

DECISIONS 2007

07-001

Appellant(s) – Topeka Energy Inc., **Operator** – Topeka Energy Inc., **Location** – Kneehill County, **Type of Appeal** – Decision

On July 11, 2005, the Director, Southern Region, Alberta Environment refused to issue a reclamation certificate to Topeka Energy Inc. for the Elnora 1-31-34-23 W4M wellsite in Kneehill County. On April 23, 2007, Topeka Energy Inc. appealed the decision. The Board noted the appeal was filed significantly past the legislated deadline and asked Topeka Energy Inc. to provide additional information as to why the appeal was filed late. After reviewing the submissions from Topeka Energy Inc. and Alberta Environment, the Board issued a Decision on July 20, 2007 dismissing the appeal as it would not grant an extension for the filing of the Notice of Appeal. Topeka Energy Inc. failed to show there were extenuating or special circumstances that warranted accepting an appeal filed more than 19 months past the deadline. Miscommunication between Topeka Energy Inc and its consultant did not make the special circumstances required to file an appeal late.

Cite as: *Topeka Energy Inc. v. Director, Southern Region, Regional Services, Alberta Environment* (20 July 2007), Appeal No. 07-001-D (A.E.A.B.)

07-002

Appellant(s) – EOG Resources Canada Inc., **Operator** – EOG Resources Canada Inc., **Location** – Duffield, **Type of Appeal** – Decision

On September 26, 2006, the Director, Central Region, Regional Services, Alberta Environment cancelled Reclamation Certificate No. 00210568-00-00 under the *Environmental Protection and Enhancement Act* previously issued to EOG Resources Canada Inc. for the 16-20-50-4-W5M wellsite near Duffield, Alberta. On May 8, 2007, the Board received a Notice of Appeal from EOG Resources Canada Inc. The Board noted the appeal was filed significantly past the legislated deadline and asked EOG to provide additional information as to why the appeal was filed late. After reviewing the submissions from EOG and Alberta Environment, the Board did not grant an extension for filing the Notice of Appeal and dismissed the appeal. EOG failed to show there were extenuating or special circumstances that warranted accepting an appeal filed more than six months past the legislated timeframe. Weather conditions limiting access to the site for a re-evaluation of the lease did not demonstrate special circumstances in this case. EOG was aware of the timelines but failed to file a Notice of Appeal on time to preserve its appeal rights. The Board issued its Decision on August 15, 2007 dismissing the appeal, stating that the statutory prerequisites for filing a Notice of Appeal had not been met as the appeal was filed out of time and no special circumstances existed to extend the appeal deadline.

Cite as: *EOG Resources Canada Inc. v. Director, Central Region, Regional Services, Alberta Environment* (15 August 2007), Appeal No. 07-002-D (A.E.A.B.)

07-003

Appellant(s) – Vern McDonald, **Operator** – Husky Oil Operations Limited, **Location** – Lac La Biche, **Type of Appeal** – See below

Overview – On February 1, 2006, Alberta Environment issued Reclamation Certificate No. 224627-00-00 to Husky Oil Operations Limited with respect to the Renaissance Craigend 5-36-64-15-W4M well near Lac La Biche, Alberta. On May 15, 2007, the Board received a Notice of Appeal from Mr. Vern McDonald appealing the Certificate.

Preliminary Decision – As the appeal was filed past the legislated timeframe, the Board asked for submissions from the participants. Mr. McDonald explained he was the registered landowner of the property in question, and he did not receive notice of the issuance of the reclamation certificate until May 15, 2007. Husky Oil explained the notification was given to the Kikino Métis Settlement. Neither Alberta Environment nor Husky Oil objected to the Board extending the timeframe in which Mr. McDonald could

file his appeal. The Board found Mr. McDonald was the registered landowner under the Métis Settlements Land Registry, but he did not receive notice of the reclamation certificate as required under the Environmental Protection and Enhancement Act. The Board granted the extension of the appeal period and accepted the Mr. McDonald's Notice of Appeal.

Cite as: Preliminary Motion: *McDonald v. Inspector, Northern Region, Regional Services, Alberta Environment, re: Husky Oil Operations Limited* (27 August 2007), Appeal No. 07-003-ID1 (A.E.A.B.).

