requested comments from the Inspector by March 8, 2001.

[10] On March 8, 2001, the Inspector provided comments to the Board in response to Talisman's February 26, 2001 letter. The letter advised that it "...is the Department's position that if the Board were to issue a reclamation certificate it should be satisfied that all of the specified land, not just the access road, has been reclaimed to an equivalent land capability ... It is submitted that the purpose of the Mediation should be to facilitate a full and frank discussion of all issues regarding the question of whether the whole site has been properly reclaimed." In conclusion, the letter proposes a contemplated agenda to be discussed at the Mediation meeting/settlement conference.

[11] The Board also received a letter from Mr. Eggers on March 8, 2001, advising that he was agreeable to the March 30, 2001, date for the Mediation meeting/settlement conference if held in Grande Prairie, Alberta. Mr. Eggers' letter also advised that it "... is absolutely imperative that the well site becomes part of the discussion at the mediation hearing."

[12] On March 12, 2001, the Board wrote to the parties advising that after reviewing all responses received, it has decided to conduct a Mediation meeting/settlement conference on March 30, 2001, in Grande Prairie, Alberta with Dr. Anne Naeth as the presiding Board Member. In her capacity as a professor at the University of Alberta, Dr. Naeth instructed one of the parties, Mr. Nevin Wolf in two of his undergraduate degree courses. The Board, therefore, requested the parties provide any objections with respect to Dr. Naeth's role as mediator with respect to this appeal. On March 19 and 26, 2001, Talisman and the Inspector respectively, advised that they

had no objection. No response was received from Mr. Eggers. The letter also explained that the Mediation meeting/settlement conference was not a hearing, but the parties may wish to seek legal advice before attending. In conclusion, the Board attached a copy of the "Participant's Agreement to Mediate" which would be signed by the parties on March 30, 2001, and a copy of the Notice of Mediation Meeting/Settlement Conference and Public Hearing advertisement that would appear in the *Grande Prairie Herald* on March 21, 2001.

## **II. THE MEDIATION MEETING/SETTLEMENT CONFERENCE**

[13] Pursuant to section 11 of the Environmental Appeal Board Regulations, A.R. 114/93, the Board conducted a Mediation meeting/settlement conference in Grande Prairie, on March 30, 2001, with Dr. Anne Naeth as presiding Board member.

[14] According to the Board's standard practice, the Board called the Mediation meeting to facilitate through settlement conference the resolution of these appeals; or failing that, to structure procedural arrangements for the oral hearing. The Board invited representatives from each party to participate in the Mediation meeting/settlement conference.

[15] In conducting the Mediation meeting/settlement conference, Dr. Naeth circulated copies of the "Participants' Agreement to Mediate", discussed the appeal and Mediation process and explained the purpose of the Mediation meeting. At the conclusion of her discussion, all participants signed the agreement.

[16] Following productive and detailed discussions, the parties agreed to a continued Mediation/settlement conference and site inspection conducted by a non-party expert which was scheduled for June 25, 2001. At the June 25, 2001 on-site meeting, a resolution evolved and the parties signed the attached settlement (page 10 of this report).

### III. BOARD'S ANALYSIS OF MEDIATION

[17] The parties and the non-party expert agreed that the site met the current reclamation criteria. However, a lengthy discussion emerged about the issue of microtopography or microrelief.<sup>3</sup> The Board highlights this issue because the non-party expert at the Mediation stressed the fact that the current reclamation criteria for wellsites do not adequately address this issue. This caused him difficulties in making his assessment since the site met current criteria, thus the company had fulfilled their legal obligations, yet the farmer's concerns were reasonable.

[18] Microtopography will continue to be a problem in other land reclamation situations where a reclamation certificate is being sought on lands under conservation tillage,<sup>4</sup> gravity irrigation or horticultural cropping with root crops where depth control is critical. When the current criteria were developed this was not a common issue. When a wellsite is reclaimed to current criteria it will potentially have an impact on the conservation cycle. In this cycle, a tillage system is used whereby crop residues are not incorporated. Thus crop residues will decompose at a rate that allows little bare soil to be exposed. If this cycle is broken through tillage to reduce microtopographic differences after reclamation, the build-up of organic material will be reduced in that area. Subsequent seeding and harvest with equipment designed for conservation tillage systems could be impacted in that the microtopographic differences could affect the evenness with which seeding and harvest can occur. The absence of the mulch could affect soil moisture and temperature. All of this, in turn, could affect germination, emergence and subsequent plant development. Similar problems may occur under gravity irrigation and when using horticultural root crops where depth control at seeding and harvest are critical.

