

ALBERTA
ENVIRONMENTAL APPEAL BOARD
Report and Recommendations

Dates of Hearing - June 23, 1998 and July 13, 1998
Date of Report and Recommendations - September 18, 1998

IN THE MATTER OF Sections 84, 85, 86, 87, 91, 92 and 93 of the
Environmental Protection and Enhancement Act, (S.A. 1992, ch. E-
13.3 as amended);

-and-

IN THE MATTER OF an appeal filed by Wayne and Laura Penson,
with respect to Reclamation Certificate 33463 issued to Pembina
Corporation (now Talisman Energy Inc.) on September 26, 1997, by
Mr. David Lloyd, Inspector of Land Reclamation, Alberta
Environmental Protection.

Cite as: Penson v. Inspector of Land Reclamation, Alberta Environmental Protection
re: Pembina Corporation.

HEARING BEFORE

Dr. M. Anne Naeth, Panel Chair
Dr. John P. Ogilvie
Mr. Ron V. Peiluck

APPEARANCES

Appellants:

Mr. Darryl Carter, counsel, Carter, Lock & Horrigan
representing Mr. Wayne and Ms. Laura Penson

Other Parties:

Ms. Maureen Harquail, counsel, Alberta Justice
representing Mr. David Lloyd and Mr. Rick Ostertag,
Alberta Environmental Protection

Ms. Letha MacLachlan, counsel, Macleod Dixon
representing Mr. Jim Gordon and Mr. Robert
Staniland, Pembina Corporation (now Talisman
Energy Inc.)

Mr. Doug Kulba and Mr. Bob Onciul, Alberta
Environmental Protection and Mr. Russell Bardak,
Riverview Consulting Ltd.

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BACKGROUND

[1] The Environmental Appeal Board (the Board) received a Notice of Appeal dated February 10, 1998 from Mr. Darryl Carter, Q.C. on behalf of Mr. Wayne and Ms. Laura Penson (the Appellants) against the issuance of Reclamation Certificate No. 33463 on September 26, 1997 by Mr. David Lloyd, Inspector, to Pembina Corporation (Pembina). The site that is the subject of the reclamation certificate is known as Decalta Dome Stur 13-35-68-22 well and is located in the NW Sec. 35 Tp. 68 Rge. 22 W5M. In October 1997, Talisman Energy Inc. (Talisman) acquired the oil and gas assets of Pembina and in doing so, assumed all responsibilities associated with their operating and abandoned locations.

[2] Pembina applied for a reclamation certificate on October 2, 1995 and an inquiry was held at the site on September 25, 1996 by Mr. Doug Kulba and Mr. Bob Onciul, Alberta Environmental Protection. As a result of this inquiry the application was refused and cancelled. Pembina requested a review of the inquiry. The second inquiry was held on September 26, 1997 by Mr. David Lloyd and Mr. Rick Ostertag, Alberta Environmental Protection and the reclamation certificate was issued.

[3] The well was surveyed and drilled in 1963. It was abandoned in 1978 and reclamation began in 1992.

[4] The Board wrote to the Appellants' counsel on February 17, 1998, acknowledging receipt of the appeal and by copy of that letter requested that the Department of Environmental Protection (the Department) provide all related correspondence, documents and materials. On that same date the Board wrote to Mr. Jim Gordon of Pembina (Approval Holder) advising him that an appeal had been filed by Mr. Carter on behalf of Mr. Wayne and Ms. Laurel Penson and providing him with a copy of the appeal.

[5] According to standard practice, the Board wrote to the Natural Resources Conservation Board (NRCB) and the Alberta Energy and Utilities Board (AEUB) asking whether this matter had been the subject of a hearing or review under their respective Boards' legislation. Replies were subsequently received from both the NRCB and the AEUB stating they did not hold any hearing or review under either of their Boards' legislation.

