Appeal No. 01-061-D

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Decision

Date of Decision –June 14, 2002

IN THE MATTER OF sections 91, 92, and 95 of the *Environmental Protection and Enhancement Act,* R.S.A. 2000, c. E-12, and section 115 of the *Water Act,* R.S.A. 2000, c. W-3;

-and-

IN THE MATTER OF an appeal filed by Stop and Tell Our Politicians Society with respect to *Water Act* Licence No. 00148301-00-00 issued by the Director, Northern Region, Regional Services, Alberta Environment to Imperial Oil Resources.

Cite as: *Stop and Tell Our Politicians Society (STOP)* v. *Director, Northern Region, Regional Services, Alberta Environment,* re: *Imperial Oil Resources*.

EXECUTIVE SUMMARY

Alberta Environment issued a Licence to Imperial Oil Resources authorizing the diversion of water for the purpose of industrial injection from wells near Cold Lake, Alberta. The Board received a Notice of Appeal from the Stop and Tell Our Politicians Society (STOP).

In consultation with the parties to this appeal, the Board held a mediation meeting and settlement conference in Cold Lake. An Interim Agreement was reached at the mediation and the parties agreed to work towards a resolution of the appeal. The Interim Agreement provided in part:

> "All parties to the appeals have agreed that the appeals be held in abeyance until November 30, 2001, while the following terms and conditions are addressed:
>
> 1. Imperial Oil Resources will develop a proposal for a workshop to address the relevant groundwater and potable water issues of the Appellants [(STOP)]. The workshop details will be reviewed by the Appellants, and if acceptable, the appeals will be withdrawn."

Following the workshop contemplated in the Interim Agreement, it became apparent that STOP had a number of outstanding issues and wished to proceed to a hearing. During the process of determining the preliminary issues of standing, jurisdiction of the Board, and the issues to be considered at the hearing, a dispute arose as to whether STOP's Notice of Appeal had in fact been withdrawn pursuant to the Interim Agreement.

The Board requested submissions on the questions of whether STOP's Notice of Appeal had been withdrawn and whether the Board had jurisdiction to proceed with the appeal. Having considered the submissions of the parties, the Interim Agreement, and all of the evidence before it, the Board has determined that STOP's Notice of Appeal has been withdrawn, that the Board does not have jurisdiction to proceed with the appeal, and that the Board is required to dismiss this appeal and discontinue its proceedings in this matter.

PRELIMINARY MEETING VIA WRITTEN SUBMISSION ONLY:	William A. Tilleman, Q.C., Chair.

PARTIES:

Appellant:	Stop and Tell Our Politicians Society, represented by Ms. Sally Ulfsten.
Director:	Mr. Patrick Marriott, Director, Northern Region, Regional Services, Alberta Environment, represented by Ms. Renee Craig, Alberta Justice.
Licence Holder:	Imperial Oil Resources, represented by Mr. Cal Sikstrom and Mr. Peter Miller, Imperial Oil Resources.

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I. INTRODUCTION

[1] This decision deals with the effect of an agreement reached following a mediation meeting. The agreement provides in part:

> "All parties to the appeals have agreed that the appeals be held in abeyance until November 30, 2001, while the following terms and conditions are addressed:
>
> 1. Imperial Oil Resources will develop a proposal for a workshop to address the relevant groundwater and potable water issues of the Appellants. The workshop details will be reviewed by the Appellants, and if acceptable, the appeals will be withdrawn."

[2] There is a disagreement over the meaning of the agreement. Imperial Oil Resources (the "Licence Holder") argued that the agreement has resulted in the appeal being withdrawn. The Stop and Tell Our Politicians Society ("STOP") argued that has not withdrawn its appeal and that it should be entitled to proceed with its appeal.

II. BACKGROUND

[3] On May 29, 2001, the Regional Director, Northern Region, Regional Services, Alberta Environment (the "Director"), issued *Water Act* Licence No. 00148301-00-00 (the "Licence") to Imperial Oil Resources authorizing the diversion of 2,920,000 cubic meters of water annually from the wells in LSD 05-22-65-W4M, near Cold Lake, Alberta, for the purpose of industrial injection.

