

ALBERTA ENVIRONMENTAL APPEALS BOARD

Report and Recommendations

Date of Report and Recommendations – January 10, 2012

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 Cenovus FCCL Ltd.
with respect to Approval No. 48522-01-00 issued under the
Environmental Protection and Enhancement Act to Cenovus FCCL
Ltd. by the Director, Northern Region, Operations Division,
Alberta Environment and Water.

Cite as: *Cenovus FCCL Ltd. v. Director, Northern Region, Operations Division, Alberta
Environment and Water* (10 January 2012), Appeal No. 11-022-R (A.E.A.B).

MEDIATION MEETING BEFORE:

Dr. Nick Tywoniuk, Board Member.

APPEARANCES:

Appellant: Mr. Mike Pittman, Cenovus FCCL Ltd., Ms. Nishi Thusoo, Cenovus FCCL Ltd., and Mr. Tony Jackson, Cenovus FCCL Ltd., represented by Mr. Ryan Rodier, Osler Hoskin & Harcourt.

Director: Mr. Patrick Marriott, Director, Northern Region, Operations Division, Alberta Environment and Water, Mr. Amit Banerjee, Alberta Environment and Water, and Ms. Ashton Stewart, Alberta Environment and Water, represented by Ms. Wendy Thiessen, Alberta Justice.

Board Staff: Mr. Gilbert Van Nes General Counsel and Settlement Officer.

EXECUTIVE SUMMARY

Alberta Environment and Water issued an Approval to Cenovus FCCL Ltd. for the Christina Lake enhanced recovery in-situ oil sands processing plant and oil production site, near Conklin, Alberta.

Cenovus FCCL Ltd. filed an appeal expressing concerns about the wildlife monitoring requirements contained in the Approval.

The Board held a mediation meeting on December 8, 2011, following which a resolution was reached and carried out by the participants. The Board recommends that the Minister of Environment and Water accept the resolution varying the conditions in the Approval.

TABLE OF CONTENTS

| | |
|------------------------------|---|
| I. INTRODUCTION | 1 |
| II. BACKGROUND | 1 |
| III. MEDIATION MEETING | 2 |
| IV. RECOMMENDATIONS | 2 |
| V. RESOLUTION | 4 |

I. INTRODUCTION

[1] This is the Environmental Appeals Board's Report and Recommendations to the Minister of Environment and Water regarding the appeal by Cenovus FCCL Ltd.

[2] Alberta Environment and Water issued an Approval to Cenovus FCCL Ltd. for the Christina Lake enhanced recovery in-situ oil sands processing plant and oil production site. Cenovus FCCL Ltd. appealed the Approval objecting to conditions 1, 5, 8 and 12 in Schedule VIII Wildlife Monitoring of the Approval, citing that the obligations imposed are unreasonable and precludes or delays Cenovus FCCL Ltd. from carrying out activities, which are the subject of an Energy Resources and Conservation Board approval.

[3] The Board held a mediation meeting on December 8, 2011, following which a resolution was reached by the participants.

II. BACKGROUND

[4] On July 29, 2011, the Director, Northern Region, Operations Division, Alberta Environment and Water (the "Director"), issued Approval No. 48522-01-00 (the "Approval") under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 ("EPEA"), to Cenovus FCCL Ltd. for the Christina Lake enhanced recovery in-situ oil sands processing plant and oil production site, located at 16-76-6-W4M, near Conklin, Alberta.

[5] On August 29, 2011, the Environmental Appeals Board (the "Board") received a Notice of Appeal from Cenovus FCCL Ltd. (the "Appellant") appealing the Approval. The Appellant expressed concerns about the wildlife monitoring requirements contained in the Approval.

[6] On August 31, 2011, the Board wrote to the Appellant and the Director (the "Participants") acknowledging receipt of the Notice of Appeal, 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 this appeal, and that the Participants provide available dates for a mediation meeting, preliminary motions hearing, or hearing.

