

ALBERTA
ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – August 27, 2007

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 Vern McDonald with
respect to *Environmental Protection and Enhancement Act*
Reclamation Certificate No. 224627-00-00 issued to Husky Oil
Operations Limited by the Inspector, Northern Region, Regional
Services, Alberta Environment.

Cite as: Preliminary Motion: *McDonald v. Inspector, Northern Region, Regional Services, Alberta Environment*, re: *Husky Oil Operations Limited* (27 August 2007), Appeal No. 07-003-ID1 (A.E.A.B.).

BEFORE:

Dr. Steve E. Hrudehy, Chair.

SUBMISSIONS BY:

Appellant: Mr. Vern McDonald.

Inspector: Ms. Lynette Sinclair, Inspector, Northern Region, Regional Support, Alberta Environment, represented by Mr. Jeffrey Moore, Alberta Justice.

Certificate Holder: Husky Oil Limited, represented by Ms. Jody Spady.

EXECUTIVE SUMMARY

On February 1, 2006, Alberta Environment issued Reclamation Certificate No. 224627-00-00 to Husky Oil Operations Limited with respect to the Renaissance Craigend 5-36-64-15-W4M well near Lac La Biche, Alberta.

On May 15, 2007, the Environmental Appeals Board received a Notice of Appeal from Mr. Vern McDonald appealing the Certificate. As the appeal was filed past the legislated timeframe, the Board asked for submissions from the participants.

Mr. McDonald explained he was the registered landowner of the property in question, and he did not receive notice of the issuance of the reclamation certificate until May 15, 2007. Husky Oil Operations Limited explained the notification was given to the Kikino Métis Settlement. Neither Alberta Environment nor Husky Oil Operations Limited objected to the Board extending the timeframe in which Mr. McDonald could file his appeal.

The Board found Mr. McDonald was the registered landowner under the Métis Settlements Land Registry, but he did not receive notice of the reclamation certificate as required under the *Environmental Protection and Enhancement Act*.

Pursuant to section 91(5) of the *Environmental Protection and Enhancement Act* and based on the circumstances of this case, the Board granted the extension of the appeal period and accepted the Mr. McDonald's Notice of Appeal.

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I. BACKGROUND

[1] On February 1, 2006, the Inspector, Northern Region, Regional Services, Alberta Environment (the “Inspector”), issued Reclamation Certificate No. 224627-00-00 (the “Certificate”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”) to Husky Oil Operations Limited (the “Certificate Holder”) with respect to the Renaissance Craigen 5-36-64-15-W4M well near Lac La Biche, Alberta.

[2] On May 15, 2007, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Mr. Vern McDonald (the “Appellant”) appealing the Certificate.

[3] On May 17, 2007, the Board wrote to the Appellant, the Certificate Holder, and the Inspector (collectively the “Participants”) acknowledging receipt of the Notice of Appeal and notifying the Certificate Holder and the Inspector of the appeal. The Board also requested the Inspector provide the Board with a copy of the records (the “Record”) relating to this appeal, and that the Participants provide available dates for a mediation meeting, preliminary 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 May 31, 2007, the Board received a copy of the Record from the Inspector, and on June 11, 2007, copies were forwarded to the Appellant and the Certificate Holder. The Board also noted in its June 11, 2007 letter that, upon review of the Record, it appeared to the Board that the Appellant is the registered owner of the land and that he was not notified that the Certificate had been issued to the Certificate Holder. The Board requested the Participants provide the Board with written submissions on the Appellant’s late filed appeal.

[6] Submissions were received between June 27, 2007 and July 10, 2007.

II. SUBMISSIONS

[7] The Appellant explained he received notice of the decision to issue the Certificate on May 15, 2007, and he filed his Notice of Appeal as soon as he became aware that the Certificate had been issued.

[8] The Appellant stated a letter was sent to the Kikino Métis Settlement (the “Settlement”) but not to the Appellant who is the landowner. The Appellant explained there are issues regarding the lack of drainage, not enough top soil, and trespassing concerns.

[9] The Certificate Holder explained it typically contacted the Kikino Métis Settlement administration or their legal counsel regarding activity on the Kikino Métis Settlement. The Certificate Holder stated the Kikino Métis Settlement had not informed the Certificate Holder that the Appellant was a registered owner of the land and no contact information for the Appellant was included in the surface lease documentation. The Certificate Holder acknowledged the Appellant as an interested party with respect to the reclaimed well site.

[10] The Certificate Holder stated that, although the Certificate was issued February 1, 2006, the Certificate Holder understands the Appellant was not aware of the Certificate being issued until May 2007. The Certificate Holder did not view the Notice of Appeal as being filed late and, therefore, had no objections regarding the date of the appeal.

[11] The Inspector stated the appeal should proceed, because it appeared the Appellant did not receive a copy of the Certificate until May 15, 2007, therefore the appeal was filed in time. The Inspector explained she was not aware that the Appellant was the owner of the land in question, because the certificate of title issued by the Alberta Lands Title Office lists the Kikino Métis Settlement as landowner.¹ The Inspector stated that, where Métis settlements are involved, the practice is to serve the settlement with the expectation that notice would be forwarded to the affected party. The Inspector recommended that Alberta Environment change its practice to require applicants provide a Métis Settlements Land Registry search and a record of discussions with the owner or occupant. The Inspector assured the Board that she would have sent the Appellant a copy of the Certificate had she known the Appellant was the landowner.