[6] All requested correspondence was received from the Department on March 9, 1998, and a copy was forwarded to the Appellants and the Approval Holder. In the Board's letter of March 12, 1998, addressed to Mr. Darryl Carter and copied to the parties, the Board requested that parties advise whether they wanted a mediation meeting under section 11 of the Environmental Appeal Board Regulation¹, if there was anything further to add on the directly affected issue, to identify why his clients believed the "reclamation carried out on site in question does not meet the AEP reclamation criteria" and if there were any other persons who may have an interest in the appeal.

[7] Responses were received from the parties and counsel for the Appellants advised that he did not wish to proceed to mediation. The Board advised the parties on March 26, 1998 that a hearing would take place on June 23, 1998 and requested written submissions from the parties. In the Board's notice of public hearing placed in the Valley Views on April 1, 1998, it was noted that if any person other than the parties wished to make representations before the Board, to advise the Board office by April 10, 1998. No intervenor requests were received. The Board received written submissions from all the parties.

[8] The hearing took place on June 23 and July 13, 1998 at the Grande Prairie Court House.

¹ AR 114/93 (hereinafter "the regulations").

SUMMARY OF THE EVIDENCE

The Appellants

[9] Mr. Carter called Mr. Onciul and Mr. Kulba as a panel. At the time of the first inquiry, Mr. Onciul was Mr. Kulba's supervisor. He said he was in Grande Prairie on the day of the inquiry and decided to accompany Mr. Kulba. He testified that he rarely attended inquiries. Mr. Kulba advised the panel he had been employed for 16 years with the government as a land assessor and then for years with the Department as an Inspector in the Grande Prairie district. He said this was the first application for a reclamation certificate that he had turned down.

[10] Mr. Kulba testified that he assessed the site by comparing the soil and vegetation on-site with a control off-site. He referred to his inquiry report and noted that the vegetation was similar on-site and off-site; there were mainly grass and legumes with a severe infestation of Canada Thistle. There was a significant difference in soil quality and quantity on-site compared to off-site. The well-site appeared to lack organic matter. He concluded that the reclamation of the site did not meet the criteria for the reclamation of wellsites drilled prior to 1983 in that the land had not been returned to equivalent capability. He stated that he did not agree with the conclusions from the site assessment provided by the company with the application. When asked if he agreed with Mr. Kulba's conclusions, Mr. Onciul replied that he agreed "whole-heartedly".

[11] Mr. Kulba referred to the 1995 update of the Reclamation Criteria for wellsites and associated facilities which states on page 61:

"Due to construction methods prior to the 1983 legislative requirement to conserve topsoil, a large number of wellsites were constructed to the standards of the time and now have very little or no salvaged surface soil for replacement. This does not relieve the operator from the responsibility to reclaim the wellsite. However, strict application of these criteria may not be applicable to judge the condition of the wellsite."

He testified that, in his opinion, the operator did not properly reclaim the wellsite even for the relaxed criteria applicable to wellsites drilled prior to 1983.

[12] Mr. Kulba stated that he was present at the second inquiry conducted by Mr. Lloyd and Mr. Ostertag but that he took no part in the inquiry. In answer to a question from the Board he said he saw nothing during that inquiry that would have made him change his decision.

[13] Mr. Carter called Mr. Russell Bardak of Riverview Consulting Ltd., the company retained by the Pensons to assess the site.²

[14] Mr. Bardak testified that he visited the site on November 5, 1997 and again on May 30, 1998. He stated that he dug test pits on and off the wellsite and took soil samples for testing. He noted hydrocarbon contamination, industrial debris (thread protectors) and undecomposed straw and manure in subsurface layers. He said that this latter condition indicated that the soil was anaerobic. His test on the soil samples indicated there had been a change in soil texture on the wellsite with the proportion of clay on the wellsite higher than that of the control off-site. He concluded that the wellsite had not been properly reclaimed and that Mr. Kulba had been correct to deny the reclamation certificate.