[4] The Environmental Appeal Board (the "Board") received a Notice of Appeal from Mr. Ronald Pernarowski on June 20, 2001, and from Ms. Sally Ann Ulfsten on behalf of certain members of the Stop and Tell Our Politicians Society on June 26, 2001 (collectively the "Appellants"). The Board acknowledged the Notices of Appeal, notified the Director and Licence Holder of the appeals, and requested a copy of the Director's Records (the "Record") related to the appeals. The Board also requested that all Parties[1] to the appeals provide available dates for a mediation meeting and settlement conference or hearing.

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[1] The "Parties" to these appeals are Mr. Pernarowski, STOP, the Licence Holder, and the Director.

[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 a review under their respective Boards' legislation. The NRCB responded in the negative, while the AEUB advised to "… please find enclosed a copy of decision 99-22 wherein the Board considered issues relating to groundwater protection in association with Imperial Oil's Cold Lake Project. Please note that that both Mr. Pernarowski and Ms. Ulfsten participated in the proceeding."

[6] On June 28, 2001, and July 5, 2001, the Director provided the Record to the Board, and a copy was provided to Mr. Pernarowski, STOP, and the Licence Holder.

[7] On July 16, 2001, in consultation with the Parties, the Board advised that a mediation meeting and settlement conference would be held on August 14, 2001, in Cold Lake, Alberta.[2]

[8] The Board subsequently received letters dated July 27, 30, and 31, 2001, from the Parties advising of other persons who may have an interest in these appeals and who may want to attend at the mediation meeting and settlement conference.[3] The Board requested that all the Parties provide their comments with respect to the attendance of other interested persons at the mediation meeting, advising that mediations are conducted on a voluntary, without prejudice basis, and that other persons would only be allowed to attend the mediation meeting if all Parties were in agreement. All Parties were not in agreement, and as a result, the Board advised the Parties on August 8, 2002, that the participation of other interested persons at the mediation meeting would not be permitted.

III. THE MEDIATION MEETING/SETTLEMENT CONFERENCE

[9] Pursuant to section 11 of the *Environmental Appeal Board Regulation*, A.R. 114/93, the Board conducted a mediation meeting and settlement conference in Cold Lake,

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[2] Notice of the mediation meeting and settlement conference was placed in *The Cold Lake Sun* on July 24, 2001 and *The Bonnyville Nouvelle* on July 23, 2001.

[3] The Director, in a letter dated July 27, 2001, advised that the Lakeland Industry Community Association and individual members of STOP, including Mr. and Mrs. E. Reddicliff, may be interested. Mr. Ronald Pernarowski, in his letter of July 30, 2001, advised that Mr. Don Savard, the Cold Lake First Nations, Alex Janvier, Ben Lefebvre, and the City of Cold Lake, may be interested. STOP did not identify any additional individuals.

Alberta, on August 14, 2001, with Dr. M. Anne Naeth as the presiding Board member (the "Mediator").

[10] According to the Board's standard practice, the Board called the mediation meeting to facilitate the resolution of these appeals. In conducting the mediation meeting and settlement conference, the Mediator circulated copies of the "Participants' Agreement to Mediate," discussed the appeals and the mediation process, and explained the purpose of the mediation meeting. At the conclusion of the Mediator's introduction, all of the Parties signed the Participants' Agreement to Mediate.

[11] Following detailed discussions, the Parties reached an agreement (the "Interim Agreement") and agreed to hold the appeals in abeyance to allow the Parties to work towards a resolution. The Parties agreed to provide the Board with a status report by November 30, 2001.

[12] On November 30, 2001, STOP advised the Board that STOP wished to proceed to a hearing, and at that time, it provided the Board with a copy of the correspondence exchanged during the period during which the appeals were held in abeyance. STOP requested that several new conditions be added to the Licence. The Director responded with proposed wording for two additional clauses, which were rejected by STOP. On the same date, Mr. Pernarowski wrote to the Board and requested an extension of the deadline to December 30, 2001, for providing his status report in order to try to reach a resolution and avoid a hearing, and requested a further mediation meeting to facilitate the resolution of his appeal. The Director also requested further mediation assistance.[4] The Licence Holder provided a status report and advised the Board, in summary, that it was willing to continue with mediation efforts.[5]

[13] On December 7, 2001, the Board advised all Parties that the Mediator would be calling the Parties to determine the next step in the mediation process and requested available dates and times. On December 24, 2001, as a result of the conference calls with the Mediator, the Board advised the Parties that a second mediation meeting would be scheduled and requested that

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4 See: Director's Letter, dated November 30, 2001.

