

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Decision

Date of Decision – June 28, 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 by Mr. William Fedoruk
with respect to Reclamation Certificate 38902 issued to Canadian
Natural Resources Limited by the Director, Environmental
Service, Parkland Region, Alberta Environment, for the Provident
Merrill Warwick 10-9-54-15 well certifying the land complies with
the conservation and reclamation requirements.

Cite as: *Fedoruk v. Director, Environmental Service, Parkland Region, Alberta
Environment, re: Canadian Natural Resources Limited.*

EXECUTIVE SUMMARY

On September 22, 1999, Alberta Environment issued a Reclamation Certificate to Canadian Natural Resources Limited certifying a well located on the land of Mr. William Fedoruk. Mr. Fedoruk filed a Notice of Appeal on September 22, 2000 appealing the Reclamation Certificate. The Board has decided to dismiss Mr. Fedoruk's appeal for a failure to respond to our requests on a timely basis.

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I. BACKGROUND

[1] On September 22, 1999, the Director, Environmental Service, Parkland Region, Alberta Environment (the “Director”), issued Reclamation Certificate 38902 (the “Certificate”) to Canadian Natural Resources Limited (the “Certificate Holder”) for the surface of land within NE 9-54-15-W4M in connection with the well known as Provident Merrill Warwick 10-9-54-15. This well is on the property owned by Mr. William Fedoruk.

[2] On September 22, 2000, the Environmental Appeal Board (the “Board”) received a Notice of Appeal from Mr. William Fedoruk (the “Appellant”) appealing the issuance of the Certificate.

[3] The Board acknowledged the appeal on September 27, 2000, noting that the appeal was received by the Alberta Environment office in Camrose on September 12, 2000 and forwarded to the Board’s office on September 22, 2000. In this letter, the Board requested all documents related to this appeal (the “Records”) and advised the Certificate Holder of the appeal.

[4] According to standard practice, on September 27, 2001, 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 legislation. The NRCB and EUB responded in the negative.

[5] On October 11, 2000, the Board made a second request to the Director to provide the Records and on October 12, 2000, he responded advising that he was in the process of collecting the relevant Records. The Board acknowledged the letter on October 13, 2000. A further letter was forwarded to the Director on October 25, 2000 advising that the Board understands from a telephone conversation that the Records would be provided by November 3, 2000. The Records were received on November 3, 2000 and forwarded to the Appellant and the Certificate Holder.

[6] In the Board’s letters of November 3, 2000 to the Appellant, Certificate Holder and the Director, the Board asked the parties if they wished to participate in a mediation meeting

under section 11 of the Environmental Appeal Board Regulation¹ and if there were any other persons that may have an interest in this appeal. The parties were asked to provide their responses by November 17, 2000.

[7] On November 17, 2000, the Board received responses from the Director and the Certificate Holder. The Director requested that the appeal be held in abeyance until late spring or early summer advising that a mediation meeting would most likely be successful if a site visit was included. No response was received from the Appellant by the due date of November 17, 2000. The Board acknowledged the Director and Certificate Holder's letters on November 21, 2000, and requested that the parties, including the Appellant, provide comments to the Director's suggestion by November 23, 2000. No response was received from the Appellant or the Certificate Holder by the due date of November 23, 2000. It should be noted that calls were placed to the Appellant by Board staff on November 17, 24, and 29, 2000.

[8] On November 30, 2000, the Board received a telephone call from the Appellant advising that he wished to attend a mediation meeting next year. In the Board's letter of December 4, 2000, the conversation with the Appellant was acknowledged and as requested by the Director, the appeal was placed in abeyance until May 1, 2001 on the condition that the Certificate Holder had no objections.

