

ALBERTA
ENVIRONMENTAL APPEALS BOARD

Report and Recommendations

Date of Mediation Meeting – November 8, 2004
Date of Report and Recommendations – November 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 section 115 of the *Water Act*, R.S.A. 2000, c. W-3;

-and-

IN THE MATTER OF appeals filed by Verna Loewen and Detlef Rottmerhusen with respect to *Water Act* Licence No. 00205559-00-00 issued to ARC Energy Resources Ltd. by the Director, Northern Region, Regional Services, Alberta Environment.

Cite as: *Loewen and Rottmerhusen v. Director, Northern Region, Regional Services, Alberta Environment re: ARC Energy Resources Ltd.* (10 November 2004), Appeal Nos. 04-003 and 04-004-R (A.E.A.B.).

MEDIATION BEFORE:

William A. Tilleman, Q.C., Mediator

APPEARANCES:

Appellants: Ms. Verna Loewen, represented by Don Bester;
and Detlef Rottmerhusen.

Director: Mr. Gary Sasseville, Director, Northern
Region, Regional Services, Mr. Rob George,
and Mr. Alan Hingston, Alberta Environment,
represented by Mr. Jeffrey Moore, Alberta
Justice.

Licence Holder: Mr. Jeff Wickens and Mr. Brad Wilson, ARC
Energy Resources Ltd., represented by Mr.
Ron Kruhlak, McLennan Ross.

EXECUTIVE SUMMARY

Alberta Environment issued a *Water Act* Licence to ARC Energy Resources Ltd. (ARC) authorizing the diversion of 273,750 cubic metres of water annually from wells in LSD 10-17-067-24-W5M, LSD 07-24-067-25-W5M and LSD 06-20-067-W5M for the purpose of industrial (injection) near Valleyview, Alberta.

The Board received Notices of Appeal from Ms. Verna Loewen and Mr. Detlef Rottmerhusen appealing the Licence.

The Board held a mediation meeting in Valleyview, Alberta, on November 8, 2004. As a result of the mediation, the participants reached an agreement that results in the allocation of water being reduced from 750 cubic meters per day to 650 cubic metres per day for a total annual allocation of 237,250 cubic metres. The agreement also requires that ARC conduct an investigation and prepare a report to be submitted to Alberta Environment into alternatives to the use of freshwater. Finally, the agreement also requests that ARC provide information about their operations to Ms. Loewen and Mr. Rottmerhusen. The Board recommended that the Minister of Environment accept the resolution.

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I. BACKGROUND

[1] On March 29, 2004, the Director, Northern Region, Regional Services, Alberta Environment (the “Director”), issued Licence No. 00205559-00-00 (the “Licence”) under the *Water Act*, R.S.A. 2000, c. W-3, to ARC Energy Resources Ltd. (the “Licence Holder”)¹ authorizing the diversion of 273,750 cubic metres of water annually from the wells in LSD 10-17-067-W5M, LSD 07-24-067-25-W5M, and LSD 06-20-067-24-W5M near Valleyview, Alberta, for the purpose of industrial (injection) uses.

[2] On April 27, 2004, the Environmental Appeals Board (the “Board”) received Notices of Appeal from Ms. Verna Loewen and Mr. Detlef Rottmerhusen (the “Appellants”) appealing the Licence.

[3] On April 27, 2004, the Board wrote to the Appellants, the Licence Holder, and the Director (collectively the “Parties”) acknowledging receipt of the Notices of Appeal and notifying the Licence Holder and the Director of the appeals. The Board also requested the Director provide the Board with a copy of the records (the “Record”) relating to the appeals, and 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 (“NRCB”) and the Alberta Energy and Utilities Board (“AEUB”) asking whether this matter had been the subject of a hearing or review under their respective legislation. The NRCB responded in the negative.

[5] On May 11, 2004, the Board received a copy of the Record from the Director, and on May 18, 2004, copies were forwarded to the Appellant and the Licence Holder.

[6] On May 11, 2004, the AEUB advised the Board these matters had not been the subject of a hearing or review under their legislation, but the AEUB had approved a waterflood scheme operated by the Licence Holder in the vicinity of the water source wells that are the subject of these appeals. Copies of the approvals issued by the AEUB were attached to the letter.

¹ At the mediation meeting, the Licence Holder advised that its proper name was ARC Resources Ltd. and requested that the name on the Licence be corrected. The Director agreed to this amendment.

[7] On May 19, 2004, the Board scheduled a written submission process to deal with the following issues:

1. The directly affected status of the Appellants; and
2. Whether the Appellants received notice of or participated in or had the opportunity to participate in one or more hearings or reviews under any Act administered by the Energy Resources Conservation Board at which all of the matters included in the notice of appeal were adequately dealt with.

[8] Submissions were received from the Parties between May 27, 2004, and June 16, 2004. On August 11, 2004, the Board notified the Parties that it would hear the appeal of Ms. Verna Loewen and dismissed the appeal of Mr. Detlef Rottmerhusen.

[9] In the interim, the Board decided that it would proceed to a mediation meeting. On November 8, 2004, in consultation with the Parties, the Board hosted a mediation meeting in Valleyview, Alberta where the issues raised on appeal were discussed and negotiated to a conclusion.