5 See: Licence Holder's Letter, dated November 30, 2001. The Licence Holder stated:

"Imperial Oil is willing to continue mediation of issues relevant to the groundwater diversion licence approval. Imperial Oil is also willing to continue working independently with appellants and other individuals to resolve issues that are not directly related to the appeal. However, a clear distinction needs to be made regarding what is relevant to this appeal and what is not."

the Parties provide the Board, by January 14, 2002, with a list of all outstanding issues as well as a list of those issues they believe had been resolved.

[14] The Board received letters dated January 14, 2002, from the Licence Holder and STOP, and dated January 15, 2002, from the Director and Mr. Pernarowski. On January 31, 2002, the Board advised the Parties that a review of the progress made during the mediation process indicated that the Parties were at different stages in resolving their appeals. The Board noted that the Licence Holder was addressing Mr. Pernarowski's issues, and a resolution was near. As a result, the Board offered to assist Mr. Pernarowski, the Licence Holder, and the Director to conclude a resolution to Mr. Pernarowski's appeal.[6]

[15] STOP's outstanding issues were numerous, and it stated that its list of amendments to the Licence were the least that STOP would accept. It appeared to the Board that further mediation between STOP and the Licence Holder would not be of benefit. The Board advised STOP that it could either continuing with the mediation process if the Director and the Licence Holder agreed and if STOP could providing the Board with compelling reasons why the mediation should continue, or it could have the Board proceed with the merits hearing.

[16] On February 5, 2002, the Board wrote to STOP advising that its appeal would proceed, but a number of preliminary jurisdictional issues needed to be decided first. These issues included:

> "1. Are Ms. Ulfsten and the cosignatures of the Notice of Appeal directly affected by the Approval 0148301-00-00 issued to Imperial Oil under the *Water Act*?
>
> 2. Have the issues identified in the Notice of Appeal been dealt with in the Alberta Energy and Utilities Board hearing, and did Ms. Ulfsten and CCR have the opportunity to participate in the Alberta Energy and Utilities Board hearing?
>
> 3. What are the issues to be included in the hearing pursuant to section 95(2) of the *Environmental Protection and Enhancement Act* should this matter proceed to a hearing?"

In the same letter, the Board set down a schedule for written submissions on these questions.

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[6] A conference call was held on February 15, 2002, and a resolution was reached between Mr. Pernarowski and the Licence Holder. As a result, Mr. Pernarowski withdrew his appeal. See: *Pernarowski* v. *Regional Director, Northern Region, Regional Services, Alberta Environment*, re: *Imperial Oil Resources* (February 28, 2002), E.A.B. Appeal No. 01-059-DOP.

[17] On February 18, 2002, the Board acknowledged receipt of the written submission from STOP, and on March 5, 2002, the Board acknowledged receipt of the response submissions from the Licence Holder and the Director.

[18] On March 14, 2002, the Board acknowledged receipt of the rebuttal submission from STOP. The Board advised that it "…will now review the submissions. Further correspondence will be forthcoming."

[19] On March 15, 2002, the Board acknowledged receiving a letter dated March 14, 2002, from the Licence Holder, containing comments in response to STOP's February 18, 2002 submission. The Board advised that it "…is returning Mr. Sikstrom's [(an employee of the Licence Holder)] letter as the process established in the Board's letter of February 5, 2002, did not contemplate a further submission from Imperial."

[20] On March 19, 2002, the Board received a letter from the Director acknowledging receipt of STOP's rebuttal submission of March 14, 2002. The Director advised:

> "Upon review of the submission, it is noted that the submission contains a significant amount of new evidence and information, and an issue not raised in any previous submission by the Appellant [(STOP)]. Notably there are letters submitted by Connie Axell, and by Jim Dodge. It is unfortunate that this information was not provided in the Appellant's written submission of February 19, 2002. … If the Board is prepared to accept this new information, the Director requests that the other parties be provided with an opportunity to respond to this new information…."

