

Via Email

December 7, 2015

Mr. Terry Smithwww.aer.ca

Dear Sir:

**RE: Request for Regulatory Appeal
Canadian Natural Resources Limited (CNRL)
Application 1814633 and 1821483
Licence No. 0475302, 0475303, 0475304 & F48592
Location: 02-13-056-04 W4M
Request for Regulatory Appeal No. 1831011**

The Alberta Energy Regulator (AER) has considered your request under section 38 of the *Responsible Energy Development Act (REDA)* for a regulatory appeal of the AER's decision to issue Licences 0475302, 0475303, 0475304 & F48592 (the decision). The AER has reviewed your submissions and the submission made by CNRL. For the reasons that follow, the AER has decided that you and your family are not directly and adversely affected by the decision. Therefore, the request for a Regulatory Appeal is not properly before the AER and is dismissed.

In this decision letter, references to 'you' and 'your' are intended to be references to both you and the family members on whose behalf the regulatory appeal has been filed.

The applicable provisions for regulatory appeals are found in Division 3 of Part 2 of the REDA. Section 38 states:

38(1) An eligible person may request a regulatory appeal of an appealable decision by filing a request for regulatory appeal with the Regulator in accordance with the rules.

Section 36(a) of *REDA* defines an "appealable decision". For the present purposes, the relevant definition is contained in subsection 36(a)(iv). It says an appealable decision includes:

(iv) a decision of the Regulator that was made under an energy resources enactment, if that decision was made without a hearing.

"Eligible person" is defined in section 36 (b)(ii) as:

A person who is directly and adversely affected by a decision referred to in clause (a)(iv).

Reasons for Decision

Your primary grounds for requesting a regulatory appeal are that you will or may be directly and adversely affected by odours, noise, and dust as a result of operations at the wells, facility site and access road.

As noted in the AER's letter in response to the objections in your statement of concern (SOC) about odours, CNRL has committed to limiting its production tank temperatures and using hexa-covers in the

tanks. The AER is satisfied that these measures will be effective to mitigate and reduce odours from the production tanks. Similar noise mitigation measures will be employed by CNRL, namely sound suppression shacks and quiet style drive heads for the wells. The AER also notes that your lands are 400 meters from the well site and your nearest residence is 444 meters away.

The access road at its closest distance to your residence is approximately 400 meters away. As noted in the AER's response to your SOC, dust from traffic on the access road reaching your lands and residence will be mitigated by the densely treed area in between your lands and the access road. The AER does not have jurisdiction over the local county road which runs adjacent to your lands and which may be used to access the leased road.

In *Kelly v. Alberta (Energy Resources Conservation Board)*¹ the Court of Appeal stated that adverse effect is a matter of degree, and that the 'magnitude of risk' associated with an activity must be considered when determining whether the activity may directly and adversely impact a person. Accordingly, the AER has considered the type of potential impacts that you have raised, and notes that you have not indicated that noise, odour, and dust associated with the project will or may impact your health or safety.

The AER's predecessor, the ERCB, has previously held that intermittent exposure to unpleasant stimuli is wholly different in nature than exposure to stimuli that may give rise to health risks, and that exposure to the former is not a sufficient reason to prevent or restrict energy development or activities, whether in rural or urban settings:

.....the Board cannot be tasked with ensuring that no individual ever suffers an unpleasant experience as a result of being exposed to odours from a facility regulated by the Board. Living in a modern, industrial society necessarily entails exposure to unpleasant stimuli. Even in rural locations one is exposed from time to time to sights, sounds, and odours that are unpleasant, sometimes to the point of eliciting a physiological response. Not all these experiences can be or should be prevented by unduly restricting what is otherwise beneficial development or activity. The Board finds there is no indication that odours from oil and gas facilities and activities in the Vulcan area pose an unacceptable health risk to individuals in the area² [Underlined emphasis added].

Based on the above, and having regard for the distance of your lands and residence from the wells and facilities and the vapour and noise mitigation measures to be employed at the site that will significantly reduce the impacts with which you are concerned, the AER finds that you have not demonstrated that you are or may be directly and adversely affected by the Decision.

In addition, as the AER's SOC response letter indicates, the AER has specific requirements relating to noise and off-lease odours with which CNRL must comply³. If you believe you are experiencing noise or odours that exceed these requirements, please contact the local AER field center. The concern you expressed with the appropriateness or effectiveness of these requirements does not affect the AER's finding that you are not directly and adversely affected by the Decision, and in any event, your submissions indicate that you have not yet availed yourself of the processes available to you under these requirements with respect to other energy development in the area.

¹ *Kelly v. Alberta (Energy Resources Conservation Board)*, 2011 ABCA 325 (CanLII) at para 26.

² *Compton Petroleum Corporation and Darian Resources Ltd.* 2011 ABERCB 008 at para 57.

³ See *Directive 038: Noise Control and Directive 060: Upstream Petroleum Industry Flaring, Incinerating, and Venting*.

You have also raised the similar concerns about different wells and/or facilities in your area; however, concerns over other AER licensed wells or facilities are outside the scope of the regulatory appeal request. To the extent that you are relying on concerns experienced with other wells or facilities to demonstrate the likelihood of direct and adverse effects from the subject wells and facility, you have provided little information as to details of the other wells and facilities and what commitments or mitigation efforts have been employed at those sites to reduce noise, odour, and dust from access roads, as has been done with the subject wells and facility.

You have also stated that you have lost the use of your property for target shooting. This statement is unclear as you have not identified and the AER is not aware of any setbacks or other restrictions placed on your lands as result of the wells and facility. The degree of impact on this recreational activity cannot be properly assessed without knowing more about the specific restriction you have referred to, assuming such a restriction exists. Similarly, you provided no information to support your assertion that the subject wells and facility will result in economic loss or loss of property values.

For the foregoing reasons, the AER finds that you have not established that you are or may be directly and adversely affected by the decision, and you are therefore not an 'eligible person' pursuant to the *REDA*. Therefore, the request for a regulatory appeal is not properly before the AER and is dismissed.

Sincerely,



Nancy Barnes
Director Oil and Gas



Greg Gilbertson
Senior Advisor



Doug Boyler, P.Eng.
Chief Operations Engineer

cc: CNRL – Rick Palmer