
ALBERTA
ENVIRONMENTAL APPEALS BOARD

Report and Recommendations

Date of Mediation Meeting - February 10, 2004

Date of Report and Recommendations - February 11, 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 EnCana Corporation
with respect to the decision of the Inspector, Northern Region,
Regional Services, Alberta Environment, to refuse to issue a
reclamation certificate to EnCana Corporation for the AEC
Normandville/AEC Tangent well located at 8-15-80-23-W5M.

Cite as: *EnCana Corporation v. Inspector, Northern Region, Regional Services, Alberta Environment* (11 February 2004), Appeal No. 03-143-R (A.E.A.B.).

MEDIATION MEETING BEFORE:

Dr. Alan J. Kennedy, Board Member.

APPEARANCES:

Appellant:

Ms. Vasile Klaassen, EnCana Corporation and Mr. Pete Dimmell, EnCana Corporation, and Mr. Jeff Biegel, Sharp Environmental (2000) Ltd., represented by Mr. Mark Sykes, EnCana Corporation.

Inspector:

Ms. Carrie Fuson, Inspector, Northern Region, Regional Services, Alberta Environment, Mr. Greg Smith, District Compliance Manager, Northern Region, Alberta Environment, Mr. Taras Pojasok, Contaminated Soil Specialist, Northern Region, Alberta Environment, represented by Ms. Shannon Keehn, Alberta Justice.

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 EnCana Corporation for the AEC Normandville/AEC Tangent well located at 8-15-80-23 W5M near Jean Cote, Alberta.

On October 31, 2003 the Board received a Notice of Appeal from EnCana Corporation appealing Alberta Environment's decision.

The Board held a mediation meeting in Peace River, Alberta, on February 10, 2004, following which a resolution was reached by the parties. The Board recommends that the Minister of Environment accept the resolution.

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I. BACKGROUND

[1] On October 2, 2003, the Inspector, Northern Region, Regional Services, Alberta Environment (the “Inspector”) refused to issue a Reclamation Certificate (the “Certificate”) to EnCana Corporation with respect to the AEC Normandville/AEC Tangent well located at 8-15-80-23 W5M near Jean Cote, Alberta.

[2] On October 31, 2003, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from EnCana Corporation (the Appellant) appealing the Inspector’s decision.

[3] On November 4 2003, the Board wrote to the Appellant and the Inspector (collectively the “Parties”) 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 (the “Record”) relating to this appeal, and that the Parties provide 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 November 28, 2003, the Board received a copy of the Record from Alberta Environment and on the same date forwarded a copy to the Parties.

[6] On November 4, 2003, the Board wrote to Mr. Henri Aubin (the “Landowner”) notifying him of the appeal. The Board requested the Landowner notify the Board by November 17, 2003 if he wished to participate in the mediation. As a response was not received from the Landowner, Board staff contacted the Landowner on November 28, 2003 by telephone and left a message on the Landowner’s answering machine requesting a return call.

[7] On December 2, 2003 the Board wrote to the Landowner again notifying him of the appeal and on December 10, 2003 the Landowner contacted the Board by telephone advising that he wanted to participate in the mediation.

[8] On December 16, 2003, in consultation with the Parties, the Board scheduled the mediation meeting for February 10, 2004, in Peace River, Alberta.

II. THE MEDIATION MEETING

[9] Pursuant to section 11 of the Environmental Appeal Board Regulation, A.R. 114/93, the Board conducted a mediation meeting in Peace River, Alberta on February 10, 2004 with Dr. Alan Kennedy as the presiding Board Member (the “Mediator”). The Landowner did not attend the mediation meeting, notwithstanding the invitation to do so.

[10] 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 parties signed the Agreement and discussions ensued.

[11] Following productive and detailed discussions, a Resolution evolved at the February 10, 2004 mediation meeting and is attached as page 4.

III. RECOMMENDATIONS

[12] In accordance with section 99 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (the “Act”), the Board recommends that the Minister of Environment order that the October 2, 2003 decision of the Inspector, Northern Region, Regional Services, Alberta Environment, be varied. Attached for the Minister’s consideration is a draft Ministerial Order implementing the recommendation.