[21] On March 20, 2002, the Board acknowledged the Director's letter and his request for an opportunity to address what was identified as "new information" in the rebuttal submission. The Board determined that no further submissions from the Director and the Licence Holder would be required at this time because the Board believed that it had sufficient information to make a decision without taking this "new information" into account.

[22] On March 26, 2002, the Board received a letter from the Licence Holder, stating its disappointment with the Board's decision not to accept further submissions from the Director and the Licence Holder, and questioning the jurisdiction of the Board in proceeding with the appeal in light of the Licence Holder's position that the appeal has been withdrawn as "…an automatic consequence of the approval of the workshop details [set forth in clause 1 of the mediation

agreement]." The Licence Holder asserted, "…the workshop proceeded exactly as proposed and accepted by the Appellants."

[23] On April 3, 2002, the Board acknowledged the Licence Holder's letter of March 26, 2002. The Board explained that it was currently in the process of making a decision on the issue of whether further submissions would be accepted in regard to the Appellant's rebuttal evidence, but would postpone making that decision until the Licence Holder's second concern was addressed. In regard to the Licence Holder's second concern, the Board provided:

> "The second issue that Mr. Miller [on behalf of the Licence Holder] raises is that in his view the Notice of Appeal that is currently before the Board has been withdrawn pursuant to the Agreement entered into between the parties on August 14, 2001. This is the agreement that resulted following the mediation meeting and settlement conference. A copy of this agreement is attached. Specifically, Mr. Miller advises that Imperial [(the Licence Holder)] agreed to '… develop a proposal for a workshop to address the relevant groundwater and potable water issues of the Appellants.' In exchange, the Appellants agreed that the '…the workshop details will be reviewed by the Appellants, and if acceptable, the appeals will be withdrawn.'
>
> Imperial states that the '…details were developed by Imperial Oil, they were judged acceptable to the Appellants, and, in fact, the workshop was held at the Riverhurst Hall on November 5, 2001.' Imperial is arguing, in essence, that because the workshop was held, the terms of the agreement have been fulfilled and the appeal has been withdrawn. Further, as a result of the appeal being withdrawn, Imperial is arguing that the Board has no jurisdiction to proceed further with this appeal."

The Board then invited submissions on the three questions, as set out in the discussion below.

IV. DISCUSSION

[24] By letter dated April 3, 2002, the Board wrote to STOP, the Licence Holder, and the Director to advise them of the Licence Holder's view that STOP's Notice of Appeal had been withdrawn pursuant to the Interim Agreement. The Board invited submissions on the following questions:

> "1. Is Imperial's [(the Licence Holder)] description of the mediation agreement correct?
>
> 2. Is Imperial correct in saying:
>
> a. that it developed the workshop details as required;

b. that the Appellant judged those details acceptable; and

c. that the workshop was held as planned?

3. If Imperial is correct in its assertions in response to questions 1 and 2, how does the Board have jurisdiction to proceed in the face of an agreement which withdraws the appeal and in view of section 95(7) of the *Environmental Protection and Enhancement Act* which provides: 'The Board shall discontinue its proceedings in respect of a Notice of Appeal if the Notice of Appeal is withdrawn.'"

[25] The Board has received and reviewed the written submissions from STOP, the Licence Holder, and the Director on the question of whether the Board should discontinue its proceedings in respect of Notice of Appeal No. 01-061.

A. The Mediation Agreement

[26] As a result of the mediation meeting and settlement conference held on August 14, 2001, the Parties entered into an Interim Agreement. The Interim Agreement is reproduced below:

> "All parties to the appeals have agreed that *the appeals be held in abeyance until November 30, 2001,* while the following terms and conditions are addressed:
>
> 1. Imperial Oil Resources will develop a proposal for a workshop to address the relevant groundwater and potable water issues of the Appellants. *The workshop details will be reviewed by the Appellants, and if acceptable, the appeals will be withdrawn.*
>
> - Imperial Oil Resources will provide appropriate facilities for the workshop and is willing to pay reasonable costs for the Appellants' independent expert(s) to review groundwater diversion information and make recommendations on regional groundwater monitoring requirements, and attend this workshop.
> - The Department of Environment will be present to participate and answer questions.
> - Imperial Oil Resources, the Department and the Appellants will develop the format, issues and topics to be discussed at the workshop.
>
> 2. Imperial Oil Resources will add Mr. Ron Pernarowski's well to the conditions for a regional groundwater monitoring network under Alberta Environment EPEA Approval 0073534-00-00.
>
> 4. Imperial Oil Resources and the Appellants will review and improve Imperial Oil Resources' contingency plan to respond to any resident concerns about potential interference with water supply.