[15] Mr. Bardak said that Mr. Penson had offered the operator topsoil from a dugout or borrow pit at no charge. However, the operator did not avail himself of this offer. Under cross examination, Mr. Bardak said that he detected hydrocarbon odours and stains in one area approximately 3 m by 2 m at depths of 50 to 75 cm. In answer to a question from the Board on how he measured compaction, he replied that he compared the degree of difficulty of pushing a shovel into the soil in various areas.

² Exhibit 5: Resume of Mr. Russell R. Bardak, P. Ag.

[16] Mr. Carter called Wayne and Laura Penson, the owners of the land. Mr. Penson testified that he purchased the land 22 years ago and that he had cleared the land and seeded it by air. He has used the land as pasture for his cattle herd. His practice is to graze the land for four or five years then cultivate it and seed it to grass. During these cultivations he has turned up scrap metal such as casing protectors. He said that he first noticed pieces of steel scrap 17 years ago. In his opinion, comparison of vegetation on and off wellsite does not mean much when the vegetation is timothy. Cattle will not eat old timothy which may be taller and look more healthy than grazed timothy.

The Department

[17] Ms. Maureen Harquail called Mr. David Lloyd and Mr. Rick Ostertag as a panel. At the time of the second inquiry, Mr. Lloyd was Branch Head, Field Services, Land Reclamation Division, Regulatory Services, Alberta Environmental Protection and Mr. Ostertag was Conservation and Reclamation Inspector, Land Reclamation Division, Alberta Environmental Protection. Mr. Lloyd was Mr. Ostertag's superior at the time. Mr. Lloyd is now Regional Director, Parkland Region, Environmental Services located in Red Deer and Mr. Ostertag is self-employed.

[18] Mr. Lloyd explained that Pembina requested an informal review of the inquiry conducted by Mr. Kulba in September 1996. He stated that such a request was covered in the *Conservation and Reclamation Information Letter* No. C&R/IL/96-2.³ This letter states on page 4:

"What happens if the operator does not agree with the inspector's decision to issue a C&R Notice or cancel the application?"

There is no formal appeal to the Environmental Appeal Board in these cases. However, the operator has the option to contact the inspector's supervisor to ask for a review of the file. The supervisor will schedule an on-site inspection or a formal inquiry if needed to resolve the issue."

³

Exhibit 3: Conservation and Reclamation Information Letter No. C&R/IL/96-2, June, 1996.

The request was made to Mr. Larry Brocke and he scheduled the second inquiry with Mr. Lloyd and Mr. Ostertag as the inspectors. Mr. Lloyd stated that both he and Mr. Ostertag had been involved in the development of the 1994 and 1995 criteria for the reclamation of wellsites.

[19] Mr. Lloyd and Mr. Ostertag held an inquiry at the site on September 26, 1997. In assessing the site they used the 1995 Criteria because, as Mr. Lloyd pointed out, this is the only mechanism the Department has for such an assessment. The Criteria provides a yardstick against which to judge the effectiveness of the reclamation process used by the operator. Mr. Lloyd noted that the Criteria recognized that construction methods used for older wells do not approach today's standards. For example, in 1969 when this well was constructed there was no requirement to conserve topsoil.

[20] Mr. Lloyd testified that he examined three broad site conditions in making his assessment of this site. They were landscape, soil and vegetation. The landscape contours were good, drainage appeared to be satisfactory; he saw no debris and he saw no issues of concern off-site. He described in detail how the soil was assessed and how Mr. Ostertag took eight random samples on-site, six control samples off-site and two samples on the access road. The control samples showed an average 10 cm depth of topsoil which, under the Criteria, would have required replacement of 6 cm of topsoil on the site where the samples showed no topsoil. The soil samples from the on-site locations showed a higher clay content and thus different texture than the controls. Mr. Lloyd testified that, in the case of pre-1983 sites such as this one, the Criteria, under certain conditions, permit some of the surface soil quality criteria to be waived. He therefore, waived the change in texture on site and decided to issue the reclamation certificate.

