

ALBERTA
ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – April 6, 2005

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 Imperial Oil Limited and
Devon Estates Limited with respect to *Environmental Protection
and Enhancement Act* Environmental Protection Order Nos. EPO-
2003/02-SR and an undated accompanying letter directive from the
Director, and EPO-2003/03-SR issued to Imperial Oil Limited and
Devon Estates Limited by the Director, Southern Region, Regional
Services, Alberta Environment.

Cite as: *Imperial Oil Limited and Devon Estates Limited v. Director, Southern Region,
Regional Services, Alberta Environment* (6 April 2005), Appeal Nos. 03-124 and
125-DOP (A.E.A.B.).

MEDIATION MEETING BEFORE:

Dr. Frederick C. Fisher, Q.C.

APPEARANCES:

Appellants:

Imperial Oil Limited and Devon Estates Limited, represented by Mr. Ken Mills and Mr. Paul Jeffrey, Blake Cassels and Graydon LLP.

Director:

Mr. Jay Litke, Director, Southern Region, Regional Services, Alberta Environment, represented by Mr. William McDonald and Mr. Grant Sprague, Alberta Justice.

Other Participants:

Lynnview Ridge Residents Action Committee, represented by Mr. Gavin Fitch, Lawson Lundell.

Calgary Health Region, represented by Dr. Brent Friesen.

Board Staff:

Mr. Gilbert Van Nes, General Counsel and Settlement Officer, and Ms. Denise Black, Board Secretary.

EXECUTIVE SUMMARY

Alberta Environment issued Environmental Protection Order Nos. EPO-2003/02-SR and EPO-2003/03-SR to Imperial Oil Limited and Devon Estates Limited. The Environmental Protection Orders were issued in relation to the Lynnview Ridge residential subdivision in the City of Calgary, Alberta.

The Environmental Appeals Board received two notices of appeal from Imperial Oil and Devon Estates appealing the Environmental Protection Orders and an undated letter directive from Alberta Environment.

Imperial Oil, Devon Estates, and Alberta Environment agreed to work to resolve their differences through consensual mediation. Therefore, the Board selected a mediator and arranged for a series of mediation meetings commencing on October 27, 2003. The Lynnview Ridge Residents Action Committee and the Calgary Health Region participated in some of the discussions with the mediator.

As a result of an agreement reached between Imperial Oil, Devon Estates, and Alberta Environment on March 31, 2005, Alberta Environment cancelled the Environmental Protection Orders and Imperial Oil and Devon Estates withdrew their appeals. Therefore, the Board discontinued its proceedings and has closed its file.

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I. BACKGROUND

[1] On August 29, 2003, the Director, Southern Region, Regional Services, Alberta Environment (the "Director"), issued Environmental Protection Order Nos. EPO-2003/02-SR and EPO-2003/03-SR to Imperial Oil Limited and Devon Estates Limited (the "Appellants") in relation to the Lynnview Ridge residential subdivision in the City of Calgary, Alberta. The Environmental Protection Orders were issued pursuant to the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12.

[2] On September 5, 2003, the Environmental Appeals Board (the "Board") received Notices of Appeal from the Appellants appealing EPO-2003/02-SR and EPO-2003/03-SR, as well as an undated letter directive from the Director (collectively the "EPOs").

[3] On September 10, 2003, the Board wrote to the Appellants and the Director (collectively the "Parties") acknowledging receipt of the Notices of Appeal and notifying the Director of the appeals.

[4] On September 23, 2003, the Board received an e-mail from the Millican Ogden Community Association (the "MOCA") asking about the procedure to apply for intervenor status. On September 23 and 25, 2003, the Board provided this information to MOCA.

[5] On September 25, 2003, the Board received a list of potentially interested parties from the Appellants, and on the same date, notified all persons on the list of the appeals.

[6] On September 26, 2003, the Board wrote to the Parties advising that the Board decided that it would like to hold a mediation meeting with respect to these appeals. The Board's letter stated:

"...When the Lynnview Ridge matter was last before the Board, the Board expressed hope that the Appellants and the Director could '...resume their adaptive dialogue on the issues ... and come to a resolution between themselves...'. Having regard to these comments, the Board has decided that it would like to hold a mediation meeting with respect to these appeals...."

On September 29, 2003 and October 3, 2003, the Board received letters from the Parties providing their available dates for the mediation meeting. The Board responded to these letters

advising that once the date for the mediation meeting had been set, the Board would arrange for individual pre-mediation conference calls between the mediator and the mediation participants.

[7] On October 7, 2003, the Board also received letters from the Calgary Health Region (the "CHR"), MOCA, and the Lynnview Ridge Residents Action Committee (the "LRRAC") requesting an opportunity to participate in the mediation meeting. The Board forwarded the letters from the CHR, MOCA and LRRAC to the Parties and requested they provide their comments to the Board with respect to the requests to participate in the mediation meeting.

[8] On October 15, 2003, the Board received letters dated October 10, 2003 from the Appellants and the Director with respect to requests from LRRAC, the CHR, and MOCA to participate in the mediation meeting. The Appellants and the Director agreed to allow LRRAC and the CHR to participate in the mediation meeting, while at the same time, advising the Board that neither party felt that MOCA would be of assistance at the mediation meeting. The Board acknowledged receipt of the letters from the Appellants and the Director advising that in its view, the concerns of the community would be properly represented at the mediation meeting through the participation of LRRAC, the Director, and the CHR. The Board also proposed that MOCA be included in the pre-mediation conference calls. The mediator would then be in a position to communicate the substance of this conference call to the Parties, the CHR, and LRRAC at the mediation meeting to ensure that the interests of MOCA were put forward.

[9] On October 21, 2003, the Board advised the Parties that the mediation meeting would be held in Calgary, Alberta on October 27 and 28, 2003, and that the Board had selected Dr. Frederick C. Fisher, Q.C. as the mediator.

II. THE MEDIATION

[10] On October 27, 2003, Dr. Frederick C. Fisher, Q.C. convened the mediation meeting. Imperial Oil, Devon Estates, and Alberta Environment agreed to proceed with a consensual mediation pursuant to an Agreement to Mediate and asked Dr. Fisher to continue in his role as mediator pursuant to the Agreement to Mediate. The mediation meetings were

conducted on a voluntary and confidential basis to ensure full and frank discussion, and to ensure that the participants' discussion did not affect their legal positions.

[11] On March 31, 2005, Imperial Oil, Devon Estates, and Alberta Environment reached an agreement. On April 1, 2005, the Director cancelled the EPOs and on April 4, 2005, Imperial Oil and Devon Estates withdrew their appeals.

III. DECISION

[12] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act* and based on the withdrawal of the appeals by the Appellants, the Board hereby discontinues its proceedings in Appeal Nos. 03-124 and 03-125, and closes its file.

Dated on April 6, 2005, at Edmonton, Alberta.

“original signed by”

William A. Tilleman, Q.C.
Chair