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My file: 281-051

July 19, 2012

By email to [james.mallet@gov.ab.ca](mailto:james.mallet@gov.ab.ca)

Alberta Justice  
Civil Litigation  
9th Floor Peace Hills Trust Tower  
10011 - 109 Street  
Edmonton, Alberta T5J 3S8

Attention: James Mallet

By email to [gilbert.vannes@gov.ab.ca](mailto:gilbert.vannes@gov.ab.ca)

Alberta Environmental Appeals Board  
306 Peace Hills Trust Tower  
10011 - 109 Street  
Edmonton, Alberta T5J 3S8

Attention: Gilbert Van Nes

By email to [erika.gerlock@gov.ab.ca](mailto:erika.gerlock@gov.ab.ca)

Alberta Justice  
Environmental Law Section  
8th Floor, Oxbridge Place  
9820 - 106 Street  
Edmonton, Alberta T5K 2J6

Attention: Erika Gerlock

By email to [RSecord@ackroydlaw.com](mailto:RSecord@ackroydlaw.com); Original  
by Courier

Ackroyd LLP  
1500 First Edmonton Place  
10665 Jasper Avenue  
Edmonton, Alberta T5J 3S9

Attention: Richard C. Secord

Dear Sirs/Madame:

**Re: Handel Transport (Northern) Ltd. and Gas Plus Inc. v. Her Majesty the Queen in  
Right of Alberta et al. / Action No. 1201-01945**

Further to the above captioned matter, please find enclosed herewith a filed copy of my clients' Originating Application for Judicial Review returnable on September 26, 2012, along with a filed Notice to Obtain Record of Proceedings (Form 8) for service upon your respective clients.

I confirm that I am in the process of filing an Affidavit in support of my clients' application and will provide you with a filed copy of the Affidavit in due course.

Yours truly,

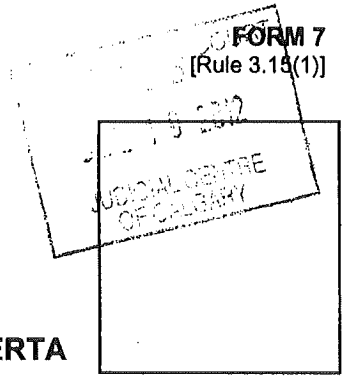
*"RIJohn"*

**Richard I. John**

RIJ/ca  
Encls.

Copy to: Gas Plus Inc. and Handel Transport (Northern) Ltd. by email

pdf



COURT FILE NUMBER: 1201- 01945  
COURT: COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE: CALGARY

Clerk's Stamp

APPLICANT(S): HANDEL TRANSPORT (NORTHERN) LTD. and GAS PLUS INC.

RESPONDENT(S): HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA and HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA, AS REPRESENTED BY THE MINISTER OF ENVIRONMENT AND WATER

DOCUMENT: ORIGINATING APPLICATION FOR JUDICIAL REVIEW

ADDRESS FOR SERVICE and CONTACT INFORMATION of PARTY FILING THIS DOCUMENT: **Richard I. John, Barrister & Solicitor**  
205 - 7A Street NE  
Calgary, Alberta, T2E 4E7  
Tel#: (403) 205-3949 - Fax#: (403) 205-3950  
File No. 281-051

**NOTICE TO RESPONDENT(S)**

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Court before the master/judge. To do so, you must be in Court when the application is heard as shown below:

Date: **Wednesday, the 26th day of September, 2012**  
Time: **10:00 A.M.**  
Where: **9th Floor, North Tower, 601 - 5 Street S.W., Calgary, Alberta**  
Before: **Justice Chambers**

Go to the end of this document to see what you can do and when you must do it.