[10] In preparation for the mediation meeting, Ms. Loewen requested that Mr. Rottmerhusen be allowed to attend and participate at the mediation meeting and the Board agreed to let him attend. The Board (via Dr. Tilleman) and the Parties further agreed that Mr. Rottmerhusen's appeal would be "rolled into the mediation" and that Mr. Rottmerhusen would be included as a party for the purpose of the Resolution.

II. BACKGROUND INFORMATION

[11] By way of background, the "pool" proposed for the oilfield injection project of the Licence Holder is the Ante Creek Triassic E Pool. Development in the Ante Creek field began in 1994 with Suncor drilling the 04-30-067-24-W5M well. Since 2000, forty two wells have been drilled.

[12] On October 1, 2002, the Licence Holder predecessor, El Paso Oil and Gas Canada Ltd. ("El Paso") made an application under the *Water Act* for approval to divert groundwater at five locations in 067-24-W5M. (Two of these locations produced dry wells, and the remaining

three locations resulted in the wells included in the Licence.) On October 15, 2002, the Director issued an Approval to explore for groundwater to El Paso. The Approval to explore for groundwater required that El Paso prepare the groundwater study that the Licence is based upon.

[13] On December 1, 2002, the Licence Holder purchased the interests in this area from El Paso and on April 9, 2002, the Licence Holder applied to the Director to amend the Approval and the application to divert groundwater to change the name from El Paso to ARC Resources Ltd. Following completion of the groundwater study as required in the Approval, the Director issued the Licence to the Licence Holder.

III. THE MEDIATION MEETING

[14] Pursuant to section 11 of the Environmental Appeal Board Regulation, AR 114/93, the Board conducted a mediation meeting in Valleyview, Alberta on November 8, 2004 with Dr. William Tilleman as Board appointed mediator (the “Mediator”).

[15] 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 participants signed the Agreement and discussions ensued.

[16] Following productive and detailed discussions, a Resolution evolved which all Parties signed. This document is attached as pages 5 and 6.

IV. RECOMMENDATIONS

[17] 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 *Water Act* Licence No. 00205559-00-00 be varied. Attached for the Minister’s consideration is a draft Ministerial Order implementing the recommendations.

[18] 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:

- Ms. Verna Loewen;
- Mr. Don Bester;
- Mr. Detlef Rottmerhusen;
- Mr. Ron Kruhlak, McLennan Ross, representing ARC Energy Resources Ltd.; and
- Mr. Jeffrey Moore, Alberta Justice, representing Mr. Gary Sasseville, Director, Northern Region, Regional Services, Alberta Environment.

Dated on November 10, 2004, at Edmonton, Alberta.

“original signed by”

Dr. William A. Tilleman, Q.C.
Mediator

“original signed by”

Dr. Frederick C. Fisher, Q.C.
Chair

V. RESOLUTION

V. RESOLUTION

RESOLUTION OF APPEALS NO. 04-003 (LOEWEN) AND 04-004 (ROTTMERHUSEN) REGARDING LICENCE NO. 00205559-00-00 (THE "LICENCE") ISSUED UNDER THE WATER ACT BY THE DIRECTOR, NORTHERN REGION, REGIONAL SERVICES, ALBERTA ENVIRONMENT, TO ARC ENERGY RESOURCES LTD. (PROPERLY NAMED ARC RESOURCES LTD.), AUTHORIZING THE DIVERSION OF 273,750 CUBIC METRES OF WATER ANNUALLY FROM WELLS IN LSD 10-17-067-24-W5, LSD 07-24-067-25-W5 AND LSD 06-20-067-24-W5 FOR THE PURPOSE OF INDUSTRIAL (INJECTION) NEAR VALLEYVIEW, ALBERTA.

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

- 1. The Licence is amended on the cover page by replacing the phrase "ARC Energy Resources Ltd." with "ARC Resources Ltd.".
2. The Licence is amended on the cover page by replacing the phrase "is authorized to divert 273,750 cubic metres of water annually" with the phrase "is authorized to divert 237,250 cubic metres of water annually".

- 3. The Licence is amended in clause 1 by replacing the phrase

"MAXIMUM PUMPING RATE (cubic metres per day)

450.0
150.0
150.0"

with the phrase

"MAXIMUM PUMPING RATE (cubic metres per day)

450.0
100.0
100.0"

- 4. The Licence is amended by adding immediately after clause 6 the following:

"6.1 The licensee shall provide a copy of all of the information that it is required to provide to the Director under this Licence by regular mail to Ms. Verna Loewen at Box 779, Valleyview, AB T0H 3N0 and to Mr. Detlef Rottmerhusen at Box 215, Valleyview, AB T0H 3N0". This information shall be provided in accordance with the same time frames as required to be provided to the Director. This information shall also include all information associated with the observation well."