¹ The Alberta Lands Title Office registers all lands of the Kikino Métis Settlement as belonging to the Settlement, but it does not specify the individuals who have interests in specific parcels of the lands. The Métis

[12] The Kikino Métis Settlement did not have any objections regarding the appeal.

III. DISCUSSION

[13] In assessing whether the Board should consider a late filed appeal, the Board must consider the applicable legislation, in this case sections 91(4) and (5) of EPEA. These sections provide:

- “(4) A notice of appeal must be submitted to the Board
- (a) not later than 7 days after receipt of a copy of the enforcement order or the environmental protection order, in a case referred to in subsection (1)(e), (f) or (h),
 - (b) not later than one year after receipt of a copy of the reclamation certificate, in a case referred to in subsection (1)(i) relating to the issuing of a reclamation certificate, and
 - (c) not later than 30 days after receipt of notice of the decision appealed from or the last provision of notice of the decision appealed from, as the case may be, in any other case.
- (5) The Board may, on application made before or after the expiry of the appeal period referred to in subsection (4), extend that period, where the Board is of the opinion that there are sufficient grounds for doing so.”

Therefore, in this case, the appeal period is one year after receipt of a copy of the Certificate.

[14] The legislation clearly defines the time frames in which an appeal must be filed. However, section 91(5) gives the Board the authority to extend the deadline for filing a Notice of Appeal when there are special grounds to do so.

[15] As stated in previous decisions,² the Board considers certainty as a cornerstone to the appeal process. By having timeframes in which to file a Notice of Appeal, the participants involved will know when the process is complete. The time lines included in the legislation, and the certainty they create, balance the interests of all participants involved. Therefore, the Board is generally reluctant to allow extensions to the file a Notice of Appeal except under special

Settlements Land Registry records the individual who has an interest in the land and the type of interest.

² See: *Biggart v. Director, Central Region, Regional Services, Alberta Environment re: Town of Innisfail* (24 November 2003), Appeal No. 03-039-D (A.E.A.B.); *Moses v. Director, Central Region, Regional Services, Alberta Environment re: Ducks Unlimited Canada* (29 November 2004), Appeal No. 04-001-ID1 (A.E.A.B.).

circumstances. Unless the Appellant can give substantial reasons as to why the Notice of Appeal was filed late, the Board will generally not allow late filed appeals.

[16] The circumstances in this case are somewhat unusual because the property in question is part of the Kikino Métis Settlement. The Alberta Land Titles Registry has the Settlement listed as owner of the property. However, the Métis Settlements Land Registry further delineates who, as a member of the Métis settlement, owns individual parcels of land. The Métis Settlements Land Registry has the Appellant listed as owner of the property on which the Renaissance Craigen 5-36-64-15-W4M well is located. Therefore, the Board accepts that the Appellant is the landowner to whom notification of the Certificate should be given. Under section 145 of EPEA

“Where an environmental protection order regarding conservation and reclamation or a reclamation certificate is issued under this Part, in addition to giving a copy of the order or certificate to the operator, the person issuing the order or certificate

- (a) shall give a copy of the order or certificate to the owner of the land concerned, and
- (b) may give a copy of the certificate to any other person whom the person issuing the certificate considers to be directly affected by the activity to which the certificate relates.”

[17] Under section 145 it is clear that notification of the issuance of the Certificate *must* be given to landowner. The Board understands notification of the issuance of the Certificate was provided to the Settlement as listed landowners in the Alberta Land Titles Registry. In this case, the Certificate Holder should have taken additional steps and verified the owner under the Métis Settlements Land Registry. Although the Certificate Holder assumed the Certificate would be forwarded to the appropriate affected person, there is no record in this case of that happening. The Appellant stated he did not receive notification until May 2007, and there is nothing in the Record or in the Parties’ submissions to refute this. Therefore, the Board accepts that the Appellant did not receive actual notification of the Inspector’s decision until May 2007.

[18] The legislation states that an appeal of a reclamation certificate can be filed “...not later than one year *after receipt of a copy of the reclamation certificate*, in a case referred to in subsection (1)(i) relating to the issuing of a reclamation certificate.” The Appellant’s appeal period started when he received a copy of the Certificate. That did not happen until May 15, 2007. The Appellant filed his Notice of Appeal as soon as he became aware of the issuance of Certificate. The Appellant took action as soon as he became aware of the Certificate being issued.

[19] Finally, neither the Inspector nor the Certificate Holder objected to the Appellant’s request for an extension of time to file the Notice of Appeal. Considering all of the circumstances, the Board will allow an extension of the time and will accept the Appellant’s Notice of Appeal.

[20] The Board also commends the Inspector in taking the initiative to ensure situations such as this do not occur in the future. The Inspector recommended that Alberta Environment change its practice by requiring that applicants provide a Métis Settlements Land Registry search and a record of discussions with the owner or occupant. The Board supports this recommendation.

IV. DECISION

[21] Based on the circumstances of this case, and as none of the Parties have objections, the Board grants the extension of the period in which to file the appeal pursuant to section 91(5) of the *Environmental Protection and Enhancement Act*.

Dated on August 27, 2007, at Edmonton, Alberta.

“*original signed by*”

Dr. Steve E. Hrudehy, FRSC, PEng
Chair