**BASIS FOR THIS CLAIM:**

Original Environmental Protection Order:

1. On December 3, 2010, the Respondent, Her Majesty the Queen in Right of Alberta, as Represented by the Minister of Environment (the "Alberta Environment and Water") issued an Environmental Protection Order No. EPO-2010/58-SR (the "EPO") affecting the lands municipally described as 6336 Bowness Road NW, Calgary (the "Site"). The Respondent subsequently issued three amendments to the EPO (the "Amended EPO").
2. In accordance with the last amendment to the EPO, the Applicants, Handel Transport (Northern) Ltd. ("HTNL") and Gas Plus Inc. ("GPI"), were directed to advise Darren Bourget, the Director for the Respondent, in writing of the selection of one of the following options for a remediation program for the Site:
  - a. Option "A" - Source Removal Program for the Site as specified previously in Clauses 17 to 22 of the Amended EPO which required the excavation of the contaminated soil; or
  - b. Option "B" - Source Containment and On-Site Remedial Program ("Option "B"") which required the installation of a containment wall (the "Secant Wall") on-site and the remediation on-site of the contaminated soil.

The Applicants, HTNL and GPI, elected Option "B" which required that they install a Secant Wall pursuant to paragraph 27 of the Amended EPO.

3. Prior to the hearing of the appeal to the Environmental Appeal Board (the "EAB"), a principal of the Applicants, HTNL and GPI, met with Darren Bourget, the Director for the Respondent, Alberta Environment and Water. Mr. Bourget verbally advised the principal for the Applicants that notwithstanding the outcome of the appeal, Alberta Environment and Water would not withdraw the option for the Applicants to build a Secant Wall on-site and remediate the contaminated soil on-site. It was partially on this basis that the Applicants, HTNL and GPI, elected to proceed to appeal the Amended EPO. The appeal hearing was held from November 22, 2011 through to November 25, 2011.

The Appeal of the Environmental Protection Order and Amendments thereto:

4. At the appeal hearing the Respondent, Alberta Environment and Water, without prior notice, withdrew Option "B" which allowed the Applicants to build a Secant Wall and

remediate on-site the contaminated. This decision by Alberta Environment and Water was based on the ostensible advice and recommendation of CH2M Hill, a consultant to Alberta Environment and Water, that it was not prudent to allow for the contaminated soil to be treated on-site.

5. Richard I. John, counsel for the Applicants, clearly indicated during the appeal that the previous written reports which had been provided by CH2M Hill were supportive of building a Secant Wall and remediating the contaminated soil on-site. Moreover, there was no written evidence and questionable verbal evidence before the EAB that CH2M Hill had told the Respondent, Alberta Environment and Water, that building a Secant Wall and treating on-site was not an acceptable intervention. The transcript of the appeal hearing, which will be transcribed at a later date, will substantiate the Applicants position and will be relied on in support of this Originating Application for Judicial Review.

The Ministerial Order and Request for Reconsideration:

6. On January 25, 2012, the Respondent issued a Ministerial Order (the "Ministerial Order") which was filed on January 30, 2012 in the Judicial Centre of Edmonton, Alberta in Action No. 1203-01640. The Ministerial Order reflected the removal of Option "B".

Breach of Natural Justice, Breach of Duty to be Fair, and Error of Law:

7. The Applicants say that the Respondent breached the principles of natural justice, breached its duty to be fair and erred in law as follows:
  - a. By failing to disclose the historical reports obtained in respect of the Site. These reports are referred to in the Amended EPO and indicate the presence of pre-existing contamination found in the soil on the Site. This information directly informs the reasonableness of Option "B" and affects the Applicants and should have been taken into consideration by the EAB;
  - b. By raising a new issue without notice to the parties. More specifically, by withdrawing Option "B" without providing any prior notice to the Applicants;
  - c. By failing to allow the Applicants an opportunity to provide evidence in respect of the detailed logistics of the work which is required to be completed pursuant to the Amended EPO and the consequences of excavating the contaminated soil;

- d. By relying on the report of a Third Party consultant, Dr. Sevigay, who had no first hand knowledge of the obstacles related to excavating the Site nor of the historical or current condition of the Site.
  
