

ALBERTA
ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – May 25, 2009

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 SP79 Investments Ltd.,
Petro-Canada and Gulf Canada Limited with respect to
Environmental Protection Order No. EPO-2006/11-CR issued
under the *Environmental Protection and Enhancement Act* to SP79
Investments Ltd., Petro-Canada, and Gulf Canada Limited, by the
Director, Central Region, Environmental Management, Alberta
Environment.

Cite as: *SP79 Investments Ltd., Petro-Canada, and Gulf Canada Limited. v. Director, Central Region, Environmental Management, Alberta Environment, (25 May 2009), Appeal Nos. 06-073, 074 & 075-DOP (A.E.A.B.).*

I. BACKGROUND

[1] On October 12, 2006, the Director, Central Region, Environmental Management, Alberta Environment (the “Director”), issued Environmental Protection Order No. EPO-2006/11-CR (the “Order”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, to SP79 Investments Ltd., Petro-Canada, and Gulf Canada Limited, in relation to the clean up of a former service station site located at SE 34-50-24-W4M, in Beaumont, Alberta.

[2] On October 18, 2006, the Environmental Appeals Board (the “Board”) received a Notice of Appeal and a request for a Stay from SP79 Investments Ltd., (“SP79”) and a Notice of Appeal from Petro-Canada (“Petro-Can”) and Gulf Canada Limited (“Gulf”) appealing the Order, (collectively the “Appellants”).

[3] On October 19, 2006, the Board wrote to the Appellants and the Director (collectively the “Participants”) acknowledging receipt of the Notices of Appeal and notifying the Director of the appeals. The Board also requested the Director advise the Board of his position with respect to the Stay.

[4] In the same letter of October 19, 2006, the Board also requested the Director provide the Board with a copy of the records (the “Record”) in relation to the Order, and that the Participants provide the Board with available dates for a mediation meeting, a preliminary motions hearing, or a hearing, by November 15, 2006.

[5] 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.

[6] On November 2, 2006, the Board scheduled a submission process for the Stay request and requested the Appellants provide the Board with answers to the following questions by November 9, 2006:

1. What are the serious concerns that the Appellants have that should be heard by the Board?
2. Would the Appellants suffer irreparable harm if the Stay is refused?
3. Would the Appellants suffer greater harm if the stay was refused pending a decision of the Board on the appeals, than the harm that could occur from the granting of a Stay; and

4. Would the overall public interest warrant a Stay?

On November 10, 2006, the Board acknowledged a letter from the Director advising that, in consultation with the Appellants, he had agreed to an interim Stay of the Order.

[7] On November 16, 2006, the Board acknowledged receipt of an e-mail dated November 15, 2006 wherein the Director advised that the Record had some technical reports and other documents that were taking longer to reproduce than originally anticipated, but the Director would have the Record completed by November 16, 2006. The Board also requested the Participants hold December 12, 2006 for a mediation meeting until further notice.

[8] On November 20, 2006, the Board acknowledged receipt of an e-mail dated November 17, 2006 from the Director enclosing the index of the Records that he provided to the Board and noting if there were issues with the confidentiality of the documents, the Appellants should contact the Board.

[9] On November 20, 2006, the Board advised the Participants that further to the Board's letter of November 16, 2006, the Board noted that one of the Participants was not available on December 12, 2006, and requested that the Participants hold December 18, 2006 for a mediation meeting until further notice. The Board also requested the Participants advise the Board by November 27, 2006, if in their opinion there were other persons that may have an interest in these appeals (that may be impacted by the Order).

[10] On November 24, 2006, the Board acknowledged receipt of a letter from Petro-Can and Gulf requesting that certain documents in the Record remain confidential. The Board advised that it would consider the matter and decide whether the identified documents should be sealed.

[11] On November 24, 2006, the Board received a letter from the Director advising that Mr. Amine Amacha of 815404 Alberta Ltd, Mr. Roger Magnan, Ms. Cecile Gobeil (co-owner/executrix), Ms. Florence Dwyer Gobeil (co-owner/executrix), and the Town of Beaumont, may be interested in the appeals as their properties all border the lands that are the subject of the Order. The Board notified the potentially interested persons on November 27, 2009.

[12] On November 27, 2006, the Board confirmed the mediation meeting for December 18, 2006, in Edmonton, Alberta.

[13] On November 28, 2006, SP79 advised that FasGas Oil Ltd. (now Parkland Industries Ltd.) and Mr. Stephen and Ms. Beverly Slater, Slater Consulting, along with any other previous owners/operators of the gas station may be interested persons as they leased the facility from SP79 Investments Ltd. SP79 also advised that it too had concerns with the confidentiality of the Record.

[14] The Board provided the Participants with a copy of the Director's Record (Tabs 1-176) on December 1, 2006. In the Board's December 1, 2006 letter, it advised SP79 that it would notify Parkland Industries of the appeals and requested SP79 provide contact information for any other persons he wished the Board to notify of the appeals. The Board also requested the Appellants identify the documents in the Record that they wished the Board to consider confidential, and restated that it would not distribute the Record to any other person at this time. The Board notified Parkland Industries of the appeal on December 1, 2006.

[15] On December 12, 2006, after consulting with the other Participants, SP79 requested the mediation meeting scheduled for December 18, 2006 be adjourned to allow for it to consult with its expert. The Board agreed to the adjournment on December 13, 2006 and rescheduled the mediation meeting to January 19, 2007.

[16] On December 21, 2006, the Board received a supplemental Record ("Supplemental Record") from the Director, and the Board provided the Appellants with copies of the Supplemental Record on December 21, 2006.

[17] Following an exchange of correspondence, on June 13, 2007, the Board advised the Participants that specifically Tabs 93, 100, 102, 122-144, 146 of the Director's Record, and the Mail in Settlement Plan in the Director's Supplemental Record would all be sealed, and would not be released by the Board without a specific order of the Board. The remainder of the Record and Supplemental Record were distributed.

II. MEDIATION MEETING

[18] Pursuant to section 11 of the Environmental Appeal Board Regulation, A.R. 114/93, the Board conducted a mediation meeting in Edmonton, Alberta, on January 19, 2007 with Dr. M. Anne Naeth, Board member, as the presiding mediator (the "Mediator").

[19] In conducting the mediation meeting, the Mediator reviewed the appeals and the mediation process and explained the purpose of the mediation meeting. She then circulated copies of the Participants' Agreement to Mediate. All in attendance signed the agreement and discussions ensued.

[20] Further mediation meetings were held on June 26 and 27, 2007, October 10, 2007, October 22, 2007, March 17, 2008, April 28, 2008, and March 13, 2009.

[21] Following productive and detailed discussions at the mediation meetings and conference calls with the Mediator, a Resolution was reached to address the Order.

[22] On May 5, 2009, the Director closed the Order. Petro-Can and Gulf withdrew their appeals on May 6, 2009, and SP79 withdrew its appeal on May 8, 2009.

III. DECISION

[23] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, and based upon the withdrawal of the appeals by the Appellants, the Board hereby discontinues its proceedings in Appeal Nos. 06-073, 074, and 075 and closes its file.

Dated on May 25, 2009, at Edmonton, Alberta.

“original signed by”

Dr. Steve E. Hruddy, FRSC, PEng
Chair