

ENERGY RESOURCES CONSERVATION BOARD**Calgary Alberta****CANADIAN FOREST OIL LTD.****SECTION 39 REVIEW OF DISPOSAL APPROVAL
PROVOST FIELD****2011 ABERCB 011
Proceeding No. 1669823**

DECISION

The Energy Resources Conservation Board (ERCB/Board) has considered the recommendation set out in the examiners' report, adopts the recommendation, and cancels the review proceeding. As a result, Class II Disposal Approval No. 6461I (including the terms and conditions thereof) remains in force.

Dated in Calgary, Alberta, on May 16, 2011.

ENERGY RESOURCES CONSERVATION BOARD*<original signed by>*

B. T. McManus, Q.C.
Acting Chair

ENERGY RESOURCES CONSERVATION BOARD

Calgary Alberta

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1 RECOMMENDATION

For the reasons set out in the discussion below, the examiners recommend that the Board cancel the written proceeding to review Approval No. 6461I and that Approval No. 6461I remain in force.

2 BACKGROUND

Blackhawk Resources Operating Corp. (BROC) applied to the ERCB in Review Application No. 1657857 for a review of two disposal wells operating under disposal scheme Approval No. 6461I (Approval). The disposal wells (Well Licence Nos. 0181450 and 0172508) and the Approval relate to Canadian Forest Oil Ltd.'s (CFOL) disposal of produced water into the Provost Upper Mannville BB Pool.

In its review request, BROC alleged that CFOL's disposal of produced water had increased the pressure of the Provost Upper Mannville BB Pool causing BROC to be concerned about oil recovery from the pool and safety of operations. The Board considered the alleged facts and found that they were new and not available at the time of granting of the Approval, and that there was a reasonable possibility that such information could lead the Board to materially vary or rescind its decision on the Approval. As a result, the Board decided to grant BROC's request for a review hearing pursuant to section 39 of the *Energy Resources Conservation Act (ERCA)* on November 25, 2010, noting that BROC owns and operates 3 wells that produce oil from the Provost Upper Mannville BB Pool. In conjunction with the review request, BROC also asked that the Board suspend CFOL's Approval and Well Licences Nos. 0181450 and 0172508. BROC did not allege that CFOL was contravening the terms of the Approval, Well Licences, or other regulatory requirement of the ERCB, and was advised that the Board had no authority to consider suspension requests made pursuant to section 39 of the *ERCA*.

The Board directed that a review hearing be held by Board-appointed examiners B. C. Hubbard, P.Eng. (Presiding Member), T. R. Keelan, P.Eng., and J. R. MacGillivray, P.Geol. The hearing was registered as Proceeding No. 1669823. Upon consideration of the nature of the matters for review and in accordance with section 47 of the *Energy Resources Conservation Board Rules of Practice (Rules of Practice)*, the examiners determined that a written hearing would be appropriate. Notice of the written hearing was issued on January 10, 2011 outlining a schedule for the filing of Written Submissions, Information Requests (IR), and IR Responses throughout the period of February 11, 2011 to April 15, 2011. In accordance with the Board's normal practice in review hearings, CFOL was considered to be the applicant in this hearing and BROC was considered to be the intervener.

On February 10, 2011, BROC filed its initial written submission with the Board. On February 18, 2011, CFOL submitted its IR to BROC arising out of BROC's submission. BROC requested an extension to respond to CFOL's IR, which was granted by the examiner panel. On March 1, 2011, BROC responded to CFOL's IR. CFOL objected to the IR Response on the basis that it did not comply with the requirement in Rule 30(1)(a) to repeat each question in the IR. BROC indicated that it did not have time to correct its IR Response.

On March 2, 2011, Board staff sent its IR to BROC specifying a March 11, 2011 response deadline. BROC did not respond to the IR. After several attempts by Board staff to contact BROC about its IR Response, BROC confirmed in writing to the Board on March 16, 2011 that it would no longer be participating in Proceeding No. 1669823, nor would it be submitting any further information or evidence. In response to inquiries from Board staff, on March 17, 2011, BROC clarified its position that the review hearing process could continue, but without any further participation from BROC. On March 30, 2011, CFOL indicated to the Board that, in its view, the hearing should be discontinued.

3 DISCUSSION

Despite having filed a submission and response to CFOL's IR, BROC's withdrawal from the hearing leaves the following information filing steps incomplete:

- BROC's response to Board Staff IR
- BROC's IR to CFOL's submission
- CFOL's response BROC's IR
- BROC's reply submission

The purpose of the review hearing was to provide a process for both parties to the proceeding to submit sufficient evidence, and allow that evidence to be tested and then considered by the examiners in making a recommendation to the Board as to whether the Approval should be rescinded, varied, or altered. The examiners are of the view that BROC's decision to withdraw from the proceeding prior to the completion of all information filing has the effect of obstructing a full evidence-gathering process. As a result, there is insufficient evidence to support an examiner recommendation that the Approval be rescinded, varied, or altered. As no further evidence will be filed to support a variance or rescission of the Approval, the examiners recommend that BROC not be heard, and that the review hearing be cancelled.

In making this recommendation, the examiners note that section 24(3) (b) of the *Rules of Practice* provides that the Board may decide not to hear an intervener if its submission is frivolous, vexatious, or of little merit. As indicated above, the submission of BROC provides insufficient evidence to allow the examiners to make a determination on any of the issues in this proceeding, or make an informed recommendation to the Board. In this respect, the examiners find the submission to be of "little merit" to this proceeding.

The examiners also had regard for section 18(2)(b) of the *Rules of Practice* which states that an application or submission may be dismissed if an applicant or intervener does not file additional information when directed to do so by the Board. Notwithstanding it was Board staff that requested further information from BROC, the information was requested on the examiners' behalf and was information considered "necessary to permit a full and satisfactory

*understanding of an issue in a proceeding*¹. BROCs failure to respond to this request is therefore captured by section 18 of the *Rules of Practice* and its consequences.

The examiners are of the view that the written proceeding as set out in the January 10, 2011 Notice of Hearing provided for the process that would have satisfied BROCs right to be heard, had it chosen to avail itself of that process. Consequently, the examiners are satisfied that the requirement to hold a hearing in accordance with section 48(7) of the *Rules of Practice* was met in this case. Even if this were not the case, the party that triggered the hearing became unwilling to complete the process, and this circumstance, in the examiners view, warrants dispensing with, in accordance with section 7 of the *Rules of Practice*, the hearing required under section 48(7).

The examiners therefore recommend cancellation of the review hearing.

Dated in Calgary, Alberta, on May 16, 2011.

ENERGY RESOURCES CONSERVATION BOARD

<original signed by>

B. C. Hubbard, P.Eng.
Presiding Member

¹ *Rules of Practice*, section 18(1)