

BY E-MAIL ONLY

November 6, 2015

Donna Dahm and Bob Plowman

Applications No. 1836303, 1836306, 1836313, 1836314, and 1836997

Baytex Energy Limited.

Statements of Concern No. 29936, 29937, 29939, and 29940.

Dear Ms. Dahm and Mr. Plowman:

You are receiving this letter because you filed a statement of concern about Applications No. 1836303, 1836306, 1836313, 1836314, and 1836997. The Alberta Energy Regulator (AER) has reviewed your statements of concern, along with the applications, the applicable requirements, and other submissions or information about the applications and has decided that a hearing is not required under an enactment or otherwise necessary to consider the concerns outlined in your statement of concern.

You have asserted that you may be directly and adversely affected by the AER's decision on the application. The factual part of the test set out in *Dene Tha' First Nation v Alberta (Energy and Utilities Board)* provides guidance on what information indicates that a party may be directly and adversely affected. It states that "some degree of location or connection between the work proposed and the right asserted is reasonable."¹ This statement is also consistent with decisions of Alberta courts and the Alberta Environmental Appeals Board (EAB) that describe the "directly affected" test applied by the EAB. One recent EAB decision summarized the test:

[28] What the Board looks at when assessing the directly affected status of an appellant is how the appellant will be individually and personally affected. The more ways in which the appellant is affected, the greater the likelihood of finding that person directly affected. The Board also looks at how the person uses the area, how the project will affect the environment, and how the effect on the environment will affect the person's use of the area. The closer these elements are connected (their

¹ *Dene Tha' First Nation v Alberta (Energy and Utilities Board)*, 2005 ABCA 68, at para 14.

proximity), the more likely the person is directly affected. The onus is on the appellant to present a prima facie case that he or she is directly affected.²

inquiries 1-855-297-8311
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In your statement of concern, you outline general concerns related to the impact of oil sands development on wetlands and ecosystems in your area; cumulative effects of the project; adverse effects of emissions on human health, animal health and the environment; infrastructure concerns; and a lack of consultation with stakeholders and affected people.

The AER has determined that it is not necessary to explore these concerns in more detail because you have not provided information that demonstrates you may actually use lands or other natural resources in the project area or other locations that may be affected by the project, or that the kinds of impacts you are concerned with may result from the program. Regarding your concerns about wetlands and ecosystems in your area, all of the wells are located on freehold land, with four of the wells located on cultivated lands, and the landowner has consented to the applications. The exploration well that will be closest to Ms. Dahm's residence (14-7-84-19W5M) will be about 636 meters southwest, and the closest well to Ms. Dahm's lands (13-8-84-19W5M) is about 426 metres southeast. The exploration well that will be closest to Mr. Plowman's residence (14-7-84-19W5M) will be about 1.48 km southwest, and the closest well to Ms. Plowman's lands (13-8-84-19W5M) is about 1.24 km southeast.

Moreover, the project itself is an oil sands exploration program, which entails minor land disturbances and temporary, localized impacts on the land and other natural resources. These wells are abandoned after drilling and no bitumen production is authorized by the AER's approval of the program. The AER is satisfied that proper and responsible completion of such programs results in no or minimal lasting disturbance or impact on the environment and natural resources, whether project-specific impacts or as part of cumulative effects. Oil sands evaluation wells are not a source of emissions, and as it is industry practice to abandon the wells while the drilling rig is on hole, do not require extensive infrastructure. Furthermore, an applicant is not required to provide a guarantee that there will be absolutely no negative cumulative effects resulting from a project. Any impacts from future applications would be assessed at the time of those applications, and notice of applications would be published on the AER website with a deadline for parties to file a statement of concern with the AER. Given the foregoing, the AER was not

² *Tomlinson v Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development, re: Evergreen Regional Waste Management Services Commission* (03 April 2013), Appeal No. 12-033-ID1 (AEAB).

prepared to assume (in the absence of hard information) that you may be affected by the project.

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The AER is satisfied that Baytex has met all consultation and notification requirements that apply to you in relation to the program.

Having regard for all the foregoing, the AER decided that you have not demonstrated that the AER's decision on the program application may directly and adversely affect you, and the AER will not hold a hearing of the application.

The AER has also decided to approve the applications and issue the applied-for licences. Attached are copies of those documents, which will also be posted on the AER website.

Under the *Responsible Energy Development Act* an eligible person may file a request for a regulatory appeal on an appealable decision. Eligible persons and appealable decisions are defined in section 36 of the *Responsible Energy Development Act* and section 3.1 of the *Responsible Energy Development Act General Regulation*. If you wish to file a request for regulatory appeal, you must submit your request in the form and manner and within the timeframe required by the AER. You can find filing requirements and forms on the AER website www.aer.ca under Applications & Notices: Appeals.

If you have any questions, please contact Lonny Olsen at 403-297-3513 or e-mail lonny.olsen@er.ca.

Sincerely,

<original signed by>

Shelley Youens

Director, Authorizations Infrastructure (Oil and Gas)

Attachments (5) licences

cc: Thomas Aiello, Baytex Energy Ltd
AER Grande Prairie Field Centre