



ALBERTA  
ENVIRONMENTAL APPEALS BOARD

---

February 16, 2007

**Via Fax, E-Mail, Mail or Courier**

Mr. Rangi Jeerakathil  
MacPherson Leslie & Tyerman  
1500, 410 – 22 Street East  
Saskatoon, SK S7K 5T6

Mr. Sabri Shawa  
May Jensen Shawa Soloman  
800 Lancaster Building  
304 – 8 Avenue S.W.  
Calgary, AB T2P 1C2

Dr. Dwight Stanford  
Town Manager  
Town of Strathmore  
680 Westchester Road  
Strathmore, AB T1P 1J1

Ms. Donna Breaker  
Siksika Nation Elders  
R.R. 1, Box 34, Site 1  
Strathmore, AB T1P 1J6

Ms. Lillian Crow-Chief  
Siksika Nation Elders  
P.O. Box 1167  
Siksika, AB T0J 3W0

Ms. Anne McMaster  
Siksika Nation Elders  
P.O. Box 81  
Cluny, AB T0J 050

Mr. Kelly Breaker  
Siksika Nation Elders  
#676, 3545 – 32 Avenue N.E.  
Calgary, AB T1Y 6M6

Ms. Charlene Graham  
Alberta Justice  
Environmental Law Section  
1710 Standard Life Building  
639 - 5 Avenue S.W.  
Calgary, AB T2P 0M9

Ms. Hester Breaker  
Chair, Water Advisory Panel  
Siksika Nation  
P.O. Box 1580  
Siksika, AB T0J 3W0

Mr. Roy Little Chief  
Siksika Nation Elders  
Box 1549  
Siksika, AB T0J 3W0

Dear Ladies and Gentlemen:

**Re: Town of Strathmore/EPEA Amending Approval No. 1190-01-13**  
**Our File No.: EAB 05-053 and 05-054 (REVISED LETTER)**

This is the decision and preliminary reasons of the Board with respect to an application for a stay by the Siksika Nation (“Siksika”) in the matter of two appeals of Amending Approval No. 1190-01-13 (the “Amending Approval”) issued under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”). Given the circumstances in this matter, the Board is of the view that it is necessary to provide this decision and preliminary reasons to the parties as soon as possible. The Board will provide additional reasons in its Report and Recommendations, or earlier if requested to do so by any of the parties.



The Amending Approval authorizes the Town of Strathmore (“Strathmore”) to construct and operate a pipeline to discharge treated wastewater from its wastewater treatment plant to the Bow River. Siksika is ardently opposed to the use of the Bow River for the discharge of Strathmore’s treated wastewater. They oppose this discharge because it will occur approximately 15 km upstream from the infiltration wells that are the raw water supply for Siksika’s Youngman Water Treatment Plant (the “Youngman Plant”). The discharge will also flow through an area of the Bow River that supplies a number of individual water wells located on Siksika land. The Youngman Plant and individual water wells are the source of supply for potable water for approximately 3000 members of Siksika.

### Background

The challenge that the Board faces in addressing the substantive merits of these appeals is to balance the interests of Strathmore with those of Siksika. Strathmore needs to dispose of its treated wastewater into the environment so that it can provide the essential service of managing wastewater for its residents. Siksika needs to protect their source of supply for potable water and the Bow River ecosystem which plays a vital role in the lives of the Siksika people. The difficulty with respect to this stay application is that it requires the Board to address this balancing of interests in the short term until the Board can provide its Report and Recommendations regarding these appeals to the Minister, and until the Minister can make a decision that will address the matter in the long term.

This stay application is complicated by two facts. First, a crisis has developed because the storage lagoons at the Strathmore wastewater treatment plant are almost full. A decision must be made immediately as to what is to be done with the treated wastewater that is currently in the lagoons and that is being produced by Strathmore on a daily basis. Strathmore produces up to an average of 4000 m<sup>3</sup> of treated wastewater per day, and at last report, the storage lagoons will be full by approximately March 15, 2007. If some way is not found to deal with at least the daily production of treated wastewater before March 15, 2007, the lagoons will ultimately overtop, leading to an uncontrolled release of treated wastewater into the environment and possibly the collapse of the lagoons. If the lagoons collapse, even greater damage to the environment may occur.