[13] Further, with respect to sections 100(2) and 103 of the Act, the Board recommends that copies of this Report and Recommendations, and of any decision by the Minister be sent to the following Parties:

- Mr. Mark Sykes, EnCana Corporation, representing Ms. Vasile Klaassen and Mr. Pete Dimmell, EnCana Corporation;
- Mr. Jeff Biegel, Sharp Environmental (2000) Ltd.;
- Mr. Henri Aubin, Landowner; and

- Ms. Shannon Keehn, Alberta Justice, representing Ms. Carrie Fuson, Inspector, Northern Region, Regional Services, Alberta Environment.

Dated on February 11, 2004 at Edmonton, Alberta.

“original signed by”

Dr. Alan J. Kennedy
Board Member

IV. RESOLUTION

RESOLUTION REGARDING APPEAL NO. 03-143 RELATING TO THE REFUSAL BY THE INSPECTOR, NORTHERN REGION, REGIONAL SERVICES, ALBERTA ENVIRONMENT, TO ISSUE A RECLAMATION CERTIFICATE UNDER THE ENVIRONMENTAL PROTECTION AND ENHANCEMENT ACT, TO ENCANA CORPORATION AT 8-15-80-23-W5M.

All parties to the appeal have agreed to the following terms and conditions:

1. Alberta Environment advises that it has authority to issue a reclamation certificate in response to an acceptable risk assessment based application and will accept a risk assessment based application from EnCana. Alberta Environment advises that a reclamation certificate issued in response to a risk assessment approach may be subject to conditions.
2. EnCana will prepare a proposal to conduct a risk assessment of the site and submit it to Alberta Environment for approval.
3. The parties agree that the refusal to issue the reclamation certificate is cancelled, and the application for a reclamation certificate be reinstated and returned to adjourned status.
4. The parties agree to work together diligently to complete the work related to completing the processing of this application for a reclamation certificate.
5. Both parties agree to work to improving their communication on this matter.
6. The appeal filed by EnCana is withdrawn.

RESOLUTION AGREED TO BY:

“original signed by”

Pete Dimmell, EnCana Corporation
Represented by Mark Sykes, EnCana Corporation

Date: February 10, 2004

“original signed by”

Carrie Fuson
Inspector, Northern Region
Regional Services, Alberta Environment
Represented by Shannon Keehn, Alberta Justice

Date: February 10, 2004

V. DRAFT ORDER

**Ministerial Order
/2004**

Environmental Protection and Enhancement Act
R.S.A. 2000, c. E-12

**Order Respecting Environmental Appeals Board
Appeal No. 03-143**

I, Dr. Lorne Taylor, Minister of Environment, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeals Board Appeal No. 03-143.

Dated at the City of Edmonton, in the Province of Alberta this ____ day of _____, 2004.

Honourable Dr. Lorne Taylor
Minister of Environment

Draft Appendix

Order Respecting Environmental Appeals Board Appeal No. 03-143

With respect to the decision of the Inspector, Northern Region, Regional Services, Alberta Environment (the "Inspector") dated October 2, 2003, to refuse to issue a Reclamation Certificate under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, to EnCana Corporation for the AEC Normandville/AEC Tangent well located at 8-15-80-23 W5M, near Jean Cote, Alberta, I, Dr. Lorne Taylor, Minister of Environment:

1. Order that the Inspector's decision of October 2, 2003, be varied.
2. Order that the application for the Reclamation Certificate be reinstated and returned to adjourned status.

**Ministerial Order
01/2004**

Environmental Protection and Enhancement Act
R.S.A. 2000, c. E-12

**Order Respecting Environmental Appeals Board
Appeal No. 03-143**

I, Dr. Lorne Taylor, Minister of Environment, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeals Board Appeal No. 03-143.

Dated at the City of Edmonton, in the Province of Alberta this 26 day of February, 2004.

“original signed by”

Honourable Dr. Lorne Taylor
Minister of Environment

Appendix

Order Respecting Environmental Appeals Board Appeal No. 03-143

With respect to the decision of the Inspector, Northern Region, Regional Services, Alberta Environment (the "Inspector") dated October 2, 2003, to refuse to issue a Reclamation Certificate under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, to EnCana Corporation for the AEC Normandville/AEC Tangent well located at 8-15-80-23 W5M, near Jean Cote, Alberta, I, Dr. Lorne Taylor, Minister of Environment:

1. Order that the Inspector's decision of October 2, 2003, be varied.
2. Order that the application for the Reclamation Certificate be reinstated and returned to adjourned status.