

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

Date Discontinuance of Proceedings – January 24, 2001

IN THE MATTER OF sections 84, 85, and 87 of the *Environmental Protection and Enhancement Act*, S.A. 1992, c.E-13.3.

-and-

IN THE MATTER OF an appeal filed on June 25, 1999 by Mr. Wayne Brown on behalf of Archean Energy Ltd., with respect to the decision of the Inspector, Land Reclamation Division, Alberta Environmental Protection to refuse to issue a Reclamation Certificate to Archean Energy Ltd. for specified land located at NW ¼ 20-79-10-W6M.

Cite as: *Archean Energy Ltd. v. Inspector, Land Reclamation Division, Alberta Environmental Protection*

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BACKGROUND

[1] On April 27, 1994 Samedan Oil of Canada Inc. (“Samedan”) applied for a reclamation certificate for a leased well site located on the NW¼ of 20-79-10-W6M (the “site”). The site is located on land owned by Mr. Cyril Day, near Gordondale, Alberta.

[2] On September 27, 1994 an inquiry was held on the site. A reclamation certificate was not issued following the inquiry because a fence remained on the site. Samedan had not obtained a release from Mr. Day to permit the fence to remain.

[3] Samedan made repeated efforts to obtain the release from Mr. Day, but were unsuccessful. On May 16, 1995 Samedan advised Alberta Environment that they had reached an impasse in their discussion with Mr. Day and advised that they would “[a]wait further action as it arises.”¹ In response to this letter, on September 26, 1995, Mr. David Lloyd, Branch Head, Field Services Branch, Land Reclamation Division, Alberta Environment (the “Inspector”) advised Samedan that their application for a reclamation certificate had been cancelled because they had been unable to obtain a release for the fence.²

[4] On January 21, 1998, Archean Energy Ltd. (“Archean”), the successor to Samedan, wrote to Alberta Environment requesting the issuance of the same reclamation certificate for the same site as they had finally obtained a release from Mr. Day.³ On June 7, 1999, the Inspector wrote to Archean and advised that a reclamation certificate had not been issued. The letter also advised that the Inspector would be requiring Archean to submit a new application for a reclamation certificate and that prior to a reclamation certificate being issued the site would have to pass a new inquiry under section 121 of the *Environmental Protection and Enhancement Act*, S.A. 1992, c.E-13.3 (the “Act”).

[5] On June 25, 1999, the Environmental Appeal Board (the “Board”) received a Notice of Appeal, dated June 24, 1999, from Mr. Wayne Brown on behalf of Archean. Mr.

Wayne Brown is an Officer of Archean. The Notice of Appeal was with respect to the decision of the Inspector to refuse to issue a reclamation certificate to Archean.

[6] On June 25, 1999, the Board acknowledged receipt of the Notice of Appeal and requested a copy of all correspondence, documents and materials (the “Inspector’s Record”) related to the appeal from the Inspector.

[7] According to standard practice, on June 25, 1999, the Board wrote to the Natural Resources Conservation Board (the “NRCB”) and the Alberta Energy and Utilities Board (the “AEUB”) asking whether this matter had been the subject of a hearing or review under their respective Boards’ legislation. Replies were subsequently received from the NRCB dated June 28, 1999 and from the AEUB dated July 6, 1999, indicating that this matter had not been the subject of a public hearing or review under their respective jurisdictions.

[8] On January 14, 2000, the Board received a letter from the Inspector enclosing the Inspector’s Records. Copies of these records were provided to Archean and Mr. Day on January 19, 2000.

[9] The January 14, 2000 letter from the Inspector provided background to the appeal, an explanation of the issues, and a proposed course of action. The proposed course of action was to issue a detailed decision document. The detailed decision document would address the issue of jurisdiction of the Board and provide the Inspector’s position as to whether the appeal before the Board was validly filed.

[10] The Board wrote to Archean on January 19, 2000 requesting comments in response to the Inspector’s January 14, 2000 letter.

[11] On January 24, 2000, the Board received a letter from Archean, stating that they did not agree with the Inspector’s position on the jurisdiction issue, but looked forward to its

detailed decision document.