Second, the stay decision is being made at an unusual point in the Board’s process – after all of the evidence has been heard on the merits of the appeals, but before the final arguments and closing comments have been filed. (Unfortunately, as a result of the complex nature of the presentations at the February 12, 13, and 14, 2007 hearing, the Board was not able to complete the hearing, and decided to receive final arguments and closing comments in writing. The deadline for all of this information to be filed is March 7, 2007.) Normally stay applications are made at the beginning of the appeal process.<sup>1</sup> However, this stay application was filed approximately one week

---

<sup>1</sup> A stay application was filed at the beginning of the appeal process, in this case, by the Siksika Elders (the other appellant). That stay application was denied as being premature. At that time, the pipeline was being constructed and there was no immediate possibility of treated wastewater being discharged to the Bow River. After that stay decision the Board attempted to arrange mediation between the parties; however, they indicated that they would prefer to work at a possible solution among themselves. The Board, following a series of inquiries, was informed in late December that the

before the hearing. Although written submissions regarding the stay were filed before the start of the hearing, the Board required more information before it was prepared to make a decision on the stay. On one hand, this provides the benefit of having the evidence from the hearing to include in making the stay decision. On the other hand, the Board must be careful not to prejudge the substantive merits of the appeals because the final arguments and closing comments are not before the Board, and therefore have not yet been considered.

In light of these circumstances, the Board has determined that, subject to a number of conditions, a stay is necessary to balance the interests of Strathmore and Siksika until such time as the Board can provide its Report and Recommendations to the Minister, and until the Minister can make his decision regarding these appeals. The Board is making the stay decision based on all of the information that it currently has before it and is making this decision at this time because of the crisis that is currently facing the parties. In making this decision, the Board wants to emphasize that it is not prejudging the substantive merits of the appeals. Once the Board receives the final arguments and closing comments of the parties, it will review that information and again review all of the evidence that has been presented, and then make its Report and Recommendations to the Minister on the completed record of these appeals.

### Stays

The Board is empowered to grant a stay pursuant to section 97(2) of EPEA, which provides: “The Board may, on the application of a party to a proceeding before the Board, stay a decision in respect of which a notice of appeal has been submitted.” The Board’s test for a stay, as discussed in numerous decisions, is based on the Supreme Court of Canada case of *RJR MacDonald*.<sup>2</sup> The four aspects that the Board considers with respect to a stay are: (1) serious concern, (2) irreparable harm, (3) the balance of convenience, and (4) the public interest. All four aspects must be successfully argued for the Board to grant a stay.

---

Strathmore lagoons would be full by approximately the end of March. At that point the Board proceeded to schedule a hearing.

<sup>2</sup> *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311. At paragraph 43, the Court states: “First, a preliminary assessment must be made of the merits of the case that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.”

The Board has traditionally characterized the third element of this test in two parts (the balance of convenience and the public interest) based on the public interest that exists in the environmental cases that come before the Board. See: *Pryzbylski v. Director of Air and Water Approvals Division, Alberta Environmental Protection re: Cool Spring Farms Dairy Ltd.* (6 June 1997), Appeal No. 96-070 (A.E.A.B.); *Stelter v. Director of Air and Water Approvals Division, Alberta Environmental Protection, Stay Decision re: GMB Property Rental Ltd.* (14 May 1998), Appeal No. 97-051 (A.E.A.B.); and *Nault and Mitchell v. Director, Southern Region, Regional Services, Alberta Environment, Preliminary Motions re: Town of Canmore* (29 May 2004), Appeal Nos. 04-019 and 04-020-D (A.E.A.B.).

### Serious Issue to be Tried and Irreparable Harm

The question of a serious issue to be tried is quite clear in this case. Strathmore needs to find some way to deal with its treated wastewater. Pursuant to EPEA, Siksika has the right to bring these appeals to challenge the use of the Bow River as the discharge location for Strathmore's treated wastewater, because the Bow River is Siksika's source of supply for potable water. Complex evidence must be considered and a complicated balancing of interests must be made to address the substantial merits of these appeals; therefore, by any standard, there is a serious issue to be tried.