07-022-027, 034-039 and 094-099

Appellant(s) - Gail Wolfe on behalf of herself and the Cold Lake Fibromyalgia Support Group, Inez Stone on behalf of herself and the Ethel Lake Interveners, Sally Ulfsten, Rachel Stone, George Elchuk, Mary Anne Leroux, David Lee, Cathy Urlacher, Ruth T. Sywak, David Stone, Andy Leroux, David Yoshida, Jens Peter Harwerth, Marinda Stander and Barbara Johnson, **Operator** - Imperial Oil Resources Limited, EnCana Corporation, Canadian Natural Resources Limited, Husky Oil Operations Limited, and Blackrock Ventures Inc. (now Shell Canada Ltd.), **Location** – Cold Lake, **Type of Appeal** – see below

Overview – On April 30, 2007, the Director, Northern Region, Regional Services, Alberta Environment, issued the following Amending Approvals under the *Environmental Protection and Enhancement Act* to the following Approval Holders:

- Amending Approval No. 73534-00-06 issued to Imperial Oil Resources Limited authorizing the construction, operation and reclamation of the Cold Lake enhanced recovery in-situ oil sands or heavy oil processing plant and oil production site near Cold Lake, Alberta.
- Amending Approval No. 68492-00-10 issued to EnCana Corporation authorizing the construction, operation and reclamation of the Foster Creek enhanced recovery in-situ oil sands or heavy oil processing plant and oil production site near Cold Lake, Alberta.
- Amending Approval No. 68023-00-04 issued to EnCana authorizing the construction, operation and reclamation of the Foster Creek enhance recovery in situ heavy oil plant, near Cold Lake, Alberta.
- Amending Approval No. 11115-03-02 issued to Canadian Natural Resources Limited authorizing the construction, operation and reclamation of the Primrose and Wolf Lake enhanced recovery in-situ oil sands and heavy oil processing plant and oil production site near Cold Lake, Alberta.
- Amending Approval No. 147753-00-02 issued to Husky Oil Operations Limited authorizing the construction, operation and reclamation of the Tucker enhanced recovery in-situ oil sands or heavy oil processing plant and oil production site near Cold Lake, Alberta.
- Amending Approval No. 78161-00-01 issued to Blackrock Ventures Inc. authorizing the construction, operation and reclamation of the Hilda Lake enhanced recovery in-situ oil sands or heavy oil processing plant and oil production site near Hilda Lake, Alberta.

The Amending Approvals incorporate the Lakeland Industry and Community Association Air Quality Monitoring Program network.

Notices of Appeal were received by the Board on May 24, 2007, June 1 and June 8, 2007, from Ms. Gail Wolfe on behalf of herself and the Cold Lake Fibromyalgia Support Group, Ms. Inez Stone on behalf of herself and the Ethel Lake Interveners, Ms. Sally Ulfsten, Ms. Rachel Stone, Mr. George Elchuk, Ms. Mary Anne Leroux, Mr. David Lee, Ms. Cathy Urlacher, Ms. Ruth T. Sywak, Mr. David Stone, Mr. Andy Leroux, Mr. David Yoshida, Mr. Jens Peter Harwerth, Ms. Marinda Stander and Ms. Barbara Johnson.

On July 2, 2007 the Board received a request for a Stay from the Appellants, and on July 9, 2007 the Board requested the Appellants respond to the Board's questions prior to considering whether to grant a Stay. A response as received however, on October 4, 2007, the participants requested the Stay be placed on hold and the Board proceed to a mediation meeting. The Board granted the request and sought the participants schedule for a mediation meeting.

Discontinuance of Proceedings – The Board was processing the appeals when on July 30, 2007, the Board received a letter from Ms. Gail Wolfe withdrawing her appeal. Ms. Wolfe indicated that Ms. Inez Stone would now represent the Cold Lake Fibromyalgia Support Group. On July 23, 2007, Ms. Cathy Urlacher and Ms. Ruth Sywak advised they wished to withdraw their appeals. Based upon the withdrawal of the

appeals by Ms. Sywak, Ms. Urlacher, and Ms. Wolfe, the Board issued a Discontinuance of Proceedings on August 7, 2007 for Appeal Nos. 07-022–027 (Ms. Wolfe), 07-034–039 (Ms. Sywak) and 07-094–099 (Ms. Urlacher).