[21] Mr. Lloyd introduced three soil samples and some field notes showing where the samples had been taken.⁴ These samples had been taken to the north of the wellsite and were presented to show the texture of the soil typical of the quarter section.

⁴ Exhibits 11a-c: Soil Samples.

[22] Under cross examination by Mr. Carter, both Mr. Lloyd and Mr. Ostertag agreed that, if the ability to waive the difference in soil texture on-site and off-site had not been part of the Criteria, they would not have passed the site and issued the reclamation certificate.

[23] In answer to questions by the Board, Mr. Lloyd said that prior to the second inquiry he contacted Mr. Kulba and asked him to notify Mr. Penson that the inquiry was going to be held at least five days prior to the date of the inquiry. He also asked Mr. Kulba to be present when the inquiry was held. He noted that Mr. Kulba, Mr. Penson and representatives from Talisman were on the site when he and Mr. Ostertag carried out the inquiry. However, they did not take part in the actual inquiry but waited off the wellsite. After the inquiry was complete, Mr. Lloyd met with them and advised them of the results.

[24] Mr. Lloyd also told the Board that when he took the soil samples⁵ on June 22, 1998, he did not advise Mr. Penson that he was going to do so and so did not have the landowners' permission to go on the land. He said that the Act⁶ gives a member of the Department such permission, but admitted that it would have been polite to obtain Mr. Penson's permission.

The Approval Holder

[25] Ms. MacLachlan called Mr. Jim Gordon, Environmental Specialist and Mr. Robert Staniland, Environmental Biologist, both employees of Talisman as a panel.

[26] Mr. Gordon reviewed the reclamation history of the site. In June 1992, the Energy Resources Conservation Board gave approval to abandon the well. Between June and October of 1992 reclamation activities consisting of stripping the surface soil, ripping the site to relieve

⁵ *Ibid*, note 4.

⁶ *Environmental Protection and Enhancement Act*, Statutes of Alberta, 1992, Chapter E-13.3 as amended.

compaction, hauling gravel from the access road, respreading the surface soil, hauling and spreading on the lease 35 loads of manure purchased from Mr. Penson, discing the wellsite and access road, picking rocks and garbage from the site and seeding the lease to a pasture mix. In fall 1994 a site inspection by STAD Resources indicated there was no compaction on the lease, the soil on and off the lease was clay/loam and the grass catch was excellent. A detailed site assessment for a reclamation report was prepared in September 1995. Pembina submitted an application for a reclamation certificate to the Department on October 2, 1995.

[27] Mr. Gordon noted that Mr. Kulba and Mr. Onciul conducted an inquiry at the site on September 25, 1996 and on October 17, 1996 advised Pembina that the application was cancelled. The reason for cancellation given in Mr. Kulba's report was that the site had not been returned to an equivalent land capability.

[28] Mr. Gordon and Mr. Staniland assessed the site in July 1997. They concluded the site had been satisfactorily reclaimed and met the reclamation requirements for a pre-1983 site. Pembina therefore wrote to Mr. Larry Brocke of the Department requesting an informal review of the 1996 inquiry as provided in the Department's *Conservation and Reclamation Information* Letter C&R IL/96-2 dated June 1996. The request was granted and the 1997 inquiry by Mr. Lloyd and Mr. Ostertag resulted.

[29] Mr. Gordon testified he had not observed any debris, off-site damage nor hydrocarbon contamination during any of his site visits. He also said that none of these matters had been reported to him by any of the independent contractors or environmental consultants retained by Pembina to work on the site. He noted that none of the Department personnel who assessed the site reported any of these conditions.

[30] Mr. Staniland testified that he had been a member of the group that developed the Reclamation Criteria for Wellsites and Associated Facilities.

The Appellants' Reply

[31] Mr. Penson testified that he intended to continue to use the land as pasture. It would be cultivated every four or five years and seeded to grass. He said he was concerned about the off-site damage, the scrap steel present on and under the site and the contour problems or ruts present along the access road. He does not believe that the lease has been properly reclaimed.