By a similar analysis, it does not require much in the way of a detailed consideration to determine that both Strathmore and Siksika risk suffering irreparable harm unless an immediate decision is made regarding what to do with the treated wastewater that is being stored in the lagoons and that is being produced by Strathmore on a daily basis. As stated previously, if Strathmore cannot deal with its treated wastewater in some way, the lagoons will overtop and there will be an uncontrolled release of treated wastewater to the environment. It is uncertain as to where exactly the treated wastewater will go and what the ultimate effect will be, but likely it will flow across privately owned land and probably across Siksika land as well, eventually entering various water bodies in the area and causing adverse environmental impacts. This is complicated by the fact that the ground and these water bodies are currently frozen. A more serious concern is that if the lagoons are overtopped, the lagoons may collapse. If the lagoons collapse, a large volume of water will flow over the adjacent land, carrying along with it the soils that make up the walls of the lagoons. This large volume of water will also pick up soil and other debris from the surface of the land as it moves. This will result in depositing even more material into the water bodies in the area, and potentially into the Bow River. This would likely result in a more severe adverse environmental impact.

With respect to the Siksika, they argue that if some sort of stay is not granted, there is a reasonable possibility that a discharge of treated wastewater at the full capacity of the pipeline could contaminate the infiltration wells that supply the Youngman Plant, the Youngman Plant itself, and the individual water wells located along the Bow River, creating public health risks to drinking water consumers. There is also a concern that the ecosystem of the Bow River, the most predominant ecological feature in the area, could be damaged by a full capacity discharge of the pipeline. While the Board has not made a final determination on the validity of these concerns, for the purpose of this stay, the Board finds that not granting some sort of stay could also cause the Siksika irreparable harm.

### Balance of Convenience and Public Interest

In the past, the Board has commonly dealt with the balance of convenience and the public interest as separate issues when considering a stay application; however, in the current circumstances these issues are inextricably linked. While the main parties in these appeals are Siksika, the Siksika Elders, and Strathmore, the negative effects of granting or not granting a stay in whole will be felt by the members of Siksika and the residents of Strathmore. As a result, the balance of convenience for the parties will be the public interest with respect to the members of Siksika and the residents of Strathmore.

The circumstances and issues underlying the stay request by the Siksika and the options available to Strathmore to respond to these circumstances have become severely constrained, despite the construction of the treated wastewater pipeline to the Bow River. As has been discussed, at the centre of the stay request is a pending crisis for Strathmore regarding the storage of its treated wastewater versus the potential impacts of the treated wastewater discharge on Bow River water quality, and the downstream water sources for the Siksika. This has come about, in part, because of the failure of Strathmore to have developed a contingency plan to deal with the concerns of the Siksika regarding the impacts on the safety and quality of their water supply, and on the ecology of the Bow River, that may be caused by using the pipeline that is the subject of these appeals.

During the hearing of the appeals, the Board learned that the Western Irrigation District (the "WID"), which had been reluctantly accepting Strathmore's treated wastewater discharge in increasing quantities since 1999, is no longer willing to accept Strathmore's treated wastewater no matter what improvements have been made to its quality. This is in part because of an adverse perception among WID water users of continuing to allow treated wastewater into their irrigation canal, which is also the raw water source for the Gleichen water treatment plant. The nutrients in the treated wastewater were contributing to operational difficulties for WID irrigation water users. The WID concerns have been repeatedly expressed in writing to Strathmore.

The option of disposing of Strathmore's treated wastewater to nearby Eagle Lake also raised apparent concerns about the negative reaction from adjacent landowners. Finally, it appears that in 2002, Strathmore itself chose not to fully evaluate the options and impacts of using its treated wastewater as its own raw water supply, either directly or after further upgrading through wetland treatment. Again, these options were rejected, in part, because of concerns with negative perceptions about using Strathmore's treated wastewater as a raw water supply even though it was noted that the Strathmore treated wastewater was generally of higher quality than the current raw water supply that Strathmore has been drawing from the WID "A" Canal.

As a result of the current circumstances, the number of viable options that are available to address the request for a stay are extremely limited. The Board cannot legally require the WID to accept the discharge of Strathmore treated wastewater, even temporarily. There is insufficient information and likely insufficient time, in the short term, to make use of the Eagle Lake and recycling options. (A full discussion and analysis of the options that were considered and found not to be viable by Strathmore will be provided in the Board's Report and Recommendations.)