4. Imperial Oil Resources will mitigate any adverse effects to wells in the Empress I aquifer in the zone of effect, attributable to Imperial Oil Resources Cold Lake operations.…" (Emphasis added.)

B. Is Imperial Oil's Description of the Interim Agreement Correct?

[27] In the Licence Holder's view, the Notice of Appeal that is currently before the Board has been withdrawn pursuant to the Interim Agreement. Specifically, the License Holder argued that it agreed to " …develop a proposal for a workshop to address the relevant groundwater and potable water issues of the Appellants."[7] In exchange, the Appellants agreed that the "…workshop details will be reviewed by the Appellants, and if acceptable, the appeals will be withdrawn."[8]

[28] The Director held that the Licence Holder's description of the Interim Agreement was "essentially correct" and that "…it is the Director's interpretation that the November 30, 2001 deadline was imposed to prevent delays and encourage early development of acceptable workshop details, which indeed, did occur."[9]

[29] STOP's view was that the Licence Holder's interpretation of the word "details" in the Interim Agreement was both narrow and incorrect.[10] STOP submitted that:

> "There was no discussion that if we accepted to participate in a workshop funded by Imperial Oil, [(the Licence Holder)] we would be forced to withdraw our appeal regardless if no resolution was achieved. …
>
> The ensuing Abeyance Agreement [(the Interim Agreement)] was drafted to accommodate Mr. Millers [(the Licence Holder's counsel)] offer to come and explain this offer to the appellants. The words **'workshop details'** included in this agreement were most likely his. I understood, and still understand the words **'workshop details'** to refer to the results of the workshop. That is if the Director was presented with the appellants concerns and an agreement was reach[ed] how to resolve these concerns was reached [*sic*] then we could avoid a hearing. An agreement betweed [*sic*] the Director and and appellants. Not just provide a meeting. …
>
> Mr. Miller's description of the discussions and understanding of the abeyance agreement at the mediation meeting held on August 14th is contradictory. In

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7 See: Licence Holder's Letter, dated March 26, 2002.

8 See: Licence Holder's Letter, dated March 26, 2002.

9 See: Director's Submission, dated April 26, 2002.

10 See: STOP's Submission, dated April 12, 2002.

> paragraph 1 on page 2 he states, ***the decision to withdraw the appeals … was an automatic consequence of the approval of the workshop details.*** Yet, in the next paragraph he ***states we understood they*** *(being the appellants)* ***had until November 30, 2001 to test with their constituents whether they were prepared to withdraw their appeals***."[11] (Emphasis in the original.)

[30] The Board finds the description for the Interim Agreement argued for by STOP to be problematic for a number of reasons.

[31] First, it is the Board's view that Clauses 1 through 4 of the Interim Agreement must be read together and in the context of the over-arching role of that agreement, which is to hold the appeals in abeyance until November 30, 2001, toward the goal of reaching a resolution of the appeals. The Board finds the phrase "workshop details," standing alone, to be vague. However, when all four clauses are read together, the intent becomes clear.

[32] Although the first clause is indirectly related to the contentious issue, the remaining three clauses are very clear. Under these clauses, the Licence Holder is required to take specific actions beyond the abeyance period. For example, Mr. Pernarowski's well was to be monitored, and adverse effects to wells in the Empress I aquifer had to be mitigated by the Licence Holder, if the effect was attributable to the Licence Holder. The wording of these conditions implies that the intent was to have the appeal dismissed, providing clause 1 was adhered to. These clauses appear to address many of the concerns raised in STOP's Notice of Appeal.

[33] STOP's interpretation appears to be that the workshop was to take place, it was to be given the opportunity to make recommendations to the Director, and if the Director did not accept its recommendations, it would continue with the appeal.

[34] The Board has a few concerns with this interpretation of the Interim Agreement. First, the Director is the decision maker and is responsible for ensuring the proper terms and conditions are included. As part of the process, he will consider concerns of those who are directly affected by his decision. However, he cannot let others make the ultimate decision. This Board is here to oversee the decisions of the Director and to make certain the appropriate decisions are made.