Cite as: *Wolfe et al. v. Director, Northern Region, Regional Services, Alberta Environment, re: Imperial Oil Resources Limited, EnCana Corporation, Canadian Natural Resources Limited, Husky Oil Operations Limited, and Blackrock Ventures Inc. (now Shell Canada Ltd.)* (07 August 2007), Appeal Nos. 07-022-027, 034-039 and 094-099-DOP (A.E.A.B.).

Discontinuance of Proceedings – The Board was processing the appeals when on October 25, 2007, it received a letter from Mr. David Lee withdrawing his appeal. Based upon the withdrawal of the appeal, the Board issued a Discontinuance of Proceedings on October 29, 2007 for Appeal No. 07-082–087.

Cite as: *Lee v. Director, Northern Region, Regional Services, Alberta Environment, re: Imperial Oil Resources Limited, EnCana Corporation, Canadian Natural Resources Limited, Husky Oil Operations Limited, and Blackrock Ventures Inc. (now Shell Canada Ltd.)* (29 October 2007), Appeal Nos. 07-082-087-DOP (A.E.A.B.).

07-118

Appellant(s) – Decker Management Ltd., **Operator** – Decker Management Ltd., **Location** – Calgary, **Type of Appeal** – Decision

On June 27, 2007, the Director, Southern Region, Regional Services, Alberta Environment, suspended Temporary Diversion Licence No. 00238211-00-00 under the *Water Act* which had been issued to Decker Management Ltd. authorizing the temporary diversion of 5000 cubic metres of water from Horse Shoe Pond located at NE 20-025-02-W5M in Calgary, Alberta, for water management purposes. The Temporary Diversion Licence expired June 30, 2007. Decker Management Ltd. filed an appeal of the Director's decision to suspend the Temporary Diversion Licence. It argued the suspension was unfair as it took away a substantive right without a right of appeal. Decker Management Ltd. asked the Board to renew the Temporary Diversion Licence for one year. The Director explained the Temporary Diversion Licence was suspended because Decker Management Ltd. failed to comply with the terms and conditions of the Temporary Diversion Licence. The Director argued there is no right of appeal pursuant to section 115(2)(b) of the *Water Act*. The Board determined the legislation is explicit in that no appeals are allowed with respect to any matter related to a temporary diversion licence, and the suspension of the Temporary Diversion Licence fell within the meaning of "any matter." Therefore, the Board dismissed the appeal. The Board also noted that even if the appeal was allowed by the legislation, the Board could not extend the Temporary Diversion Licence because the *Water Act* limits the term of a temporary diversion licence to less than one year. The Appellant failed to provide sufficient reasons to demonstrate that section 115(2)(b) of the *Water Act* should not apply in this circumstance. Therefore, the Board does not have jurisdiction to hear the appeal, and pursuant to section 95(5) of the *Environmental Protection and Enhancement Act*, the Board dismisses the appeal.

Cite as: *Decker Management Ltd. v. Director, Southern Region, Regional Services, Alberta Environment* (01 November 2007), Appeal No. 07-118-D (A.E.A.B.).

07-120-122 & 07-124-126

Appellant(s) – Bassani Family, Cholla Sand and Dry Waste Ltd., and the Edmonton Minor Soccer Association, **Operator** – Northland Material Handling Inc., **Location** – Edmonton, **Type of Appeal** – Discontinuance of Proceedings

On June 21, 2007, the Director, Central Region, Regional Services, Alberta Environment, issued Amending Approval No. 0049589-00-03, and on August 31, 2007, issued Amending Approval No. 0049589-00-04 under the Environmental Protection and Enhancement Act to Northland Material Handling Inc. extending the expiry date of the original Approval 0049589-00-00 to August 31, 2008 for the operation, reclamation and lateral expansion of a Class III landfill. The lateral expansion shall include surface water management, soil conservation, and sand removal. This was the second extension of the Approval's expiry date. Notices of Appeal in relation to Amending Approval 0049589-00-03 were received by the Board on August 17,

2007 from the Bassani family, Cholla Sand and Dry Waste Ltd., and the Edmonton Minor Soccer Association.

