

# ALBERTA ENVIRONMENTAL APPEALS BOARD

## Report and Recommendations

---

Date of Report and Recommendations – March 7, 2011

**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 Anadarko Petroleum Corporation with respect to the cancellation of Reclamation Certificate No. 00245649-00-00 issued under the *Environmental Protection and Enhancement Act* by the Inspector, Southern Region, Environmental Management, Alberta Environment.

Cite as: *Anadarko Petroleum Corporation v. Inspector, Southern Region, Environmental Management, Alberta Environment* (07 March 2011), Appeal No. 09-037-R (A.E.A.B).

**MEDIATION MEETING BEFORE:**

Ms. A. J. Fox, Board Member

**APPEARANCES:**

**Appellant:**

Ms. Linda Kuhn and Ms. Dana Howard, Anadarko Petroleum Corporation; Mr. Dan Yoshisaka, Stantec Canada Ltd.; and Mr. Michael Clark, Matrix Solutions Inc.

**Inspector:**

Mr. Darren Bourget, Director, Operations Division, Alberta Environment; Mr. Brad Dunkle, Inspector, Southern Region, Environmental Management, Alberta Environment; and Ms. Trish Hickle, Operations Division, Alberta Environment

**Board Staff:**

Mr. Gilbert Van Nes, General Counsel and Settlement Officer

**NON ATTENDANCE:**

**Landowner:**

Mr. Palmer Tainsh

## **EXECUTIVE SUMMARY**

Alberta Environment issued a reclamation certificate to Anadarko Petroleum Corporation on August 26, 2008 for a well site located near Provost.

Mr. Palmer Tainsh, the occupant, filed a complaint with Alberta Environment indicating that “blow outs” were an issue on the site. Following a site inspection in September 2009, Alberta Environment cancelled the reclamation certificate on November 19, 2009, advising Anadarko that the site required further work.

Anadarko filed a Notice of Appeal with the Board on December 17, 2009 appealing the cancellation of the reclamation certificate.

The Board held a mediation meeting on May 27, 2010, following which a resolution was reached between Alberta Environment and Anadarko. Pursuant to the resolution, a number of reports were prepared by Navus Environmental Ltd., an independent third party consultant. Navus concluded that the blow outs on the site are similar in size and distribution in comparison to representative off-site control locations.

The Board recommends that the Minister of Environment accept the resolution and reverse the decision of Alberta Environment to cancel the reclamation certificate. Based on the reports, the Board also recommends that the Minister of Environment vary the reclamation certificate by including the access road to the well site in the reclamation certificate.

## TABLE OF CONTENTS

I. BACKGROUND .....	1
II. MEDIATION MEETING.....	3
III. RECOMMENDATIONS.....	5
IV. APPENDIX.....	6

## **I. BACKGROUND**

[1] On August 26, 2008, the Inspector, Southern Region, Environmental Management, Alberta Environment (the “Inspector”), issued Reclamation Certificate No. 00245649-00-00 (the “Certificate”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”), to Anadarko Petroleum Corporation for the KMG Provost well located at SE 24-33-09-W4M, near Provost (the “Site”).

[2] The Inspector received a complaint from Mr. Palmer Tainsh, the landowner,<sup>1</sup> on November 3, 2008, and conducted an inspection of the Site on November 6, 2008 in response to the complaint. The Inspector advised Anadarko on December 19, 2008 that there were sand blow outs on the Site and that the access road needed to be contoured. Further inspections took place on June 2, 2009 and September 24, 2009, and on November 19, 2009 the Inspector cancelled the Certificate.

[3] On December 17, 2009, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Anadarko Petroleum Corporation (the “Appellant”) appealing the cancellation of the Certificate.

[4] On December 18, 2010, the Board wrote to the Appellant and the Inspector (the “Parties”) acknowledging receipt of the Notice of Appeal, and notifying the Inspector of the appeal. The Board also requested the Inspector provide the Board with a copy of the records (the “Record”) relating to this appeal, and that the Parties provide available dates for a mediation meeting, preliminary motions hearing, or a hearing.

[5] On January 7, 2010, the Board wrote to Mr. James Tainsh and Mr. Palmer Tainsh, notifying them of the appeal and requesting they advise by January 15, 2010, whether they wished to participate in the appeal. The Board did not receive a response and on January 21, 2010 wrote again requesting a response by February 4, 2010, and advising that if they did not respond or attend a mediation meeting, the Board may proceed to make a decision regarding the appeal without further notice to them.

---

<sup>1</sup> The Record the Board received initially indicated that Mr. Palmer Tainsh was the occupant of the land. It was later determined that Mr. Palmer Tainsh was the owner and occupant of the land. Mr. Palmer Tainsh acquired the land from Mr. James Tainsh at some point prior the appeal being filed.