[7] On October 5, 2011, the Board received a copy of the Record from the Director, and on October, 2011 forwarded a copy to the Appellant.

[8] On October 14, 2011, in consultation with the Participants, the Board scheduled the mediation meeting for October 25, 2011, in Calgary, Alberta. On October 19, 2011, at the request of the Participants, the mediation meeting was re-scheduled to December 8, 2011.

III. MEDIATION MEETING

[9] Pursuant to section 11 of the Environmental Appeal Board Regulations, Alta Reg.114/93, the Board conducted a mediation meeting in Calgary, Alberta, on December 8, 2011, with Dr. Nick Tywoniuk, Board Member, as the presiding mediator (the "Mediator").

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

[11] Following productive and detailed discussions, a resolution evolved at the mediation meeting, which was subsequently amended and finalized by the Participants on December 22, 2011 and is attached as pages 4 to 8 of this Report and Recommendations.

[12] The Participants carried out the substantive terms of the resolution. Then, in accordance with the resolution, in a letter dated December 22, 2011, the Appellant requested that the Board recommend to the Minister of Environment and Water that the conditions of the Approval be varied as detailed in the resolution. Finally, also in accordance with the resolution, in a letter dated December 22, 2011, the Director advised the Board he consented to the Appellant's request to vary the conditions in the Approval as detailed in the resolution.

IV. RECOMMENDATIONS

[13] In accordance with section 99 of the *Environmental Protection and Enhancement Act*, the Board recommends that the Minister of Environment and Water vary Approval No. 48522-01-00 in accordance with the resolution reached by the Participants.

[14] Further, with respect to sections 100(2) and 103 of EPEA, the Board recommends that copies of this Report and Recommendations, and the decision by the Minister, be sent to the following Participants:

- Mr. Mike Pittman, Cenovus FCCL Ltd.;
- Mr. Ryan Rodier, Cenovus FCCL Ltd.; and
- Ms. Wendy Thiessen, Alberta Justice, on behalf of Mr. Patrick Marriott, Director, Northern Region, Operations Division, Alberta Environment and Water.

Dated on January 10, 2012, at Edmonton, Alberta.

- original signed -

Delmar W. Perras
Chair



V. RESOLUTION

**RESOLUTION
ENVIRONMENTAL APPEALS BOARD
EAB File No. 11-022**

In the matter of the mediation of the appeal of the July 29, 2011 decision of the Director, Northern Region, Operations Division, Alberta Environment and Water to issue Approval No. 48522-01-00 (the "Approval") under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, to Cenovus FCCL Ltd. ("Cenovus") for the Christina Lake enhanced recovery in-situ oil sands processing plant and oil production site, near Conklin, Alberta.

All participants to the appeal have agreed as follows:

1. The goal of the participants is to obtain authorization by the Director of Alberta Environment and Water of the Wildlife Mitigation Program required in Schedule VIII of the Approval as soon as possible (the "Goal"). The participants hope to achieve this Goal on or before December 22, 2011.
2. The participants agree to work to achieve this Goal collaboratively, reasonably, and in good faith. The participants shall make achieving this Goal a priority and shall respond to each others requests in as timely a manner as possible. Cenovus agrees to file the final version of the Wildlife Mitigation Program document with Alberta Environment and Water on or before December 15, 2011.
3. Unless this Goal has already been achieved, the participants agree to meet to continue this mediation during the week of January 2, 2012, as determined by the Board in consultation with the participants. The focus of the mediation will be to address any outstanding matters with respect to achieving the Goal.
4. Upon achieving this Goal, the participants agree that: (a) the requirements of Condition 8 of Schedule VIII of the Approval shall be deemed to have been met, (b) Cenovus may immediately begin the vegetation clearing authorized under the Approval, and (c) Cenovus will make an application to Alberta Environment and Water to delete Condition 8 of Schedule VIII of the Approval as it is spent and Alberta Environment and Water agrees to delete this condition from the Approval in response to that application.
5. Cenovus will make an application to Alberta Environment and Water to amend Condition 12(c) of Schedule VIII of the Approval by deleting the phrase:

cont. . /2

“a description of how the approval holder will contribute to implementing the *Woodland Caribou Policy for Alberta*, Alberta Sustainable Resource Development, 2011, as amended, including:”

and replacing it as follows:

