

ALBERTA
ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Mediation Meeting – May 31, 2005
Date of Discontinuance of Proceedings – March 10, 2006

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 Tartan Energy Inc. with
respect to *Environmental Protection and Enhancement Act*
Environmental Protection Order No. 2005/04-NR issued to Tartan
Energy Inc., by the Director, Northern Region, Regional Services,
Alberta Environment.

Cite as: *Tartan Energy Inc. v. Director, Northern Region, Regional Services, Alberta
Environment* (10 March 2006), Appeal No. 04-124-DOP (A.E.A.B.).

I. BACKGROUND

[1] On March 16, 2005, the Director, Northern Region, Regional Services, Alberta Environment (the “Director”), issued two Environmental Protection Orders No. EPO-2005/03-NR and EPO-2005/04-NR (the “EPO’s”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 to Tartan Energy Inc. (the “Appellant”) with respect to seven well sites in Sturgeon County, Alberta. This Discontinuance of Proceedings is with respect to EPO 2005/04-NR (the “EPO”), dealing with two of the well sites. The Board issued a Report and Recommendations on June 13, 2005 with respect to EPO 2005/03-NR.¹

[2] On March 23, 2005, the Environmental Appeals Board (the “Board”) received Notices of Appeal and a request for a Stay from Tartan Energy Inc. (the “Appellant”), appealing Alberta Environment’s decision to issue the EPO’s.

[3] On March 23, 2005, the Board wrote to the Appellant and the Director acknowledging receipt of the Notices of Appeal and application for a Stay, 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 these appeals, and that the Appellant and the Director provide 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. The Natural Resources Conservation Board responded in the negative. The Board received a letter from the Alberta Energy and Utilities Board (the “AEUB”) advising:

“...The AEUB is currently considering an application made by Tartan Energy Inc. For a review, pursuant to section 39 of the *Energy Resources Conservation Act*, of the AEUB’s decision made in 1997 granting the transfer of the following well licences from Legal Oil and Gas Ltd. to Tartan Energy Inc.:

¹ *Tartan Energy Inc. v. Director, Northern Region, Regional Services, Alberta Environment* (13 June 2005), Appeal No. 04-123-R (A.E.A.B.).

Licence

No. 0006000
No. 0005712
No. 0005071
No. 0006372
No. 0003960

Location

07-21-57-25 W4M
03-21-57-25 W4M
14-16V-57-25 W4M
11-16V-57-25 W4M
10-16V-57-25 W4M”

At the same time, the AEUB also advised the Board that a decision with respect to the application would be made in due course.

[5] On March 31, 2005, the Board received a letter from the Director advising that landowners, Mr. John Peet, Mr. Brian Cornelis, and Ms. Vivian Visscher (the “Landowners”), as well as the Orphan Well Association, may have an interest in these appeals. On April 21, 2005, the Board received further information from the Director advising that landowners Mr. and Mrs. Robert Halvorson (the “Landowners”), may also have an interest in the appeals. The Board wrote to the Landowners and the Orphan Well Association, advising them of the appeals and providing them with a copy of the Board’s file.

[6] On April 6, 2005, the Board wrote to the Appellants, the Director, the Landowners, and the Orphan Well Association (the “Participants”) advising that a Preliminary Meeting would be held to address the Stay.

[7] On April 12, 2005, the Board received the Record from the Director, and on April 13, 2005 forwarded a copy to the Appellants, the Landowners and the Orphan Well Association. On April 14, 2005 the Board received a letter from Mr. and Mrs. Visscher, opposing the Stay and stating that the Stay would cause them serious prejudice. Mr. Cornelis and Mr. Peet, also opposed the Stay.

[8] On April 15, 2005, the Board wrote to the Participants advising that a Preliminary Meeting would be held in Edmonton, Alberta on April 27, 2005 to deal with the following issues.

1. The participation of the Landowners, and the Orphan Well Association, in these appeals;
2. The Appellant’s request for a Stay;
3. The issues to be dealt with at a future hearing of these appeals; and
4. Whether the Hearing of these appeals should be held via written submissions and Agreed Statement of Facts.