[6] On January 15, 2010, the Board received a copy of the Record from the Inspector, and on January 21, 2010 forwarded a copy to the Appellant and the Tainshs.

[7] On January 22, 2010, the Appellant provided their schedule for a mediation meeting and the Board acknowledged the letter and provided a copy to the Inspector and the Tainshs.

[8] On February 2, 2010, Board staff contacted Mr. Palmer Tainsh via telephone who advised he would attend a mediation meeting, and confirmed that he is the owner of the land (the "Landowner") and requested the mediation meeting be held in Consort, Alberta. On February 2, 2010, in consultation with the Parties and the Landowner, the Board scheduled the mediation meeting for May 27, 2010, in Consort, Alberta.

[9] The Parties and the Landowner were requested to contact the Board by February 26, 2010, to provide a list of persons that would be attending the mediation meeting. The Landowner did not respond.

[10] On March 3, 2010, the Board wrote to the Parties and the Landowner providing an updated Participants' Agreement to Mediate that would be signed at the May 27, 2010 mediation meeting. The letter also advised that the Board had not received a response from the Landowner and again requested he contact the Board by March 18, 2010 to provide the Board with the names of any individuals that would be attending the mediation meeting with him. A further updated Participants' Agreement to Mediate was provided to the Parties and the Landowner on March 5, 2010 following information received from Anadarko.

[11] On May 13, 2010, Anadarko requested permission to enter the Landowner's land to survey the site on May 26, 2010 for the May 27, 2010 mediation meeting and site visit.

[12] Several attempts were made to contact the Landowner by telephone between March 1 and May 21, 2010, all attempts were unsuccessful.

## II. MEDIATION MEETING

[13] Pursuant to section 11 of the Environmental Appeal Board Regulations, Alta Reg.114/93, the Board conducted a mediation meeting in Consort, Alberta, on May 27, 2010, with Ms. A.J. Fox, Board Member, as the presiding mediator (the “Mediator”). The Landowner did not attend the mediation meeting. Following unsuccessful attempts to contact the Landowner and with the agreement of the Parties, the Mediator decided to proceed with the mediation in the Landowner’s absence. (For details of the attempts to contact the Landowner, see the attachment “Background Information” to the letter from the Board to Mr. Palmer Tainsh dated January 17, 2011 included at section IV Appendix to this Report and Recommendations.) The Mediator is authorized to proceed with a mediation and resolve an appeal in the absence of one of the parties pursuant to Rule 32 of the Board’s Rules of Practice.<sup>2</sup>

[14] In conducting the mediation meeting, the Mediator reviewed the appeal and the mediation process and explained the purpose of the mediation meeting. She then circulated copies of the Participants’ Agreement to Mediate. All those in attendance signed the Participants’ Agreement to Mediate.

[15] Following productive and detailed discussions, a resolution evolved at the May 27, 2010 mediation meeting, with the Parties agreeing to further discussions, and to provide status reports to the Board on a regular basis.

[16] As agreed to by the Parties at the mediation meeting, the Board wrote to the Landowner on June 3, 2010 advising that a resolution was reached and the situation would be addressed according to the resolution.

---

<sup>2</sup> Rule 32 of the Board’s Rules of Practice provides:

“Where publication or notice of a preliminary motions hearing, a mediation meeting or a public hearing has been given by the Board in accordance with these rules and statutory requirements, and a Party does not attend the preliminary motions hearing, mediation meeting or hearing, the Board may proceed in that Party’s absence and that Party is not entitled to any further notice of that portion of the appeal unless the Board directs otherwise.

Unless excused by the Board for good cause, failure of a Party to attend a proceeding, after being served with reasonable notice of the time and place thereof, shall constitute a waiver of all objections to the agreements reached in the proceeding and to any order or ruling with respect thereto.”

[17] A key term of the resolution was to have an independent third party prepare an assessment of the Site. The Parties subsequently agreed to have this term of the resolution and resulting assessment reports prepared by Navus Environmental Ltd. (the “Navus Reports”) made public.

[18] On November 19, 2010, the Board received an e-mail from the Inspector advising the terms of the resolution had been fulfilled and requesting the Board recommend to the Minister of Environment that he reinstate the Certificate. The Inspector also indicated that based on the Navus Reports, the Board should also recommend to the Minister of Environment that the Certificate be varied to include the access road.

[19] In response to this e-mail, the Board’s General Counsel spoke with the Parties, and based on this conversation and instructions from the Mediator, the Board’s General Counsel wrote to Mr. Palmer Tainsh on January 17, 2011. In the January 11, 2011 letter, Mr. Tainsh was provided with a copy of the Navus Reports and was provided with an opportunity to respond to the Navus Reports. (A copy of this letter is included at section IV. Appendix to this Report and Recommendations.)