On September 7, 2007, the Board received a letter from the Director stating: “This letter is to notify the Board of recent developments affecting the...appeals. First, on August 31st, 2007, the Director cancelled the EPEA Amending Approval No. 0049589-000-03 issued on June 21, 2007. That amending approval provided an extension of the operating approval until August 31, 2008. Then, on August 31, 2007, the Director issued EPEA Amending Approval No. 0049589-00-04. This amending approval has the same effect as the amending approval issued on July 21st, 2007. It extends the operating approval until August 31st, 2008...These decisions...were undertaken to ensure that the publication deadline in Section 3(1) of the Environmental Protection and Enhancement (Miscellaneous) Regulation was complied with....”

On September 10, 2007, the Board wrote to the participants, acknowledging the Director’s letter, and stating: “...when Alberta Environment cancels an Amending Approval that is under appeal, the Board would set a submission process to give the participants an opportunity to comment on whether the appeal is moot. In this case, because another Amending Approval which has the same effect as Amending Approval No. 49589-00-03 has been issued, and in the interest of preventing delays in the appeal process, the Board proposes to forgo the submission process, declare the appeal moot, and close its file regarding Appeals 07-120, 121 and 122. The Appellants could then file a new Notice of Appeal with the Board in relation to Amending Approval 0049589-00-04.” The Board requested the participants provide comments with respect to the Board’s proposed course of action by September 11, 2007. The Board also advised the Appellants that if they wished to file a new appeal in relation to Amending Approval 0049589-00-04, that they should do so as soon as possible. The Board received letters on September 12 and 14, 2007 from the Director and the Approval Holder. The Director advised the Board’s suggested course of action was acceptable, and the Appellants’ letter stated: “I am not altogether sure that these errors should or can be overlooked by the simple expedient of canceling earlier action taken and purporting to remedy the situation by new action. ” On September 12, 2007 the Board received a Notice of Appeal from the Appellants in relation to Amending Approval 0049589-00-04 that was acknowledged on October 1, 2007.

On October 24, 2007, the Board received a letter from the Appellants, withdrawing the appeals and advising: “Please be advised that the two appeals I have filed on behalf of my clients are hereby withdrawn. My clients do not concede that there were no solid grounds. Moreover, this action is taken without prejudice to any rights of appeal that may exist and any grounds that may be argued in the event the Director approves the Northland application for extension of the waste site and renewal of the permit beyond 2009.” The Board therefore issued a Discontinuance of Proceedings on October 29, 2007 and closed its file.

Cite as: *Bassani et al. v. Director, Central Region, Regional Services, Alberta Environment*, re: *Northland Material Handling Inc.* (29 October 2007), Appeal Nos. 07-120-122 and 07-124-126-DOP.

07-123

Appellant(s) – Spruce Meadows and R.D.Southern, **Operator** – City of Calgary, **Location** – Calgary, **Type of Appeal** – Discontinuance of Proceedings

On September 4, 2007, the Director, Southern Region, Regional Services, Alberta Environment issued Approval No. 00240168-00-00, under the *Water Act* to the City of Calgary authorizing the completion of the construction works associated with a water main pipeline installation and reclamation along the perimeter of Radio Tower Creek Wetland, for the Silverado Subdivision development in Calgary, Alberta. On September 6, 2007, the Board received a Notice of Appeal and a Stay request from Spruce Meadows, a sole proprietorship of R. D. Southern appealing the Approval. On September 6, 2007, the Board wrote to the Appellant, the Approval Holder and the Director acknowledging receipt of the Notice of Appeal and requesting the Appellant provide the Board with a written submission regarding the Stay request by September 7, 2007. On September 12, 2007, the Board received a letter from the Appellant advising that an agreement was reached and that Approval and the appeal were no longer necessary. The Appellant

asked the Board to hold the appeal in abeyance until the agreement could be finalized. The Board granted the abeyance and on October 16, 2007 the Appellant withdrew his appeal. As a result of the withdrawal, the Board issued a Discontinuance of proceeding on October 25, 2007 and closed its file.

Cite as: *Spruce Meadows v. Director, Southern Region, Regional Services, Alberta Environment, re: City of Calgary* (25 October 2007), Appeal No. 07-123-DOP (A.E.A.B.).