Siksika's request for a stay of the Amending Approval to prevent the discharge of Strathmore treated wastewater into the Bow River upstream of their raw water supply is based on the concerns they raised regarding the lack of evidence that full dilution or mixing of that treated wastewater with the entire Bow River flow will be achieved prior to reaching the water intake of the Youngman Plant. The Siksika argue that there are voids in the data regarding the area where the treated wastewater will be discharged and in the area where the Youngman Plant gets its raw water supply. They also raise the concern that the modeling to determine the impacts was based on data from another reach of the Bow River. This must be balanced with the broader public interest

determination that needs to consider the severe environmental consequences of imposing a total stay on Strathmore which might lead to overflow and failure of their treated wastewater storage lagoons, given the absence of other viable, immediate disposal options.

The Board is facing two undesirable extremes: denying the stay, thereby allowing Strathmore to discharge treated wastewater from their storage lagoons at full pipeline capacity,<sup>3</sup> and by that discharge imposing a potential risk to the drinking water sources of the Siksika; or granting the stay in its entirety, likely precipitating a treated wastewater storage crisis for Strathmore that would likely lead to serious environmental consequences. Under the circumstances, the Board has determined that the balance of convenience and the public interest require that a partial stay, with conditions, be granted. These conditions are precautionary in nature to ensure that the members of Siksika are not exposed to an undetermined health risk resulting from the consumption of their community drinking water.

### Decision

The Board grants a partial stay of the Amending Approval, subject to certain conditions. The conditions, to remain in effect until the Ministerial Order arising from the hearing of the appeals is issued, are:

1. The Town of Strathmore shall not discharge treated wastewater to the Bow River at a rate greater than 4,000 m<sup>3</sup>/d. Any need by the Town of Strathmore to dispose of treated wastewater above that discharge rate shall be dealt with by trucking the excess treated wastewater to another disposal facility, such as the City of Calgary, subject to the authorization of the Director for Alberta Environment. No discharge of treated wastewater shall be permitted until the Town of Strathmore receives written confirmation from the Director for Alberta Environment that all of the preconditions included in the Amending Approval have been met. When it is discharging treated wastewater from its pipeline to the Bow River, the Town of Strathmore shall measure the total daily volume of treated wastewater being discharged and this information shall be provided on a weekly basis to the Director for Alberta Environment, the Siksika Nation, and the Siksika Elders.
2. The Town of Strathmore shall conduct the monitoring prescribed in Table 1. This monitoring shall commence one week prior to any discharge of treated wastewater into the Bow River and shall continue until the stay is lifted. The monitoring prior to the discharge is only at the locations downstream of the treated wastewater pipeline outfall as noted in Table 1. Any monitoring on Siksika land is only required upon receiving the written consent from the Siksika Nation granting access to the land. The monitoring information shall be

---

<sup>3</sup> The Board notes that there are still two outstanding prerequisites in the Amending Approval that must be met before Strathmore is allowed to discharge its treated wastewater: the completion of a traditional use study to the satisfaction of the Director for Alberta Environment and the completion of an emergency response plan to the satisfaction of the Director for Alberta Environment. Nothing in this stay decision should be interpreted to relieve Strathmore from meeting these approval requirements before being allowed to discharge treated wastewater to the Bow River.

provided on a monthly basis to the Director for Alberta Environment, the Siksika Nation, and the Siksika Elders.