FINAL ARGUMENTS

The Appellants

[32] Mr. Carter argues that there is no provision in the Act for an appeal from the decision of a reclamation inspector who denies an application for a reclamation certificate. He further notes that section 132 of the Act provides for Cabinet to make regulations giving the criteria used to determine whether or not a piece of land has been properly reclaimed.⁷ He argues that Cabinet cannot delegate the right to make such regulations. His conclusion is that neither the Minister nor any members of his Department have the right to set criteria for standards of reclamation nor to establish even an informal appeal process and; therefore, Mr. Lloyd's issuance of a reclamation certificate in this case is not proper.

[33] Mr. Carter also argues that Mr. Lloyd is not objective in that he was directly involved in the development of the criteria and information letters. He suggests that, because of his

⁷ 132 The Lieutenant Governor in Council may make regulations

- (a) respecting the manner in which and the time within which specified land must be conserved and reclaimed
- (b) respecting the establishment of standard or criteria to be used to determine whether conservation and reclamation have been completed in a satisfactory manner, including, without limitation, the standard of reclamation of specified land to its equivalent capability.

involvement in their development he is anxious to see them accepted and so he is not in a neutral position when dealing with matters of land reclamation and conservation.

The Department

[34] Ms. Harquail argues that there are only two issues before the Board. Was the decision by the Inspectors to issue Reclamation Certificate No. 33463 reasonable and correct and were the Wellsite Reclamation Criteria correctly used as a benchmark for determining equivalent capability?

[35] Ms. Harquail notes that Mr. Lloyd was asked to conduct the inquiry by Mr. Brocke, the Director of Land Reclamation and that the Appellants were provided with five days notice of the inquiry as required by the regulations. During the inquiry the Inspectors assessed the site for drainage, contouring, soil quality, soil quantity, existence of debris and rocks, vegetation and contamination. They noted texture on-site dropped one class compared to off-site. However, as provided in the Criteria (page 13)⁸, since the site was constructed prior to 1983, they waived the soil quality requirement. The Department argues that the Inspectors acted properly.

[36] Ms. Harquail argues that these are the only criteria available to the Inspectors which have been established and authorised by the Director pursuant to Section 3 of the *Conservation and Reclamation Regulation* (A.R. 115/93).⁹ She noted that the Criteria has been used and accepted by industry, consultants and landowners and it is proper to use them in this case.

[37] Ms. Harquail rebuts Mr. Carter's argument that Cabinet does not have the right to delegate authority to make regulations to the Director by citing the 1988 Supreme Court decision

⁸ When most or all of the surface soil depth is made up through the use of amendments, or is the result of a Management Plan for sites constructed before 1983, then some of the surface soil quality criteria may be waived.

⁹ 3(1) The Director may establish standards and criteria for conservation and reclamation of specified land and develop and release information documents respecting those standards and criteria.

in *Re Peralta and the Queen in Right of Ontario*¹⁰ which provides that the use of the word “respecting” empowers the Governor in Council to delegate to others the administration of its regulations including the creation of any standards and criteria. She concludes that the Director can properly develop and publish criteria for the reclamation of land. Therefore, the Inspectors acted properly in using the provisions of the Criteria applicable to a pre-1983 site.

The Approval Holder

[38] Ms. MacLachlan suggests that the determination of whether or not the Director can develop and apply standards and criteria for assessing reclamation and conservation is not within the jurisdiction of the Board but rather a matter for the courts. She argues that the Inspectors, Mr. Lloyd and Mr. Ostertag, performed a valid and careful inspection and that they were correct in issuing Reclamation Certificate No. 33463. The Appellants did not introduce any evidence refuting this fact.

The Appellants’ Reply

[39] The Appellants reiterate their argument that the Criteria and Information Letter used by the Inspectors have not been developed according to the legislation. They suggest the Inspectors were not impartial in their assessment of the site.