[20] In a letter dated February 7, 2011, Mr. Tainsh responded stating: “...I still have concerns with the site and do not want the reclamation certificate reissued. I do not want the fence removed until the blowouts are fixed...” The Mediator reviewed the letter provided by Mr. Tainsh and concluded that it did not provide a substantive response to the Navus Reports. Based on this, and the Landowner’s non-attendance at the mediation meeting, the Mediator has determined that the resolution reached between the Parties should result in a Report and Recommendations being provided to the Minister to resolve this appeal.

### **III. RECOMMENDATIONS**

[21] In accordance with section 99 of the *Environmental Protection and Enhancement Act*, the Board recommends that the decision of the Inspector to cancel Reclamation Certificate No. 00245649-00-00 be reversed. Further, in accordance with section 99, recommends that Reclamation Certificate No. 00245649-00-00 be varied to include the access road on the Site.

Dated on March 7, 2011, at Edmonton, Alberta.



---

Delmar W. Perras  
Chair



ALBERTA  
ENVIRONMENTAL APPEALS BOARD

IV.

APPENDIX

January 17, 2011

Via Courier

Mr. Palmer Tainsh  
Box 582  
Consort, AB T0C 1B0

Dear Mr. Tainsh

**Re: Anadarko Petroleum Corporation/Cancellation of EPEA Reclamation Certificate No. 00245649-00-00/Our File No.: EAB 09-037**

Attached for your review are two reports regarding the well know as KMG Provost 8-24-33-9-W4M. The first report (dated July 2010) deals with the wellsite and part of the access road, and the second report (dated September 2010) deals with the remaining part of the access road. **The Board is requesting that you review these reports and provide any comments that you may have, in writing, by February 7, 2011.**

These reports were prepared by Navus Environmental Ltd. (Navus), an independent consultant hired in response to the complaint that you filed with Alberta Environment and the appeal filed by Anadarko Petroleum Corporation (Anadarko) following the cancellation of the reclamation certificate issued for the site.

Navus concluded that the "... site meets all applicable landscape parameters ..." specified in the *Reclamation Criteria for Wellsites and Associated Facilities – 1995 Update*. This criteria is used by Alberta Environment to determine whether a reclamation certificate should be issued. (A copy of the criteria is attached for your reference.) With respect to the issue of the blowouts, Navus determined that the "... blowouts on-site are similar in size and distribution as representative control locations."

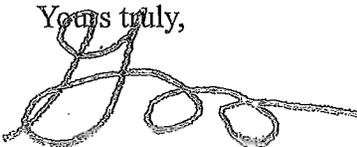
Based on these reports and with the agreement of Anadarko and Alberta Environment, the Board intends to recommend that the reclamation certificate for this wellsite (the reclamation certificate that was cancelled) be reinstated for both the wellsite and the access road. Prior to making this recommendation, the Board would like to give you the opportunity to provide any comments that you may have regarding these reports by February 7, 2011.

Any written comments that you provide on or before February 7, 2011 will be taken into account prior to the Board determining its next steps. If the Board does not hear from you on or before February 7, 2011, it will proceed to determine its next steps without your input and without further notice to you.

There is also an outstanding issue of a fence that remains on the site. The Board requests that you contact Ms. Dana Howard of Anadarko at 1-832-636-1268 to arrange for it to be removed.

Please contact me if you have any questions. You may call toll-free by first dialling 310-0000, followed by 780-427-4179, or e-mail [gilbert.vannes@gov.ab.ca](mailto:gilbert.vannes@gov.ab.ca).

Yours truly,

A handwritten signature in black ink, appearing to read 'G. Van Nes', with a long horizontal stroke extending to the right.

Gilbert Van Nes  
General Counsel and  
Settlement Officer

Encl.

cc: Ms. Dana Howard and Ms. Linda Kuhn  
Anadarko Petroleum Corporation  
Ms. Aurelia Nicholls, Alberta Justice