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[11] See: STOP's Submission, dated April 15, 2002.

[35] Another concern is STOP's interpretation of "workshop details." It is clear from the statements made in its submission, STOP is fully aware of the difference between the terms "workshop details" and "workshop results."[12] Clause 1 states that "...Imperial Oil Resources will develop a proposal for a workshop" and the "workshop details will be reviewed by the Appellants." A description of the obligations of the Licence Holder are included as part of Clause 1, and it is clear that what is required refers to steps that must be taken in organizing the workshop. Nowhere in the agreement is there a reference to what any of the Parties will do after the workshop has been completed. Reading the agreement, it is clear that the withdrawal of the appeals is directly related to the preparation of the workshop, not the actual holding of the workshop *nor the outcome*. STOP knew it was the details, as it pertained to the workshop, which had to be approved before the appeal was withdrawn. Clause 1 actually states that "Imperial Oil Resources, the Department [(the Director)] and the Appellants will develop the format, issues and topics to be discussed at the workshop."

[36] The Supreme Court of Canada has discussed how terms of a contract should be construed, particularly in circumstances in which there is some ambiguity in the clauses. The Court stated:

> "…literal meaning should not be applied where to do so would bring about an unrealistic result or a result which would not be contemplated in the commercial atmosphere in which the insurance was contracted. Where words may bear two constructions, the more reasonable one, that which produces a fair result, must certainly be taken as the interpretation which would promote the intention of the parties. Similarly, an interpretation which defeats the intentions of the parties and their objective in entering into the commercial transaction in the first place should be discarded in favour of an interpretation of the policy which promotes a sensible commercial result.... Said another way, the courts should be loath to support a construction which would either enable the insurer to pocket the premium without risk or the insured to achieve a recovery which could neither be sensibly sought nor anticipated at the time of the contract."[13]

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12 In STOP's Submission, it argued:

"The words 'workshop details' included in this agreement were most likely [the Licence Holder's]. I understood, and still understand the words 'workshop details' to refer to the results of the workshop. That is if the Director was presented with the appellants (*sic*) concerns and an agreement was reach[ed] as to how to resolve these concerns was reached (*sic*) then we could avoid a hearing. An agreement betweed (*sic*) the Director and the appellants. Not just the details of provide a meeting."

13 *Consolidated-Bathurst Export* v. *Mutual Boiler and Machinery Insurance,* [1980] 1 S.C.R. 888.

[37] Applying this principle to the circumstances of this case, the intention of the Parties entering mediation was to resolve the issues presented by the Appellants in an effort to prevent the matter proceeding to a hearing. When the Interim Agreement is read from that perspective, the intent of the Parties was to have the appeals withdrawn providing the Licence Holder fulfilled its obligations as stated. It is not unrealistic to have the Licence Holder believe that the appeal would be withdrawn once the workshop was held and the other clauses in the agreement had been satisfied. Although STOP may argue that it is an unfair interpretation, the Board again looks at the overall intent of the Parties entering mediation.

[38] STOP, the Licence Holder, and the Director agreed that a workshop was held, based on the agenda accepted by STOP.[14] During the planning process, STOP made suggestions that were incorporated into the workshop design. STOP accepted the plans and attended the actual workshop.

[39] Although the Licence Holder was not obligated to continue discussing the terms of the Licence after the workshop had been held, it continued to try to address the Appellants' concerns.[15] The Board views this as actions of a good corporate neighbour. It is clear, that the Licence Holder is aware of the importance of maintaining amenable relationships with those who live in the vicinity of its projects and that is probably why it continued the discussions. In its letter of November 30, 2001, the Licence Holder stated that it is "…willing to continue working independently with appellants and other individuals to resolve issues that are not directly related to the appeal." The Board applauds the Licence Holder for taking this approach.

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[14] See: Licence Holder's Submission, dated April 26, 2002, Director's Submission, dated April 26, 2002, and STOP's Submission, dated April 12, 2002.

[15] See: Licence Holder's Letter, dated November 30, 2001, which "…provides a status report on the results of efforts taken to resolve the appeals of Ron Pernarowski and Sally Ulfsten (STOP) since August 14, 2001 when agreement was reached to hold appeals in abeyance while the terms were addressed." With regard to Condition 1, the Licence Holder provided: "Workshop oral agreement by Pernarowski, Ulfsten, Marriott and Sikstrom that an amendment to the groundwater licence, requiring annual review of groundwater monitoring results and amendment of licence when warranted, would resolve appellants concerns."