ISSUES BEFORE THE BOARD

[40] The primary issue facing the Board is whether or not the Inspectors, Mr. Lloyd and Mr. Ostertag, acted properly in issuing Reclamation Certificate No. 33463. A secondary issue is whether or not they acted within the law when they used the Criteria and when they re-inspected the site that had previously been refused a reclamation certificate by Mr. Kulba. This re-inspection was

¹⁰ (1985), 16 D.L.R. (4th) 259 (Ont. C.A.), aff’d (1988), 56 D.L.R. (4th) 575 (S.C.C.) (“Peralta”).

carried out not as a result of a new application, but as a result of a request from Pembina to review Mr. Kulba's inspection.

CONSIDERATIONS OF THE BOARD

[41] The Board believes the Director has the legislative authority to develop and issue standards and criteria covering the assessment of reclaimed sites. Inspectors reporting to the Director can use the Criteria in carrying out their duties. The Board concludes that Mr. Lloyd and Mr. Ostertag were acting with proper authority when they used the Criteria in assessing the site. This does not mean they applied the standards and directions contained in the Criteria correctly or that they acted properly in issuing the reclamation certificate. These matters require further consideration by the Board.

[42] The Board, in making a decision whether the Inspectors acted properly, must take into consideration the expertise of the Inspectors on the matter under review and how much weight to place on their evidence and the evidence of others. The Board believes both Mr. Lloyd and Mr. Ostertag were lacking in experience for the agricultural conditions in the area. Mr. Ostertag testified that he had farmed extensively in areas south of Edmonton. However, conditions there are very different from those around the site. Mr. Lloyd has not farmed and said that this was only the second reclamation inquiry in which he had participated. On the other hand, the Board concludes that Mr. Kulba has had considerable experience including in the Fairview, Grande Prairie and Peace River areas. The Board therefore places more weight on the evidence of Mr. Kulba than on that of the other two inspectors.

[43] There was considerable discussion by the Appellants regarding the use of the waiver provision on page 13 of the Criteria. The item on page 13 states "When most or all of the surface soil depth is made up through the use of amendments, or is the result of a Management Plan for sites constructed before 1983, then some of the surface soil quality criteria may be waived." In the present

case, “most or all” of the surface soil on the site does not consist of amendments. The evidence showed that only 35 loads of manure were imported. Mr. Bardak reported the presence of straw. Mr. Penson testified that only manure was brought onto the site. No formal Management Plan was presented in evidence. It appears to the Board that neither of the conditions which would have permitted some waiver of surface soil criteria have been met and that Mr. Lloyd and Mr. Ostertag are not justified in using the waiver provision.

[44] None of the Department or Talisman witnesses gave any evidence of casing protectors and other metallic debris on the site. However, Mr. Penson introduced pieces he found just before the hearing as exhibits.¹¹ Mr. Penson also provided photographs of partially buried debris.¹² These had been taken on lease between September 26, 1997 and October 27, 1997, immediately following the inquiry by Mr. Lloyd and Mr. Ostertag. Thus, there is clear evidence to the Board that the site was not reclaimed due to the presence of metallic debris at the surface.

RECOMMENDATIONS

[45] The Board recommends that the appeal be allowed and that Talisman Energy Inc. be required to carry out further reclamation activities on the site and submit a new application for a reclamation certificate.

[46] Further with respect to section 92(2) and 93 of the *Environmental Protection and Enhancement Act*, the Board recommends that copies of this Report and Recommendations and of any decision by the Minister be sent to the following parties:

¹¹ Exhibit 7: Casing protectors on lease site (2 sizes).

¹² Exhibits 20 a & b: Photos taken between September 26, 1997 and October 27, 1997.

- Mr. Wayne and Ms. Laurel Penson, represented by Mr. Darryl Carter, counsel, Carter, Lock & Horrigan;
- Pembina Corporation (now Talisman Energy Inc.), represented by Ms. Letha MacLachlan, counsel, Macleod Dixon; and
- Inspector, Alberta Environmental Protection, represented by Ms. Maureen Harquail, counsel, Alberta Justice.