5. The Licence is amended by adding immediately after clause 12 the following:

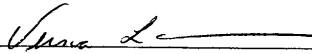
“13. The licensee shall commence the investigation of alternatives to the use of freshwater by December 1, 2004. The licensee shall provide a copy of a written status report regarding its investigation to the Director, Ms. Verna Loewen and Mr. Detlef Rottmerhusen on or before December 1, 2005. The licensee shall provide a copy of the written final report detailing its investigation into alternatives to the use of freshwater to the Director, Ms. Verna Loewen and Mr. Detlef Rottmerhusen on or before December 1, 2006. The final report shall include, to the satisfaction of the Director, a complete investigation of alternative water sources and provide sufficient documentation to prove to the Director the feasibility of the best alternatives to the use of freshwater.”


6. ARC Resources Ltd. shall arrange to take Ms. Verna Loewen and Mr. Detlef Rottmerhusen on a site visit of the facilities to which the Licence relates to view the wells and the monitoring equipment. This site visit shall take place on or before January 31, 2005.

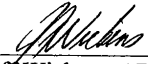
7. ARC Resources Ltd. shall provide Ms. Verna Loewen and Mr. Detlef Rottmerhusen with a written explanation of the calibration methods used for the monitoring equipment related to this Licence. This site visit shall be provided on or before January 31, 2005.

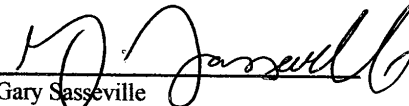
8. THAT in consideration of the foregoing, the Appellants, Verna Loewen and Detlef Rottmerhusen, agree to withdraw their Notices of Appeal.

RESOLUTION AGREED TO BY (ON November 8, 2004):


Verna Loewen
represented by Mr. Don Bester


Detlef Rottmerhusen


Jeff Wickens, ARC Energy Resources Ltd.,
represented by Ronald Kruhlak, McLennan Ross


Gary Sasseville
Director, Northern Region, Regional
Services, Alberta Environment
Represented by Jeffrey Moore, Alberta Justice

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VI. DRAFT ORDER

**Ministerial Order
/2004**

Water Act
R.S.A. 2000, c. W-3

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

**Order Respecting Environmental Appeals Board
Appeal Nos. 04-003 and 04-004**

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 Nos. 04-003 and 04-004.

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 Nos. 04-003 and 04-004

With respect to the decision of the Director, Northern Region, Regional Services, Alberta Environment (the “Director”) to issue Licence No. 00205559-00-00 (the “Licence”), under the Water Act, R.S.A. 2000, c. W-3, to ARC Energy Resources Ltd., I, Dr. Lorne Taylor, Minister of Environment order:

1. The Director’s decision to issue the Licence is confirmed subject to the following variations.
2. The Licence is amended on the cover page by replacing the phrase “ARC Energy Resources Ltd. with “ARC Resources Ltd.”.
3. The Licence is amended on the cover page by replacing the phrase “is authorized to divert 273,750 cubic metres of water annually” with the phrase “is authorized to divert 237,250 cubic metres of water annually”.
4. The Licence is amended in clause 1 by replacing the phrase:

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(cubic metres per day)**

**450.0
150.0
150.0”**

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5. The Licence is amended by adding immediately after clause 6 the following:

“6.1 The licensee shall provide a copy of all of the information that it is required to provide to the Director under this Licence by regular mail to Ms. Verna Loewen at Box 779, Valleyview, AB T0H 3N0 and to Mr. Detlef Rottmerhusen at Box 215, Valleyview, AB T0H 3N0”. This information shall be provided in accordance with the same time frames as required to be provided to

the Director. This information shall also include all information associated with the observation well.”

6. The Licence is amended by adding immediately after clause 12 the following:

“13. The licensee shall commence the investigation of alternatives to the use of freshwater by December 1, 2004. The licensee shall provide a copy of a written status report regarding its investigation to the Director, Ms. Verna Loewen and Mr. Detlef Rottmerhusen on or before December 1, 2005. The licensee shall provide a copy of the written final report detailing its investigation into alternatives to the use of freshwater to the Director, Ms. Verna Loewen and Mr. Detlef Rottmerhusen on or before December 1, 2006. The final report shall include, to the satisfaction of the Director, a complete investigation of alternative water sources and provide sufficient documentation to prove to the Director the feasibility of the best alternatives to the use of freshwater.”



ALBERTA ENVIRONMENT

Office of the Minister

Ministerial Order

25/2004

Water Act

R.S.A. 2000, c. W-3

Environmental Protection and Enhancement Act

R.S.A. 2000, c. E-12

**Order Respecting Environmental Appeals Board
Appeal Nos. 04-003 and 04-004**

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 Nos. 04-003 and 04-004.

Dated at the City of Edmonton, in the Province of Alberta this 10TH day of Nov., 2004.


Honourable Dr. Lorne Taylor
Minister of Environment

Appendix

Order Respecting Environmental Appeals Board Appeal Nos. 04-003 and 04-004

With respect to the decision of the Director, Northern Region, Regional Services, Alberta Environment (the "Director"), to issue Licence No. 00205559-00-00 (the "Licence"), under the Water Act, R.S.A. 2000, c. W-3, to ARC Energy Resources Ltd., I, Dr. Lorne Taylor, Minister of Environment order:

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