

ALBERTA
ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Mediation Meeting – June 9, 2004
Date of Discontinuance of Proceedings – June 10, 2004

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

-and-

IN THE MATTER OF an appeal filed by Calpine Canada
Resources with respect to the decision of the Inspector, Southern
Region, Regional Services, Alberta Environment, to refuse to issue
a reclamation certificate to Calpine Canada Resources for the
Bowtex et al Sibbald well, SE Sec. 4, TWP. 28, RGE. 03, W4M.

Cite as: *Calpine Canada Resources v. Inspector, Southern Region, Regional Services,
Alberta Environment* (10 June 2004), Appeal No. 03-140-DOP (A.E.A.B.).

MEDIATION MEETING BEFORE:

Dr. Alan J. Kennedy, Board Member.

APPEARANCES:

Appellant: Mr. Stephen Swalm, Envirsoil Land Management, Mr. Bob Boon, Calpine Canada Resources.

Inspector: Mr. Brad Dunkle, Inspector, Southern Region, Regional Services, Alberta Environment, and Mr. Martin Foy, Alberta Environment, represented by Mr. Jeffrey W.A. Moore, Alberta Justice.

Landowner: Mr. Gerald Pearen.

Board Staff: Mr. Gilbert Van Nes, General Counsel and Settlement Officer, Environmental Appeals Board.

EXECUTIVE SUMMARY

Alberta Environment refused to issue a Reclamation Certificate to Calpine Canada Resources for the Bowtex et al Sibbald well, SE Sec. 4, TWP. 28, RGE. 03, W4M, near Oyen, Alberta.

The Board received a Notice of Appeal from Calpine Canada Resources appealing Alberta Environment's decision.

The Board held a mediation meeting in Oyen, Alberta, on June 9, 2004. As a result of the mediation meeting, Calpine Canada Resources withdrew their appeal. The Board therefore closes its file in this matter.

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I. BACKGROUND

[1] On September 23, 2003, the Inspector, Southern Region, Regional Services, Alberta Environment (the “Inspector”) refused to issue a Reclamation Certificate (the “Certificate”) to Calpine Canada Resources with respect to the Bowtex et al Sibbald well, located at SE Sec. 4, Twp. 28, Rge. 03, W4M, near Oyen, Alberta.

[2] On October 16, 2003, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Calpine Canada Resources (the “Appellant”) appealing the Inspector’s decision.

[3] On October 20, 2003, the Board wrote to the Appellant and the Inspector acknowledging receipt of the Notice of Appeal and notifying the Inspector of the appeal. In the same letter, the Board also requested the Inspector provide the Board with a copy of the record relating to this appeal (the “Record”) and requested that the Appellant and the Inspector provide the Board with available dates for a mediation meeting or hearing.

[4] According to standard practice, the Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board asking whether this matter had been the subject of a hearing or review under their respective legislation. Both boards responded in the negative.

[5] On October 31, 2003, the Board received a copy of the Record from the Inspector and on November 4, 2003, the Board provided a copy of the Record to the Appellant. In his letter of October 31, 2003, the Inspector advised the owner of the land to be Mr. John Hanewich.

[6] On November 4, 2003, the Board wrote to Mr. Hanewich, notifying him of the appeal and requesting he advise the Board by November 10, 2003 if wished to participate in the appeal.

[7] On November 19, 2003, the Board wrote to the Appellant, the Inspector and Mr. Hanewich (collectively “the Parties”) advising that it had decided to proceed with a mediation meeting, that a site visit may be crucial to a successful mediation meeting, and proposing an abeyance of the appeal until March, 2004 so that a site visit would be possible.

[8] The Board did not receive any objections to holding the appeal in abeyance until a site visit could be conducted in the spring of 2004, and on November 27, 2003 the Board wrote to the Parties advising that it would contact the Parties in March 2004 for their available dates for the mediation meeting and site visit.

[9] The Board did not receive a response to its November 4, 2003 letter from Mr. Hanewich with respect to participating in the appeal. On April 2, 2004 the Board contacted Mr. Hanewich by telephone and was advised by Mr. Hanewich that he did not think that he would attend the mediation meeting. The Board advised Mr. Hanewich that if he did not attend the mediation meeting, a decision could be made by the other Parties at the mediation meeting without further consultation.

[10] On May 21, 2004, in consultation with the Parties, the Board scheduled the mediation meeting for June 9, 2004 in Oyen, Alberta. The Board again contacted Mr. Hanewich by telephone on June 2, 2004 to confirm whether he would be attending the mediation meeting. The Board was advised by Mr. Hanewich that he would attend the mediation meeting if he could.

[11] On June 2, 2004, the Board wrote to the Parties confirming the names of the participants for the mediation meeting for June 9, 2004, and advising:

“Further to the June 2, 2004 telephone conversation with Mr. Hanewich, the Board understands that Mr. Hanewich will attend the mediation meeting, if he can make it. Mr. Hanewich is advised that if he fails to attend the mediation meeting, the Board reserves the right to proceed with the mediation meeting and reach a resolution of the appeal without further notice.”

[12] On June 3, 2004, it was brought to the Board’s attention, by the Inspector, that the owner of the land is Mr. Gerald Pearen, and not Mr. John Hanewich. The Board, prior to receiving this information from the Inspector, was given no reason to believe that Mr. Hanewich no longer owned the land.

[13] Upon receipt of this new information from the Inspector, Board staff immediately contacted Mr. Pearen and was advised by Mr. Pearen that he had purchased the land from Mr. Hanewich in 2001. Mr. Pearen advised that he would be attending the mediation meeting. The Board wrote to the Parties that same day acknowledging its telephone conversation with Mr.

Pearen and providing Mr. Pearen with a copy of the Board's file in this matter and the details for the mediation meeting.

II. THE MEDIATION MEETING

[14] Pursuant to section 11 of the Environmental Appeal Board Regulation, A.R. 114/93, the Board conducted a mediation meeting in Oyen, Alberta on June 9, 2004 with Dr. Alan Kennedy as the presiding Board Member (the "Mediator").

[15] Mr. Hanewich, the former landowner, did not attend the mediation meeting. Upon review of land title documents provided by Mr. Pearen at the mediation meeting, the Board was satisfied that Mr. Pearen is the current landowner.

[16] In conducting the mediation meeting, the Mediator reviewed the appeal and the mediation process and explained the purpose of the mediation meeting. He then circulated copies of the Participants' Agreement to Mediate. All persons in attendance signed the Agreement and discussions ensued. Following productive and detailed discussions, an agreement was reached and the Appellant withdrew their appeal.

III. DECISION

[17] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c W-3, and based upon the withdrawal of the appeal by the Appellant, the Board hereby discontinues its proceedings in Appeal No. 03-142 and closes its file.

Dated on June 10, 2004 at Edmonton, Alberta

"original signed by"

Dr. William A. Tilleman
Chairman