07-129

Appellant(s) – Galleon Energy Inc., **Operator** – Galleon Energy Inc., **Location** – Municipal District of Smoky River No. 130, **Type of Appeal** – Discontinuance of Proceedings

On June 13, 2007, the Director, Northern Region, Regional Services, Alberta Environment, refused to issue a reclamation certificate under the *Environmental Protection and Enhancement Act* to Galleon Energy Inc. for the Normandville 4-2-79-21-W5M well in the Municipal District of Smokey River No. 130. On October 17, 2007, the Board received a Notice of Appeal from Galleon Energy Inc. appealing the Director's decision. On October 18, 2007, the Board wrote to the participants acknowledging receipt of the Notice of Appeal and advised the Appellant that their appeal appeared to be filed outside of the 30 day time limit prescribed in the *Environmental Protection and Enhancement Act*. The Board requested the Appellant indicate to the Board the reasons for the extension of time to appeal and provide an explanation as to why the appeal was filed outside of the 30 day time limit. On October 23, 2007, the Board received a letter from the Appellant advising they are withdrawing their appeal, and would be resubmitting their application for a reclamation certificate to Alberta Environment. As a result of the withdrawal, the Board issued a Discontinuance of Proceedings on October 25, 2007, and closed its file.

Cite as: *Galleon Energy Inc. v. Director, Northern Region, Regional Services, Alberta Environment* (25 October 2007), Appeal No. 07-129-DOP

07-127

Appellant(s) – Canadian Natural Resources Limited, **Operator** – Canadian Natural Resources Limited, **Location** – County of Vermillion, **Type of Appeal** – Discontinuance of Proceedings

On August 13, 2007, Alberta Environment refused to issue a reclamation certificate, under the *Environmental Protection and Enhancement Act* to Canadian Natural Resources Limited for PCP 6B Marwayne and PCP 8A Marwayne wells at surface point 7-11-53-2-W4M, near the Town of Marwayne, in the County of Vermillion. On September 20, 2007, the Board received a Notice of Appeal from Canadian Natural Resources Limited. On November 29, 2007, the Board scheduled the mediation meeting for January 24, 2008 in Lloydminster, Alberta. Following productive and detailed discussions at the January 24, 2008 mediation meeting, the Appellant withdrew their appeal. As a result of the appeal being withdrawn, the Board issued a Discontinuance of Proceedings on January 25, 2008 and closed its file.

07-134

Appellant(s) – Talisman Energy Inc., **Operator** – Talisman Energy Inc., **Location** – Clear Hills County, **Type of Appeal** – Discontinuance of Proceedings

On October 2, 2007, Alberta Environment cancelled Reclamation Certificate No. 00224089-00-00 that was issued under the *Environmental Protection and Enhancement Act* to Talisman Energy Inc. in relation to the Inverness George 16-33-82-6 W6M well in the Municipal District of Clear Hills No. 21 (Clear Hills County). On October 31, 2007, the Board received a Notice of Appeal from Talisman Energy Inc., appealing the cancellation of the Certificate. On December 13, 2007, the Board received a letter from the Director requesting the matter proceed to a hearing. The Board scheduled the Hearing for February 19, 2008. On January 25, 2008, the Board received a letter dated January 24, 2008, from the Appellant, advising that they were withdrawing their appeal. The Board issued a Discontinuance of Proceedings on January 31, 2008 and closed its file.

07-141

Appellant(s) – Gwendoline Frazer, **Operator** – R. Hoyda Management Corp., **Location** – Lac Ste. Anne County, **Type of Appeal** – Discontinuance of Proceedings

On December 31, 2007, Alberta Environment issued Licence No. 00237932-00-00 under the *Water Act* to R. Hoyda Management Corp. authorizing the operation of a works and the diversion of up to 2,618 cubic metres of water annually for agricultural purposes in the Lac Ste. Anne County. On January 22, 2008, the Board received a Notice of Appeal from Mrs. Gwendoline Frazer appealing the Licence. On January 29, 2008, the Board received a telephone call from the Appellant advising that she was withdrawing her appeal. The Board, therefore, issued a Discontinuance of Proceedings on January 31, 2008 and closed its file.