3. The Town of Strathmore shall conduct a continuous injection dye dispersion study to determine the actual dilution of the continuous discharge from the treated wastewater pipeline outfall to the point in the Bow River adjacent to the infiltration wells of the Youngman Plant when ice and river flow conditions will allow for a meaningful study to be performed and worker safety is not placed in jeopardy. This requirement must address the concern raised about the lack of evidence on mixing characteristics of a discharge to the Bow River in this region under conditions of minimum mixing behaviour. Any work required on Siksika land is only required upon receiving the written consent from the Siksika Nation granting access to the land. The results, analysis, and full interpretation of the study shall be prepared by a professional engineer qualified to interpret river mixing studies and shall be provided to the Director for Alberta Environment, the Siksika Nation, and the Siksika Elders.
4. The Town of Strathmore shall conduct sampling and analysis of the 350 individual wells on the Siksika land as prescribed in Table 2. Any work required on Siksika land is only required upon receiving written consent from the Siksika Nation granting access to the land and the verbal consent of individual residents controlling access to each individual well. The results of the sampling and analysis shall be provided on a monthly basis to the Director for Alberta Environment, the Siksika Nation, and the Siksika Elders.
5. The Town of Strathmore shall deliver bottled water for consumption at the rate of 2 L/d per person for a population of 3,000 to the Siksika Nation's administration offices. Distribution of bottled water to the Siksika Nation must be provided in bottle sizes suitable for individual pickup within the community (i.e. 1 to 2 L bottles). Arrangements for storage and distribution within the Siksika Nation shall be made to the satisfaction of the Director for Alberta Environment, following discussions between the Town of Strathmore and the Siksika Nation. The provision of drinking water is intended for those residents of the Siksika lands currently being supplied by the Youngman Plant or individual water wells adjacent to the Bow River. The Youngman Plant is expected to continue to operate and provide for normal household water usage. The requirement to provide bottled water is only required upon receiving written consent from the Siksika Nation granting access to deliver the bottled water. The requirement to provide bottled water only applies when the Town of Strathmore is discharging treated wastewater from its pipeline to the Bow River and continues for three days after the discharge stops.
6. The Town of Strathmore shall conduct an evaluation of the physical ice characteristics associated with the treated wastewater discharge at the pipeline outfall by means of collecting photographic evidence at least once per week during the discharge period. This information shall be provided to the Director for Alberta Environment, the Siksika Nation, and the Siksika Elders.

7. The Town of Strathmore shall immediately begin preparations to allow for the disposal of the treated wastewater by irrigation, and shall immediately begin using disposal of the treated wastewater by irrigation as soon as authorized to do so by the Director for Alberta Environment and as soon as weather conditions permit. The Town of Strathmore shall inform the Siksika Nation and the Siksika Elders when it begins irrigation.
8. The Town of Strathmore shall stop the discharge of treated wastewater via the pipeline into the Bow River as soon as the Town is able to implement irrigation disposal or any other alternative disposal method approved by the Director for Alberta Environment.
9. All the items specified in the conditions above shall be paid for by the Town of Strathmore.
10. Where any of the parties, including the Director for Alberta Environment, are unable to meet these conditions, any of the parties are free to apply to the Board for further direction respecting this stay.

It is apparent to the Board that Strathmore's relationship with the Siksika Nation and the Siksika Elders has been seriously damaged by the manner in which the current situation has been reached. There is potential for that relationship to get substantially worse, to the detriment of both of these neighbouring communities. The Board strongly encourages Strathmore to recognize the need and the opportunity to begin rebuilding a positive relationship with their neighbours. At the same time, the Board strongly encourages the Siksika Nation to provide Strathmore with the access that is required to carry out the requirements of the stay, which the Board hopes will be of benefit to all of the parties. As was eloquently expressed by the Siksika Elders at the hearing; water is essential for life and the preservation and wise use of our water resources is important for all parties, and indeed for all Albertans.

Please do not hesitate to contact me directly if you have any questions. You may call toll-free by first dialing 310-0000, followed by 780-427-4179, or e-mail [gilbert.vannes@gov.ab.ca](mailto:gilbert.vannes@gov.ab.ca).

Yours truly,



Gilbert Van Nes  
General Counsel  
and Settlement Officer

cc: Ms. Joanne Threesun

**Table 1**  
Monitoring Program for Strathmore's Treated Wastewater,  
the Bow River, and the Youngman Water Treatment Plant