[9] On April 30, 2001, the Director suggested a mediation meeting in late June to view the crop growth and provided June 26, 27 and 29, 2001 as available dates. The Board acknowledged the letter on May 2, 2001 and requested the Appellant and Certificate Holder provide their available dates for a mediation meeting in June 2001 by May 7, 2001. No response was received from the Appellant by the due date of May 7, 2001 and a telephone message was left for the Appellant to call the Board on May 10, 2001. The Board acknowledged the Certificate Holder's letter of May 7, 2001 on May 10, 2001, and requested that the Director and

1 Section 11 of the Environmental Appeal Board Regulation (AR 114/93) states:

- 11 Where the Board has determined the parties to the appeal, the Board may, prior to conducting a hearing of the appeal, on its own initiative or at the request of any of the parties, convene a meeting of the parties and any other interested persons the Board considers should attend, for the purpose of
- (a) mediating a resolution of the subject matter of the notice of appeal, or
 - (b) determining any of the matters referred to in section 13.

Certificate Holder hold the June 26, 27 and 29, 2001 dates for a mediation pending receipt of the Appellant's available dates.

[10] On May 15, 2001, the Board advised the Appellant in a letter that he was to provide the information previously requested by May 18, 2001 and that failure to provide the information requested may result in the dismissal of his appeal pursuant to section 87(5)(a)(ii) of the *Environmental Protection and Enhancement Act*, S.A. 1992, c-E. 13.3, (the "Act"). No response was received from the Appellant by the due date of May 18, 2001.

[11] On May 22, 2001 the Appellant contacted the Board via telephone and advised that he was available for a mediation meeting in the evening or weekend only and on May 25, 2001, the Board requested the parties advise of dates for a mediation in the evening or weekend by June 2, 2001. On June 1, 2001, the Board received a response from the Director advising that June 27, 2001 was the only available date. The Board acknowledged this letter on June 4, 2001 and requested additional dates from the Director for the months of June and July. No response was received from the Appellant or from the Certificate Holder by the due date of June 1, 2001. Board staff attempted to contact the Appellant on June 7, 2001 and a message was left requesting that he contact the Board office.

[12] The Board wrote to the parties on June 11, 2001, acknowledging letters of June 7 and 8, 2001 from the Certificate Holder and the Director respectively, requesting further dates from the Director by June 12, 2001. On June 12, 2001 the Board received a response from the Director advising that he would not participate in a mediation meeting on the weekend and that September 5 and 25, 2001 were available for a mediation meeting.

[13] In the Board's letter of June 13, 2001, the Certificate Holder and Appellant were requested to advise if they were available for a mediation meeting on September 5 or 25, 2001 and to provide this by Monday, June 18, 2001. No response was received from the Certificate Holder or the Appellant by the due date of June 18, 2001. A telephone call was placed to the Appellant on June 20, 2001 at 8:30 p.m. and Board staff were advised to call back after 9:00 p.m. At 9:20 p.m. a further call was placed to the Appellant and a message was left asking the Appellant if he was available September 5 or 25, 2001 for a mediation meeting. He was asked to call the Board staff and a home telephone number and work telephone number were provided.

[14] The Board tried again. The Appellant was requested in a letter of June 22, 2001 to provide the Board with the information it requested in the June 13, 2001 letter by June 27, 2001. This letter also included a statement that failure to provide the information requested may result in the dismissal of the appeal.

[15] On June 28, 2001 the Appellant contacted the Board office, however, he advised that he did not wish to leave a message and would contact the Board again. The Appellant spoke with Board staff later on June 28, 2001 advising that he wished to proceed with the mediation meeting in August 2001.

II. DECISION

[16] Section 85 of the Act states:

85 Where the Board receives a notice of appeal it may by written notice given to the person who submitted the notice of appeal require the submission of additional information specified in the written notice by the time specified in the written notice.

[17] Section 87(5)(a)(ii) of the Act states:

87(5) The Board
(a) may dismiss a notice of appeal if
(ii) the person who submitted the notice of appeal fails to comply with a written notice under section 85.

[18] The Board hereby exercises its discretion under section 87(5)(a)(ii) of the Act and dismisses the Notice of Appeal filed by Mr. William Fedoruk for a failure to respond to our requests on a timely basis.

Dated on June 28, 2001, at Edmonton, Alberta.

William A. Tilleman, Q.C.