Background Information

1. December 19, 2007 – Application for a reclamation certificate filed with Alberta Environment by Arcadis Canada Inc. on behalf of Anadarko.
2. May 18, 2008 – Following a request for additional information from Alberta Environment, Anadarko confirmed that it had provided the landowner with a copy of the application for a reclamation certificate on October 24, 2007 and that it had not received an acknowledgement form or a complaint form in reply.
3. August 26, 2008 – Alberta Environment issued a reclamation certificate to Anadarko.
4. October 28, 2008 – Alberta Environment received a complaint from Mr. Palmer Tainsh.
5. November 6, 2008 – Alberta Environment conducted an inspection of the site with Mr. Tainsh in attendance.
6. September 24, 2009 – Alberta Environment conducted a follow up inspection of the site. Mr. Tainsh was invited to attend, but declined.
7. November 19, 2009 – Alberta Environment cancelled the reclamation certificate.
8. December 17, 2009 – Anadarko appealed the decision of Alberta Environment to cancel the reclamation certificate to the Board.
9. January 7, 2010 – The Board sent a letter to Mr. Tainsh (delivered January 21, 2010) advising of the appeal and asking if he wished to participate in the appeal as he was the landowner.
10. January 21, 2010 – The Board sent a second letter to Mr. Tainsh (delivered February 4, 2010) advising of the appeal and asking if he wished to participate in the appeal as he was the landowner. A reply was requested by February 4, 2010.
11. February 2, 2010 – A Board staff member contacted Mr. Tainsh by telephone asking if he wished to participate in a mediation meeting regarding the appeal that was being arranged by the Board. Mr. Tainsh confirmed that he was the landowner and advised he would attend the mediation if it was held in Consort.
12. February 2, 2010 – A letter was sent to Mr. Tainsh (delivered February 3, 2010) advising that the mediation meeting would be held on May 27, 2010 and that additional details would follow.
13. February 9, 2010 – A letter was sent to Mr. Tainsh (delivered February 12, 2010) confirming that the mediation would be held on May 27, 2010 in Consort. The letter asked Mr. Tainsh if he would be bringing anyone with him to the mediation meeting.
14. March 3, 2010 – A letter was sent to Mr. Tainsh (delivered March 5, 2010) advising of the names of the other participants in the mediation meeting. Mr. Tainsh was again requested to advise if he would be bringing anyone with him to the mediation meeting.

15. March 1 to March 3, 2010 – A Board staff member made 4 attempts to contact Mr. Tainsh by telephone to confirm his participation in the mediation meeting. There was no answer and no answering machine.
16. May 13, 2010 – A letter was sent to Mr. Tainsh (delivered March 17, 2010) requesting permission for Anadarko to survey and flag the site prior to the mediation meeting.
17. May 13 to May 21, 2010 – A Board staff member made 6 attempts to contact Mr. Tainsh by telephone to confirm his participation in the mediation meeting. There was no answer and no answering machine.
18. May 26, 2010 – An agent of Anadarko attended at Mr. Tainsh's residence and obtained permission to survey and flag the site. The agent indicated he advised Mr. Tainsh of the mediation meeting the next day.
19. May 27, 2010 – The Board convened the mediation meeting. Mr. Tainsh was not in attendance. Anadarko advised of the report of its agent that Mr. Tainsh had been verbally notified of the mediation meeting the previous day. A Board staff member made a number of attempts to contact Mr. Tainsh by telephone. There was no answer and no answering machine. As is authorized by the Board's Rule of Practice, the Mediator decided to proceed with the mediation meeting.
20. Following the mediation meeting, an independent consultant (Navus) was hired to prepare two reports relating to the wellsite and access road. These reports were provided to Anadarko, Alberta Environment, and the Board. Following a review of these reports, at the request of the Board, Anadarko and Alberta Environment have agreed to provide the reports to Mr. Tainsh and give him an opportunity to comment on the reports before the Board determines its next step in this appeal. The Board indicated that subject to the comments of Mr. Tainsh, based on the reports, it intends to recommend to the Minister that the reclamation certificate for the wellsite and access road be reinstated.



ALBERTA  
ENVIRONMENT

*Office of the Minister  
MLA, Medicine Hat*

## Ministerial Order 10/2011

*Environmental Protection and Enhancement Act*  
R.S.A. 2000, c. E-12

### Order Respecting Environmental Appeals Board Appeal No. 09-037

I, Rob Renner, Minister of Environment, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeals Board Appeal No. 09-037.

Dated at the City of Edmonton, in the Province of Alberta, this 9 day of March, 2011.

Rob Renner  
Minister

## Appendix

### Order Respecting Environmental Appeals Board Appeal No. 09-037

With respect to the decision of the Inspector, Southern Region, Environmental Management, Alberta Environment (the "Inspector"), to cancel Reclamation Certificate No. 00245649-00-00 under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, issued to Anadarko Petroleum Corporation, I, Rob Renner, Minister of Environment:

1. Order that the decision of the Inspector to cancel the Reclamation Certificate is reversed.
2. Order that the decision of the Inspector be amended by including the Access Road in the Reclamation Certificate, by repealing the plan attached to the Reclamation Certificate and replacing it with the plan attached to this Ministerial Order.