“a description of the approval holder’s alignment with the *Woodland Caribou Policy for Alberta*, Alberta Sustainable Resource Development, 2011, as amended, including the following Government-led initiatives:”

Alberta Environment and Water agrees to amend this condition as detailed above in response to that application.

- 6. On or before December 22, 2011, Cenovus shall submit an application to Alberta Environment and Water to extend and amend the temporary clearing authorization for the period of January 1 to February 15, 2012. Alberta Environment and Water agrees to make a decision respecting the application for this temporary clearing authorization on or before December 31, 2011, and such authorization will not be unreasonably withheld.
- 7. Cenovus agrees to withdraw the appeal upon: (a) the Goal being achieved, (b) Condition 8 of Schedule VIII of the Approval being deleted, and (c) Condition 12(c) of Schedule VIII of the Approval being amended as described in section 5 above.
- 8. The participants agree to have a hearing date set by the Board, in consultation with the participants, as soon as possible in or after the last week of January 2012 in the event that a hearing is required.

RESOLUTION AGREED TO BY:



Mike Pittman, Cenovus FCCL Ltd.
Represented by Ryan V. Rodier,
Osler, Hoskin & Harcourt LLP

Date: DEC. 13, 2011

Patrick Marriott, Director
Northern Region, Operations Division,
Alberta Environment and Water
Represented by Wendy Thiessen,
Alberta Justice

Date: _____

“a description of how the approval holder will contribute to implementing the *Woodland Caribou Policy for Alberta*, Alberta Sustainable Resource Development, 2011, as amended, including:”

and replacing it as follows:

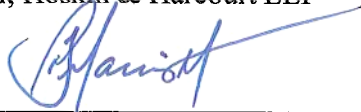
“a description of the approval holder’s alignment with the *Woodland Caribou Policy for Alberta*, Alberta Sustainable Resource Development, 2011, as amended, including the following Government-led initiatives:”

Alberta Environment and Water agrees to amend this condition as detailed above in response to that application.

6. On or before December 22, 2011, Cenovus shall submit an application to Alberta Environment and Water to extend and amend the temporary clearing authorization for the period of January 1 to February 15, 2012. Alberta Environment and Water agrees to make a decision respecting the application for this temporary clearing authorization on or before December 31, 2011, and such authorization will not be unreasonably withheld.
7. Cenovus agrees to withdraw the appeal upon: (a) the Goal being achieved, (b) Condition 8 of Schedule VIII of the Approval being deleted, and (c) Condition 12(c) of Schedule VIII of the Approval being amended as described in section 5 above.
8. The participants agree to have a hearing date set by the Board, in consultation with the participants, as soon as possible in or after the last week of January 2012 in the event that a hearing is required.

RESOLUTION AGREED TO BY:

Mike Pittman, Cenovus FCCL Ltd.
Represented by Ryan V. Rodier,
Osler, Hoskin & Harcourt LLP



Patrick Marriott, Director
Northern Region, Operations Division,
Alberta Environment and Water
Represented by Wendy Thiessen,
Alberta Justice

Date: _____

Date: 13 DECEMBER 2011



**RESOLUTION AMENDMENT
ENVIRONMENTAL APPEALS BOARD
EAB File No. 11-022**

In the matter of the mediation of the appeal of the July 29, 2011 decision of the Director, Northern Region, Operations Division, Alberta Environment and Water to issue Approval No. 48522-01-00 (the “Approval”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, to Cenovus FCCL Ltd. (“Cenovus”) for the Christina Lake enhanced recovery in-situ oil sands processing plant and oil production site, near Conklin, Alberta.

