

ALBERTA ENVIRONMENTAL APPEAL BOARD

Decision

Date of Decision – April 28, 2003

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 Phillips Petroleum Resources Ltd. and Sharp Environmental (2000) Ltd., with respect to the decision of the Inspector, Northern Region, Regional Services, Alberta Environment, to refuse to issue a Reclamation Certificate to Phillips Petroleum Resources Ltd., for the GAO et al Kenzie 6-15-75-18-W5M well in the MD of Big Lakes.

Cite as: Preliminary Issue: *Phillips Petroleum Resources Ltd. v. Inspector, Northern Region, Regional Services, Alberta Environment* (28 April 2003), Appeal No. 02-144-ID1 (A.E.A.B.).

PARTIES:

Appellants: Mr. Keith Poirier, Phillips Petroleum Resources Ltd., and Mr. Jeff Biegel, Sharp Environmental (2000) Ltd.

Inspector: Ms. Carrie Fuson, Inspector, Northern Region, Regional Services, Alberta Environment, represented by Ms. Shannon Keehn, Alberta Justice.

Landowner: Mr. Con A. Dermott, Vanderwell Contractors (1971) Ltd.

EXECUTIVE SUMMARY

Alberta Environment refused to issue a Reclamation Certificate to Phillips Petroleum Resources Ltd. for the GAO et al Kenzie 6-15-75-18-W5M well in the MD of Big Lakes.

The Board received a Notice of Appeal from Phillips Petroleum Resources Ltd. and Sharp Environmental (2000) Ltd. appealing Alberta Environment's decision.

The Board held a mediation meeting in Slave Lake, Alberta, on April 11, 2003. However the mediation meeting was unsuccessful and the parties made a joint recommendation to the Board on the issue to be heard at the hearing.

The Board accepts the recommendation of the parties and the issue that will be heard at the upcoming hearing is:

“Interpretation of Alberta Environment's criteria dealing with soil textural classes, comparing the control and the wellsite, access road, and campsite.”

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I. BACKGROUND

[1] On January 20, 2003, the Inspector, Northern Region, Regional Services, Alberta Environment (the “Inspector”) refused to issue a Reclamation Certificate (the “Certificate”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (the “Act”), to Phillips Petroleum Resources Ltd. with respect to the GAO et al Kenzie 6-15-75-18-W5M well in the Municipal District of Big Lakes.

[2] On February 14, 2003, the Environmental Appeal Board (the “Board”) received a Notice of Appeal, dated February 12, 2003, from Phillips Petroleum Resources Ltd. and Sharp Environmental (2000) Ltd. (the “Appellants”) appealing the Inspector’s decision.

[3] On February 19, 2003, the Board wrote to the Appellants and the Inspector (collectively the “Parties”) acknowledging receipt of the Notice of Appeal and notifying the Inspector of the appeal. In the same letter, the Board also requested the Inspector provide the Board with a copy of the record relating to this appeal (the “Record”) and requested that the Parties provide the Board with available dates for a mediation 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 February 19, 2003, the Board wrote to Mr. Con A. Dermott, Vanderwell Contractors (1971) Ltd. (the “Landowner”) notifying him of the appeal. The Board requested that the Landowner notify the Board by March 5, 2003, if he wished to participate in the appeal. On March 4, 2003, the Landowner advised the Board that he wished to participate.

[6] On March 5, 2003, the Board received a copy of the Record from the Inspector and on March 6, 2003, forwarded a copy to the Appellants and the Landowner.

[7] The Board held a mediation meeting on April 11, 2003, in Slave Lake, Alberta. As the mediation was not successful, the Parties made a joint recommendation to the Board regarding the issue to be heard at a subsequent hearing. The issue the Parties recommended is:

“Interpretation of Alberta Environment’s criteria dealing with soil textural classes, comparing the control and the wellsite, access road, and campsite.”

II. ANALYSIS

[8] In reviewing the Notice of Appeal, the Appellants state that the Inspector failed the site due to "... a drop in textural class, suggesting the site fails to meet equivalent capability as required by legislation." They further suggest that the site meets equivalent capability in all other categories of the criteria and that the Inspector's decision places a "...potentially huge reclamation burden on Phillips Petroleum to remedy the site that meets equivalent capability."¹

[9] Under the Act, the Board has the authority to determine the issues that will be heard at a hearing. Sections 95(2), (3), and (4) of the Act state:

"(2) Prior to conducting a hearing of an appeal, the Board may, in accordance with the regulations, determine which matters included in notices of appeal properly before it will be included in the hearing of an appeal....

(3) Prior to making a decision under subsection (2), the Board may, in accordance with the regulations, give to a person who has submitted a notice of appeal and to any other person the Board considers appropriate, an opportunity to make representations to the Board with respect to which matters should be included in the hearing of the appeal.

(4) Where the Board determines that a matter will not be included in the hearing of an appeal, no representations may be made on that matter at the hearing."

[10] Although a joint recommendation of the Parties is in the public's interest as it streamlines the Board's process, the Board is not obligated to accept such submissions; the Board can not defer its decision-making obligation, under section 95 of the Act, to another party.

[11] The courts have considered joint submissions previously, usually in the context of sentencing provisions. In *R. v. G.W.C.*, the Alberta Court of Appeal recognized that joint submissions should be accepted unless they are unfit or contrary to the public interest and, if accepted, "...would bring the administration of justice into disrepute."² The Alberta Court of Appeal quoted the Manitoba Court of Appeal stating, "...while a sentencing judge has an overriding discretion to reject a joint recommendation, 'there must be a good reason to do so, particularly ... where the joint recommendation is made by experienced counsel.'"³

¹ Notice of Appeal, dated February 12, 2003.

² *R. v. G.W.C.*, [2000] A.J. No. 1585 (Alta. C.A.), at paragraph 18.

³ *R. v. G.W.C.*, [2000] A.J. No. 1585 (Alta. C.A.), at paragraph 18.

[12] Reviewing the issue presented in the recommendation of the Parties, the Board finds that the issue brought forward and jointly agreed to is an issue stated in the Notice of Appeal, and it is an issue that is concise and well defined. Therefore, the Board is of the view that the joint recommendation is consistent with the purposes enunciated in one of the original appeal issues, and thus will be heard.⁴

[13] In summary, based on the joint recommendations and having reviewed the Notice of Appeal and the Inspector's Record, the Board accepts the joint recommendation and the issue stated.

III. DECISION

[14] Pursuant to section 95(3) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, the Board determines the issue to be heard at the hearing of this appeal will be:

“Interpretation of Alberta Environment’s criteria dealing with soil textural classes, comparing the control and the wellsite, access road, and campsite.”

Dated on April 28, 2003, at Edmonton, Alberta.

“original signed by”

William A. Tilleman, Q.C., Chair

⁴ Section 2 of the Act provides:
“The purpose of this Act is to support and promote the protection, enhancement and wise use of the environment while recognizing the following:
(a) the protection of the environment is essential to the integrity of ecosystems and human health and to the well-being of society; ...
(c) the principle of sustainable development, which ensures that the use of resources and the environment today does not impair prospects for their use by future generations;
(d) the importance of preventing and mitigating the environmental impact of development and of government policies, programs and decisions;
(e) the need for Government leadership in areas of environmental research, technology and protection standards;
(f) the shared responsibility of all Alberta citizens for ensuring the protection, enhancement and wise use of the environment through individual actions;
(g) the opportunities made available through this Act for citizens to provide advice on decisions affecting the environment; ...
(j) the important role of comprehensive and responsive action in administering this Act.”

The Board believes that this agreement supports all of these purposes.