8. The Applicants, through their solicitor Richard I. John, made a formal request for reconsideration to the EAB on March 20, 2012 pursuant to section 101 of the *Environmental Protection and Enhancement Act (Alberta)* on the basis that they were unable to comply with the time-lines set in the Ministerial Order. The EAB denied the request for reconsideration. The Applicants say that if the detailed logistics of the excavation was put before the EAB it would have been a significant factor in determining the efficacy of excavation and the EAB would not have directed time-lines which cannot physically be met in the circumstances.
  
9. In this regard, testing subsequent to the issuance of the Ministerial Order have confirmed that the level of contamination both on and off the Site are consistent with the evidence of Tiamat Environmental Consultants, a consultant to the Applicants, which was put before the EAB, and there was an insufficient basis for the EAB to have concluded that it was necessary to excavate the soil which is located on the Site.

Abuse of Discretion:

10. In the alternative, the Applicants says that the Respondent exercised an abuse of discretion, in particular, by:
  - a. acting on irrelevant considerations;
  - b. acting on inadequate material; and
  - c. reaching an patently unreasonable and improper result.

**REMEDY SOUGHT:**

11. An Order in the nature of Certiorari reinstating Option "B" and or in the alternative, an Order in the nature of Mandamus requiring the EAB to reinstate Option "B".
  
12. Costs of this application on a solicitor and his own client basis.

13. Such further relief as the nature of this case may require and this Honourable Court may direct.

**AFFIDAVIT OR OTHER EVIDENCE TO BE USED IN SUPPORT OF THIS APPLICATION:**

14. All relevant records, or portions thereof to be transcribed at a later date, which were referred to at the appeal hearing;
15. Affidavit(s) of the Applicants to be filed in accordance with Rule 3.15(5) of the *Rules of Court* (Alberta);
16. The Record of Proceedings (relevant portion only) to be produced in accordance with Form 8, filed concurrent with this Originating Application for Judicial Review.
17. All other materials as counsel may advise and this Honourable Court may permit.

**APPLICABLE ACTS AND REGULATIONS:**

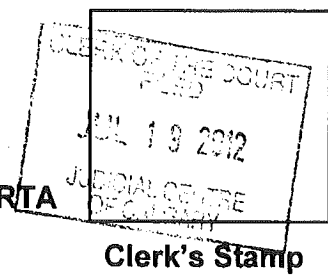
18. Subdivision 2, including 3.15, 3.18 of the *Rules of Court* (Alberta) and 6.3 of the *Rules of Court* (Alberta).
19. *The Environmental Protection and Enhancement Act*, RSA 2000, c.E-12.

**WARNING:**

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this origination application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant(s).

*pds*

COURT FILE NUMBER: 1201- 01945  
COURT: COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE: CALGARY



APPLICANT(S): HANDEL TRANSPORT (NORTHERN) LTD. and GAS PLUS INC.  
RESPONDENT(S): HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA and HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA, AS REPRESENTED BY THE MINISTER OF ENVIRONMENT AND WATER

DOCUMENT: NOTICE TO OBTAIN RECORD OF PROCEEDINGS

ADDRESS FOR SERVICE and CONTACT INFORMATION of PARTY FILING THIS DOCUMENT: **Richard I. John, Barrister & Solicitor**  
205 - 7A Street NE  
Calgary, Alberta, T2E 4E7  
Tel#: (403) 205-3949 - Fax#: (403) 205-3950  
File No. 281-051

**NOTICE TO THE ENVIRONMENTAL APPEAL BOARD**

**Requirement**

You are required to provide the following or an explanation as to why they, or any of them, cannot be provided:

- a. the decision or written record of the act that is the subject of the originating application for judicial review;
- b. the reasons given for the decision or act, if any;
- c. the document starting the proceeding;
- d. the evidence and exhibits filed with you, if any, and;
- e. anything else in your possession relevant to the decision or act.