COSTS

[47] The Board's decision on costs will follow in due course.

MATTERS UNRELATED TO THIS REPORT AND RECOMMENDATIONS

Resume of Mr. David Lloyd

[48] When the Board examined Mr. Lloyd's resume¹³ after the hearing on June 23, 1998, it noted that Mr. Lloyd had included the following employment activity: "Advisor to Environmental Appeal Board (as requested) to provide statement on procedures and processes regarding conservation and reclamation practices used by field and head office staff." This reference gave the Board deep concern because the Board is independent of the staff of the Department and goes to considerable lengths to maintain that independence. For that reason the Board recalled Mr. Lloyd as a witness at the start of the continuation of the hearing on July 13, 1998 to explain the statement in his resume.

[49] Mr. Lloyd testified that he had attended hearings of the Board regarding appeals of the issuance of reclamation certificates at the Board's request and that he assumed that his presence

¹³ Exhibit 9: Resume of Mr. David Lloyd, Regional Director, Parkland Region, Alberta Environmental Protection.

had been required to give advice to the Board on the matters under appeal. However, when the Board suggested that he had been called to give evidence rather than advice, he agreed. The Board had required his presence at the hearing because he was the Director concerned with the matter. After some questioning by both Mr. Carter and the Board, he agreed that he would withdraw the statement from his resume. The Board expects that Mr. Lloyd's resume is now corrected.

Test Case of the Pre-1983 Wellsite Reclamation Criteria

[50] Throughout the hearing, each of the parties made numerous statements that this appeal was a "test case" before the Board for the reclamation certification of wellsites constructed prior to 1983. This was done particularly by Mr. Carter and the Department. The Board does not view this as a test case in any sense of the concept.

[51] The waiving of the change in texture on-site versus off-site was not the reason for the Board's decision. The fact that the site still contained metallic debris indicated the site was not reclaimed. The Board does not have to go further in its deliberations to determine if the waiver should have been used. A reclamation certificate should not be issued if such metallic debris is on-site. The onus is on the Appellants to meet the burden of proof to sufficiently defend their case. The Board believes the Appellants did this in their presentation of evidence showing debris and photos to indicate the location of the debris.

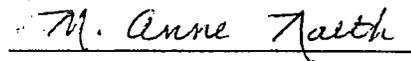
[52] If the metallic debris had not been present on site, the Board would next have assessed the soil quantity and quality. The Board placed credibility on the evidence presented by both Mr. Onciul and Mr. Kulba. Mr. Kulba in particular had experience working on the soils of the region. He indicated that soil quality and quantity were not comparable on-site versus off-site.

[53] The waiver itself was discussed in the considerations of the Board. The waiver could only have been applied if the site had most of its surface soil depth made up with amendments or was the result of a management plan for wellsites constructed prior to 1983. Neither of these

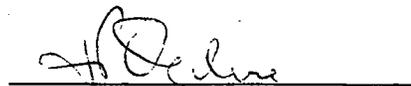
conditions were met. Thus the waiver does not apply. However, whether or not the waiver was appropriate is not the main issue. The main issue is that the site still contained metallic debris from wellsite construction and/or operation. This should have been cleaned up prior to reclamation certification application.

[54] Thus the facts in this appeal do not require the Board to inquire further into soil quality and quantity to allow it to be a "precedent setting" appeal for reclamation of wellsites constructed prior to 1983.

Dated September 18, 1998, at Edmonton, Alberta.



Dr. M. Anne Naeth



Dr. John P. Ogilvie



Mr. Ron V. Peiluck

ORDER

I, Ty Lund, Minister of Environmental Protection:

yes

Agree with the Recommendations of the Environmental Appeal Board and order that they be implemented.

Do not agree with the Recommendations of the Environmental Appeal Board and make the alternative Order set out below or attached.

Dated at Edmonton this 23 day of September 1998.

Ty Lund
Honourable Ty Lund
Minister of Environmental Protection

_____ Refer to Attachments (only if applicable)