See also: Director's Submission, dated April 26, 2002, which provided:

> "At the end of the workshop, Imperial Oil Resources Ltd., Mr. Pernarowski, Ms. Ulfsten on behalf of STOP, and the Director agreed to the inclusion of one additional set of clauses in the *Water Act* licence, to resolve the appellants' remaining concerns. The set of conditions provided for an annual meeting among the licensee, the Director and identified stakeholders for the purposes of reviewing the past year's diversion, and the resulting environmental impacts and resident's concerns regarding the licence. It also provided the Director with the ability to amend the licence on the basis of the annual discussions."

[40] The Board accepts the Director's explanation of the November 30, 2001 deadline, and that it was included in the agreement to "…prevent delays and encourage early development of acceptable workshop details…." Without a specified deadline, the Parties may have attempted to prolong the process.

[41] The Board notes the actions of STOP makes it difficult for the Licence Holder and the Director to alleviate STOP's concerns. STOP has continually added issues in its submissions even though the issues that can be presented must fall squarely within the parameters of the Notice of Appeal.[16] Section 95(2) of EPEA states that:

> "Prior to conducting a hearing of an appeal, the Board may, in accordance with the regulations, determine which *matters included in notices of appeal* properly before it will be included in the hearing of an appeal…." (Emphasis added.)

[42] As the matters must have been included in the Notice of Appeal, future submissions and arguments must be restricted to these issues. In this case, the Notice of Appeal referred to multi-well casing failures, arsenic in the groundwater, the term of the Licence, use of alternate water sources, the failure to consider long term water management plan, and the protection of groundwater and surface water of those directly affected.

[43] The Licence Holder and the Director attempted to draft an additional clause to include in the Licence a "…mechanism for annual review and discussions of groundwater diversion issues surrounding Imperial's Cold Lake operations."[17] This was a result of the concerns expressed by STOP at the workshop. STOP had agreed to the draft wording at the workshop, but when formally presented, STOP "…then changed position, unwilling to accept the agreed upon clause, and requested additional licence clauses."[18] The Board believes STOP entered the mediation in good faith, but STOP must also realize that if it agreed to specific arrangements or clauses, it is unfair to the other Parties to suddenly try to change the deal. The Licence Holder and the Director apparently drafted another clause, in an attempt to address

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[16] See: *Kievet et al*. v. *Director, Approvals, Southern Region, Regional Services, Alberta Environment* re: *Lafarge Canada Inc*. (April 16, 2002), E.A.B. Appeal Nos. 01-097, 098, and 101-D; *Bailey et al*. v. *Director, Northern East Slopes Region, Environmental Services, Alberta Environment* re: *TransAlta Utilities Corporation* (May 18, 2001), E.A.B. Appeal Nos. 00-074, 077, 078, and 01-001-005-R; and *Imperial Oil Limited* v. *Director, Enforcement and Monitoring, Bow Region, Regional Services, Alberta Environment (*August 22, 2001), E.A.B. Appeal No. 01-062-ID.

[17] See: Director's Letter, dated April 26, 2002.

[18] See: Director's Letter, dated April 26, 2002.

emergency water supplies, which STOP rejected.[19] The Director made these attempts "…despite expressing the position that the conditions for withdrawal of the appeal had been met."[20] This indicates to the Board that STOP was aware that the appeal was withdrawn, pursuant to the conditions of the Interim Agreement.

[44] For these reasons, the Board cannot accept the Appellant's interpretation of the agreement. Any actions taken by the Licence Holder and the Director after November 30, 2001, were done in the spirit of cooperation.