Location <sup>1</sup>	Parameters <sup>2</sup>	Frequency <sup>3</sup>
Treated Wastewater	<i>E. Coli</i> , Fecal Coliforms, Total Coliforms, Total-P, Dissolved-P, Ammonia-N, Total Kjeldahl-N, Nitrate-Nitrite-N, Total Suspended Solids, Total Dissolved Solids, Electrical Conductivity, C-BOD5, Turbidity, and Colour.	Daily (Starting with first pipeline discharge.)
	Semi-Permeable Membrane Sampling Device for Trace Organics (Pesticides and Pharmaceuticals). <sup>4</sup>	Weekly Integrated Sample
Bow River upstream of Secondary Channel	<i>E. Coli</i> , Fecal Coliforms, Total Coliforms, Total-P, Dissolved-P, Ammonia-N, Total Kjeldahl-N, Nitrate-Nitrite-N, Total Suspended Solids, Total Dissolved Solids, Electrical Conductivity, C-BOD5, Turbidity, and Colour.	Daily (Starting one week before any pipeline discharge.)
Bow River downstream of Secondary Channel	<i>E. Coli</i> , Fecal Coliforms, Total Coliforms, Total-P, Dissolved-P, Ammonia-N, Total Kjeldahl-N, Nitrate-Nitrite-N, Total Suspended Solids, Total Dissolved Solids, Electrical Conductivity, C-BOD5, Turbidity, and Colour.	Daily (Starting with first pipeline discharge.)
Bow River within 1m of shoreline at the location of Infiltration Wells for the Youngman Water Treatment Plant.	<i>E. Coli</i> , Fecal Coliforms, Total Coliforms, Total-P, Dissolved-P, Ammonia-N, Total Kjeldahl-N, Nitrate-Nitrite-N, Total Suspended Solids, Total Dissolved Solids, Electrical Conductivity, C-BOD5, Turbidity, and Colour.	Daily (Starting one week before any pipeline discharge.)
Raw Water from the Infiltration Wells for the Youngman Water Treatment Plant.	<i>E. Coli</i> , Fecal Coliforms, Total Coliforms, Total-P, Dissolved-P, Ammonia-N, Total Kjeldahl-N, Nitrate-Nitrite-N, Total Dissolved Solids, Electrical Conductivity, Turbidity, and Colour.	Daily (Starting one week before any pipeline discharge.)
	Semi-Permeable Membrane Sampling Device For Trace Organics (Pesticides And Pharmaceuticals). <sup>5</sup>	Weekly Integrated Sample
Treated Water, after disinfection from the Infiltration Wells for the Youngman Water Treatment Plant.	<i>E. Coli</i> , Fecal Coliforms, Total Coliforms, Total-P, Dissolved-P, Ammonia-N, Nitrate-Nitrite-N, Total Dissolved Solids, Electrical Conductivity, Turbidity, Colour, and Chlorine Residual.	Daily (Starting one week before any pipeline discharge.)

<sup>1</sup> The sampling locations are to be approved by the Director for Alberta Environment.

<sup>2</sup> Additional parameters may be specified by the Director for Alberta Environment.

<sup>3</sup> Additional frequency may be specified by the Director for Alberta Environment.

<sup>4</sup> Subject to feasibility of adopting the U.S. EPA method described by Dr. Roy Crowther and with analyses for pesticides and pharmaceuticals to be specified by the Director for Alberta Environment.

<sup>5</sup> Subject to feasibility of adopting the U.S. EPA method described by Dr. Roy Crowther and with analyses for pesticides and pharmaceuticals to be specified by the Director for Alberta Environment.

**Table 2**  
Monitoring Program for Individual Wells

Location <sup>1</sup>	Parameters <sup>2</sup>	Frequency <sup>3</sup>
Up to 350 Individual Wells identified by the Siksika Nation.	<i>E. Coli</i> , Fecal Coliforms, Total Coliforms, Nitrate-Nitrite-N, Total Dissolved Solids, Electrical Conductivity, Turbidity, and Colour.	Once <sup>4</sup> (Before pipeline discharge commences.)
	<i>E. Coli</i> , Fecal Coliforms, Total Coliforms, Nitrate-Nitrite-N, Total Dissolved Solids, Electrical Conductivity, Turbidity, and Colour.	Monthly (After initial sample.)

---

<sup>1</sup> The sampling locations are to be approved by the Director for Alberta Environment.

<sup>2</sup> Additional parameters may be specified by the Director.

<sup>3</sup> Additional frequency may be specified by the Director.

<sup>4</sup> The Town of Strathmore must demonstrate to the satisfaction of the Director for Alberta Environment that it has undertaken a reasonable effort to complete the sampling of all individual wells, but the Director for Alberta Environment may authorize the Town of Strathmore to discharge treated wastewater in accordance with the conditions of this stay if it demonstrates that it has not been possible to complete the initial sampling from every individual well.