[9] On April 25, 2005, the Board wrote to the Participants and advised of telephone conversations with Mr. Peet, who indicated that he would not be attending the Preliminary Meeting, and Mr. Cornelis who advised that if he could not attend the Preliminary Meeting that he would give the Board a letter allowing Mr. and Ms. Visscher to represent him. Mr. Halvorson confirmed that he would attend the Preliminary Meeting, and that he reserved his right to attend and participate in the hearing of these appeals to ensure that his concerns were heard. Mr. Halvorson advised the Board that he takes no position with respect to the Stay.

[10] On April 26, 2005, the Board received an e-mail from the Orphan Well Association advising that their participation in the Preliminary Meeting would be by written submissions only and that they would not be present at the Preliminary Meeting.

[11] The Board held the Preliminary Meeting on April 27, 2005 and on April 28, 2005, the Board wrote to the Participants, advising of the Board's decision with respect to the Preliminary Meeting. The Board's reasons were subsequently issued on June 30, 2005.² The decision of the Board was: (1) the Landowners, being Mr. and Mrs. Visscher, Mr. Cornelis, Mr. Peet and Mr. and Ms. Halvorson, and the Orphan Well Association will be full parties for the purpose of these appeals; (2) the request for a Stay of EPO No. 2005/03-NR was denied; (3) the request for a Stay of EPO No. 2005/04-NR was granted until June 1, 2005; and (4) the Board also advised that it would hold an oral hearing on May 30 and 31, 2005 to hear submissions on the following issues:

1. Were the Environmental Protection Orders properly issued?
2. Is rescission an available remedy in these circumstances to nullify the regulatory authority underlying the Environmental Protection Orders?

[12] On May 2, 2005, the Board placed advertisements in the Edmonton Journal, the Morinville Mirror, the Morinville Free Press, the St. Albert Gazette and the Saint City News, advising that the Hearing of these appeals would take place on May 30 and 31, 2005 in the Board Office. The Board's advertisements also set a deadline of May 16, 2005 for others to make representations before the Board at the Hearing. The Board did not receive any intervenor

² Preliminary Motions: *Tartan Energy Inc. v. Director, Central Region, Regional Services, Alberta Environment* re: *Tartan Energy Inc.* (30 June 2005), Appeal Nos. 04-123 & 124-ID1 (A.E.A.B.).

applications. On May 10, 2005, the Board also issued a news release containing the same details as the advertisements, and listing the issues to be addressed at the Hearing. The Board also sent a copy of the file to the Morinville public library for viewing.

[13] On May 24, 2005, the Board was advised by the Appellant and the Director, that they were working on an agreement. Due to the possibility of an agreement, the Board wrote to the Participants advising that the Hearing had been adjourned as settlement discussions were continuing between the Appellant and the Director. The Board scheduled a mediation meeting for May 31, 2005, between the Appellant and the Director, facilitated by the Board's General Counsel to discuss a potential resolution.

II. MEDIATION MEETING

[14] Pursuant to section 11 of the Environmental Appeal Board Regulation, A.R. 114/93, the Board conducted a mediation meeting in Edmonton, Alberta on May 31, 2005 facilitated by Mr. Gilbert Van Nes, General Counsel and Settlement Officer, for the Board.

[15] Following detailed and productive discussions at the mediation meeting, the parties reached a settlement with respect to EPO No. 2005/03 (EAB 04-123) and on June 13, 2005, the Board issued a Report and Recommendations.³

[16] An Interim Agreement was reached with respect to EPO No. 2005/04-NR (EAB Appeal No. 04-124). The Appellant and the Director agreed to continue discussions and to provide the Board with status reports by September 14, 2005.

[17] On September 14, 2005, the Board received letters dated September 8, 2005 and September 14, 2005 from the Appellant requesting an extension of time and the Board granted an extension until December 1, 2005. On December 2, 2005, the Board received a letter from the Appellant requesting an extension until March 1, 2006 to provide the next status report to the Board and the Board again granted the extension.

[18] On February 28, 2006, the Board received a letter from the Appellant advising that they wished to withdraw their appeal of EPO 2005/04-NR (EAB 04-124).

³ *Tartan Energy Inc. v. Director, Northern Region, Regional Services, Alberta Environment* (13 June 2005), Appeal No. 04-123-R (A.E.A.B.).

III. DECISION

[19] 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. 04-124 and closes its file.

Dated on March 10, 2006, at Edmonton, Alberta.

“original signed by”

Steve E. Hrudey, D.Sc. (Eng.) P.Eng.