C. The Workshop Details

[45] The Licence Holder stated that the "…details were developed by Imperial Oil, they were judged acceptable to the Appellants [(STOP)], and, in fact, the workshop was held at the Riverhurst Hall on November 5, 2001."[21] The Director agreed with the Licence Holder on all three questions.[22]

[46] However, in STOP's view the Licence Holder incorrectly and narrowly interpreted the word "details."[23] In STOP's submission, it stated:

> "My interpretation of the statement **workshop details** meant the organization of a workshop for the purpose of the appellants' independent expert(s) to explain to the Director their professional review of the groundwater diversion information. The technical data and information used by the government in the decision making process that led to this licence. Discussion of the same between the Director, his staff and the appellants, which should have explained why we felt the conditions under the license, were inadequate. But if the Director still failed to accept our input then we would have to request a hearing in front of the Appeal Board." (Emphasis in original.)

[47] STOP further stated, "…if the workshop resulted in a resolution of our appeal, we would have of course withdrawn it."[24]

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[19] See: Director's Letter, dated April 26, 2002. According to the Director, the Licence Holder and the Director offered on two subsequent occasions to participate in further mediation to resolve the wording of the two clauses.

[20] See: Director's Submission, dated April 26, 2002.

[21] See: Licence Holder's Letter, dated March 26, 2002.

[22] See: Director's Submission, dated April 26, 2002.

[23] See: STOP's Submission, dated April 12, 2002.

[24] See: STOP's Submission, dated April 12, 2002.

[48] The Board agrees that "details" includes the organization of the workshop, including determining what issues would be addressed. However, including the requirement of the Director to accept STOP's input as being included as a "detail," is a major leap from the standard definition of the word. STOP itself used phrases such as "workshop result" or "resolution" as the basis to withdraw the appeal, not "details," the actual word used in the agreement.

[49] The word "detail" is defined in the dictionary as "a part of a whole; a small and subordinate part."[25] The word "result" is defined as "something that results as a consequence, issue, or condition."[26] The meanings of these two words are not similar and are not interchangeable. It is difficult to understand how STOP could define the words synonymously and state that what it believed to be agreeing to was a resolution and not just the organization of the workshop.

[50] The Board finds that the workshop was held as contemplated in the Interim Agreement. The Licence Holder fulfilled all of its obligations under the Interim Agreement, and went beyond what was asked for, in an effort to meet STOP's concerns.

D. Does the Board have jurisdiction to proceed?

[51] The Director, in response to this issue, stated:

> "Because the conditions have been met, actually through the agreement [(the Interim Agreement)] to workshop details and by extension in good faith, through the workshop being held in accordance with those details, the appeal is withdrawn, despite the Appellant's [(STOP)] refusal to acknowledge the withdrawal. The agreement does not require that a separate, active step be taken by the Appellant to withdraw the appeal…. Once the proceedings are discontinued, there is no appeal, and, the director submits, then the Board no longer has statutory authority under ss. 90 and 94 of EPEA, and thus no longer has jurisdiction to inquire into the matters in the Appellant's Notice of Appeal."[27]

[52] The Licence Holder reiterated that:

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25 Merriam-Webster Dictionary <html.www.m-c.com>.

26 Merriam-Webster Dictionary <html.www.m-c.com>.

27 See: Director's Submission, dated April 26, 2002.

> "The Appellants [(STOP)] understood and agreed that the workshop was being proposed as an alternative to a hearing and that they had until November 30, 2001 to test with their constituents whether they were prepared to withdraw their appeals. The mediator made this very clear to the Appellants before they signed the memorandum.
>
> It is Imperial Oil's submission that the Environmental Appeal Board has no jurisdiction to hear this matter because the appeals have been withdrawn…."[28]

[53] The Interim Agreement included a conditional withdrawal – if the Licence Holder completed the conditions as stated, STOP would withdraw its appeal. The Licence Holder did comply with the conditions of the Interim Agreement. STOP was therefore required to withdraw its appeal. Pursuant to section 95(7), "…the Board shall discontinue its proceedings in respect of a notice of appeal if the notice of appeal is withdrawn." Based on the wording of the Interim Agreement, STOP has withdrawn its appeal upon the Licence Holder fulfilling the conditions. The Board has no choice but to discontinue its proceedings.

V. DECISION

[54] For the reasons listed above, and pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, the Board does not have jurisdiction to proceed with the appeal, the appeal is dismissed, and the Board's proceedings are discontinued.

Dated at Edmonton, Alberta on June 14, 2002.

"original signed by"
William A. Tilleman, Q.C.
Chair

[28] See: Licence Holder's submission dated April 26, 2002, and letter from the Licence Holder, dated March 26, 2002.