[12] On January 31, 2000, the Board received the detailed decision document from the Inspector. The document stated in part:

“The purpose of this letter is to explain the status of the application for a reclamation certificate on NW¼ 14-20-79-10-W4th (the “site”) and outline the rationale for Alberta Environment’s ... position that a new certificate is required. The letter will also review the jurisdictional issues raised in our letter of January 14, 2000. We will also propose a course of action to address this matter.”

[13] The Board wrote to Archean on February 2, 2000, requesting comments in response to the Inspector’s letter of January 31, 2000.⁴

[14] On February 16, 2000 the Board also received a reply to its February 2, 2000 letter from Archean. Archean stated that they did not agree with the Inspector’s position regarding the Board’s jurisdiction. Archean also advised that it would be open to a mediation, but requested that a date be set for a hearing in order to prevent further delay should a resolution not be reached. Archean advised that it had a number of comments regarding the substantive matters raised in the January 31, 2000 letter from the Inspector, but proposed to respond to those matters once the Board had decided on how to proceed with the appeal.

[15] In response to the letters from the Inspector dated January 31, 2000, Mr. Day dated February 16, 2000, and from Archean dated February 16, 2000, the Board by letter of February 23, 2000, offered to schedule a mediation meeting/settlement conference.

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[16] All parties accepted the Board’s offer to schedule a mediation meeting/settlement conference and the parties provided their available dates. The mediation meeting/settlement conference was scheduled for May 24, 2000, in Edmonton, Alberta.

PROCEDURAL MATTERS/MEDIATION MEETING

[17] According to standard practice, the Board called a mediation meeting/settlement conference in an attempt to facilitate a resolution of this appeal, or failing that, to make procedural arrangements for an oral hearing. In conducting this meeting the presiding Board member, Dr. Steve Hrudey, reviewed the appeal and mediation process and explained the purpose of the mediation. He then circulated copies of the “Participants Agreement to Mediate” which all parties signed.

[18] At the mediation meeting/settlement conference, the parties signed an “Interim Agreement Towards a Resolution” and also agreed to conduct an inspection of the site. The parties also agreed to attend a second mediation meeting/settlement conference on September 6, 2000, after they had the opportunity to review the inspection report which was to be produced following this site inspection.

[19] The parties decided upon a date for the site inspection, and on June 21, 2000, the Board wrote to the parties confirming that the site inspection would take place on June 30, 2000, at the site, in Gordondale, Alberta.

[20] On July 10, 2000, the Board wrote to the parties requesting that upon receipt of the inspection report, they would provide a status report to the Board by August 4, 2000.

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[21] The Board received the inspection report on July 21, 2000 and on August 1, 2000 the Board forwarded the inspection report to all of the parties.⁵

[22] The Board received a letter from the Inspector on August 23, 2000, requesting that Mr. Russell Bardak, who conducted the inspection and prepared the inspection report, be permitted to attend the second mediation meeting/settlement conference on September 6, 2000. The purpose of Mr. Bardak’s attendance at the mediation was to answer any questions that the

parties may have in relation to the inspection report.

[23] The Appellant consented to Mr. Bardak's attendance at the second mediation meeting/settlement conference, provided that Mr. Bardak agreed to comply with the provisions of the "Participants Agreement to Mediate".

[24] The second mediation meeting/settlement conference held on September 6, 2000 was unsuccessful. On that same date, following the mediation meeting/settlement conference, the Board wrote to the Appellant requesting that they advise the Board as to how they wished to proceed.

[25] On October 5, 2000, the Board received a letter from Archean stating that:
"...we can advise that Archean has contacted the parties and is working towards resolving this matter. In the interim, and as a resolution has not been achieved, Archean maintains its right to pursue its appeal with the Board."

The Board acknowledged the letter from Archean on October 2, 2000, and requested that Archean provide a status report to the Board by October 19, 2000.

[26] On October 19, 2000, the Board received a letter from Archean advising that Archean had proposed a settlement offer by way of a registered letter to Mr. Day, and that they were waiting for Mr. Day's response to that offer.

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[27] On October 20, 2000, the Board acknowledged Archean's letter of October 19, 2000, and requested that Archean notify the Board once they had received a response from Mr. Day. The Board also requested a further status report to be provided to the Board by October 31, 2000.