[19] The parties were concerned that the current criteria does not adequately address this issue. Those farming the land (occupants or landowners) may oppose the issuance of a reclamation certificate because of microtopography concerns, but in many cases there may not be an option for them to pursue to have it addressed since the land will meet reclamation criteria.

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<sup>3</sup> Small scale, local difference in topography, including mounds, swales or pits only a few metres in diameter and with elevation differences less than 10 cm.

<sup>4</sup> Any tillage system that reduces soil and/or water loss mainly through retention of surface crop residues, compared to clean tillage where all residues are incorporated into the soil. It considers elements such as crops to be grown, soil type, equipment, fertilizer, herbicides and their interactions.

The operators responsible for the reclamation will not have to deal with microtopographic issues because they are not required to be addressed in the current criteria. If the criteria were to reflect this issue, operators could take measures at the time of wellsite construction and in the early stages of reclamation to better address the concerns. An additional concern is that these microtopographic issues may not surface until some subsidence has occurred on the reclaimed site. This is a problem in that operators do not want to delay obtaining a reclamation certificate. Compensation for time for tillage by the farmer may be a way to avoid postponing certification another year or two. If more serious measures such as importing material or material movement are required, the operator would need to be responsible for it.

[20] The current criteria permits inconsistency in how different land reclamation inspectors address microtopographic issues. Thus, there is a need for definitions in the criteria, not only on contour, but on microtopography. With nothing in the criteria on how to deal with microtopography, there is ample opportunity for different decisions from different inspectors. It would help inspectors to have a protocol that could be followed for conservation tillage versus regular tillage situations.

[21] The parties also discussed how increased communication between reclamation inspectors, landowners and operators should be encouraged to ensure that legitimate concerns are heard and dealt with to avoid the necessity of Mediations and hearings on this issue.

#### **IV RECOMMENDATIONS**

[22] The Board recommends that the Minister of Environment reverse the decision of the Inspector and issue a Reclamation Certificate to Talisman Energy Inc. in accordance with the resolution contained herein. Attached for the Minister's consideration is a draft Ministerial Order implementing this recommendation.

[23] Further, with respect to section 92(2) and 93 of *the Environmental Protection and Enhancement Act*, the Board recommends that copies of this Report and Recommendations and of any decision by the Minister be sent to the following parties:

- Talisman Energy Inc., represented by Mr. Nevin Wolf;
- Mr. Peter Eggers;
- Mr. Russell Bardak, Inspector, Northwest Boreal Region, Alberta Environment, represented by Mr. Randy Didrikson, Alberta Justice and Mr. Darin Stepaniuk, Alberta Justice;
- Mr. Oscar Nordhagen; and
- Individual Responsible for Reclamation Criteria, Mr. Chris Powter, Alberta Environment.

Dated on July 9, 2001, at Edmonton, Alberta.

“Original signed by”

Dr. M. Anne Naeth

**V. DRAFT MINISTERIAL ORDER**

**Ministerial Order  
/2001**

*Environmental Protection and Enhancement Act*  
S.A. 1992, c.E 13.3

**Order Respecting EAB Appeal No. 01-006**

I, Dr. Lorne Taylor, Minister of Environment, pursuant to section 92(1) of the Environmental Protection and Enhancement Act, S.A. 1992, c.E-13.3, make the order in the attached Appendix, being an Order respecting Environmental Appeal Board Appeal No. 01-006.

Dated at the City of Edmonton in the Province of Alberta, this \_\_\_\_ day of \_\_\_\_\_, 2001.

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Honourable Dr. Lorne Taylor  
Minister of Environment

Draft Appendix

Order Respecting Environmental Appeal Board Appeal No. 01-006

With respect to the decision of Mr. Russell Bardak, Inspector, Northwest Boreal Region, Alberta Environment, to refuse to issue a reclamation certificate for a wellsite and access road on SE 8-74-7 W6M, I, Dr. Lorne Taylor, Minister of Environment, reverse the decision of the Inspector, and order:

1. That a reclamation certificate be issued to Talisman Energy Inc. for the wellsite and access road on SE 8-74-7 W6M.