All participants to the appeal have agreed as follows:

1. The Resolution signed by the participants on December 13, 2011 in counterpart (the “Original Resolution”) is amended by this Resolution Amendment (the “Resolution Amendment”). Where the Resolutions are inconsistent, this Resolution Amendment shall govern.

2. Section 4 of the Original Resolution is amended by repealing it and replacing it as follows:

“Upon achieving this Goal, the participants agree that: (a) the requirements of Condition 8 of Schedule VIII of the Approval shall be deemed to have been met; (b) Cenovus may immediately begin the vegetation clearing authorized under the Approval; and (c) Cenovus will, in writing, request the Board to make a recommendation to the Minister of Environment and Water to delete Condition 8 of Schedule VIII of the Approval as it is spent, which request Alberta Environment and Water will, if requested by the Board, consent to in writing.”

3. Section 5 of the Original Resolution is amended by repealing it and replacing it as follows:

“The participants agree that the Cenovus will, in writing, request the Board to make a recommendation to the Minister of Environment and Water to amend Condition 12(c) of Schedule VIII of the Approval by deleting the phrase:

‘a description of how the approval holder will contribute to implementing the *Woodland Caribou Policy for Alberta*, Alberta Sustainable Resource Development, 2011, as amended, including:’

and replacing it as follows:

'a description of the approval holder's alignment with the *Woodland Caribou Policy for Alberta*, Alberta Sustainable Resource Development, 2011, as amended, including the following Government-led initiatives:’,

which request Alberta Environment and Water will, if requested by the Board, consent to in writing.”

RESOLUTION AMENDMENT AGREED TO BY:



Mike Pittman, Cenovus FCCL Ltd.
Represented by Ryan V. Rodier,
Osler, Hoskin & Harcourt LLP

Date: Dec 22, 2011


Patrick Marriott, Director
Northern Region, Operations Division,
Alberta Environment and Water
Represented by Wendy Thiessen,
Alberta Justice

Date: _____

'a description of the approval holder's alignment with the *Woodland Caribou Policy for Alberta*, Alberta Sustainable Resource Development, 2011, as amended, including the following Government-led initiatives:',


which request Alberta Environment and Water will, if requested by the Board, consent to in writing."

RESOLUTION AMENDMENT AGREED TO BY:



Mike Pittman, Cenovus FCCL Ltd.
Represented by Ryan V. Rodier,
Osler, Hoskin & Harcourt LLP

Date: DEC. 22, 2011



Patrick Marriott, Director
Northern Region, Operations Division,
Alberta Environment and Water
Represented by Wendy Thiessen,
Alberta Justice

Date: 22 DECEMBER 2011



ALBERTA
ENVIRONMENT AND WATER

*Office of the Minister
MLA, Drayton Valley-Calmar*


Ministerial Order 05 /2012

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

Order Respecting Environmental Appeals Board Appeal No. 11-022

I, Diana McQueen, Minister of Environment and Water, 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. 11-022.

Dated at the City of Edmonton, in the Province of Alberta, this 13 day of Feb/2012 2012.


Diana McQueen
Minister

Alberta 

Appendix

Order Respecting Environmental Appeals Board Appeal No. 11-022

With respect to the decision of the Director, Northern Region, Operations Division, Alberta Environment and Water, to issue Approval No. 48522-01-00 (the "Approval") under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, to Cenovus FCCL Ltd., I, Diana McQueen, Minister of Environment and Water, order that the Approval is varied as follows:

1. Repeal condition 8 of Schedule VIII.
2. Repeal the phrase "a description of how the approval holder will contribute to implementing the *Woodland Caribou Policy for Alberta*, Alberta Sustainable Resource Development, 2011, as amended, including:" in condition 12(c) of Schedule VIII, and replace it with the phrase "a description of the approval holder's alignment with the *Woodland Caribou Policy for Alberta*, Alberta Sustainable Resource Development, 2011, as amended, including the following Government-led initiatives:".