[28] On October 25, 2000, following a telephone conversation with Mr. Day, the Board wrote to the parties, stating:

"Although, as the Board understands, Mr. Day is not satisfied with the proposed settlement offer as it stands, the Board is pleased to see that some progress has been made. The Board is of the view that the best possible resolution to this matter would be through mediated settlement. In this regard the Board would like

to offer the parties a further opportunity to participate in a mediation meeting/settlement conference.”

The Parties were requested to provide their comments and available dates to the Board by October 30, 2000.

[29] The Board received a letter on October 30, 2000, from the Inspector advising the following:

“Further to the Board’s letter of October 25, 2000, I can advise that the [Inspector] has some hesitancy in agreeing to a further mediation meeting if the remaining issues are only monetary concerns and not environmental. Further information would have to be provided to determine if the [Inspector] would be agreeable to attending at any such mediation meeting.”

[30] On October 30, 2000, the Board received the following letter from Archean stating:

“We received the Board’s October 25, 2000 letter. As the Board is aware, Archean extended a settlement offer to Mr. Day on September 29, 2000. Archean has received no response to its offer even though, as indicated by your letter, Mr. Day has discussed the offer with the Board. Archean has been working towards resolving this matter and is hoping a settlement can be reached. However, Archean needs to know Mr. Day’s position with respect to its offer before it can make a determination as to whether participation in a further mediation will be a constructive process.”

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[31] On October 30, 2000, the Board received a letter from Mr. Day, enclosing a letter to Archean. In his letter to the Board, Mr. Day advised that he would not be available for a mediation meeting/settlement conference until the new year. In his letter to Archean, Mr. Day stated:

“In regards to your letter dated September 29, 2000.[sic] Please be advised that it is not acceptable to me. I made it perfectly clear to you in my statement dated Sept 5, 2000, what I intended to receive...”

[32] The Board acknowledged Mr. Day’s letter on November 7, 2000, and requested that the parties provide an outline of the specific issues they would like addressed in the context of a mediation meeting/settlement conference. The Board advised, that upon review of these issues, the Board would then decide if a further mediation meeting/settlement conference would

be viable.

[33] By letter of November 22, 2000, the Board responded to continued correspondence. The Board advised that since it appeared that the parties did not wish to pursue further mediation, that the Board, upon review of the file had decided to conduct a hearing. The hearing would be conducted via written submissions. Archean was required to submit their initial submission by December 4, 2000, the Inspector and Mr. Day were to submit their response submissions by December 15, 2000, and Archean was to submit any rebuttal submission by December 22, 2000.

[34] On November 29, 2000, the Board received a telephone call from Archean requesting an extension to their deadline for filing their initial submission to December 8, 2000. In the absence of any objections from the other parties to the appeal, the Board granted the request, but maintained the final submission date of December 22, 2000.

[35] On December 8, 2000, the Board received a letter from Archean. That letter stated:

“We wish to advise the Board that Archean Energy Ltd. withdraws its appeal, which is identified by the Board as file No. EAB 99-136.”

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DECISION

[36] Pursuant to section 87(7) of the *Environmental Protection and Enhancement Act*, and based on Archean’s letter of December 8, 2000, the Board hereby discontinues its proceedings in Appeal No. 99-136 and will be closing its file.

Dated January 24, 2001 at Edmonton, Alberta.

Dr. William A. Tilleman

¹ Inspector’s Record – Document #11 – Letter from Samedan to Alberta Environment.

² Inspector's Record – Document #12.

³³ Inspector's Record – Document 18 – Letter from WASS Ltd. (on behalf of Archean).

⁴ On February 16, 2000, in reply to its February 2, 2000 letter to Archean, the Board received a letter from Mr. Day. Mr. Day was in support of the Inspector's position, and stated the following:

“In particular, it is our position that the Alberta Environmental Appeal Board does not have jurisdiction to proceed with this appeal and this matter has caused Mr. Day, who is a farmer with limited revenue, to incur unnecessary costs.”

⁵ Upon reviewing the inspection report, the parties provided the Board with status reports. On August 18, 2000, the Board wrote to Mr. Day confirming that the second mediation meeting/settlement conference was to be held, as agreed, on September 6, 2000.