

Via Email

March 18, 2019

Point Loma Resources Ltd.

Attention: Tory Wagner

Harold Wynne

Calgary Head Office
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Canada

www.aer.ca

Dear Sirs:

**RE: Request for Regulatory Appeal by Harold Wynne
Point Loma Resources Ltd. (Point Loma)
Application No.: 1916344; Licence Nos.: 492108, 425447, and 425449
Location: 17-048-27W4M, 16-048-27W4M
Request for Regulatory Appeal No.:1916880**

Introduction

The Alberta Energy Regulator (AER) has considered Mr. Wynne's request under section 38 of the *Responsible Energy Development Act (REDA)* for a regulatory appeal of the AER's decision to approve the Licences. The AER has also reviewed Mr. Wynne's subsequent submissions and the submissions made by Point Loma Resources Ltd.

For the reasons that follow, the AER has decided that Mr. Wynne is not directly and adversely affected by the decision, and is hereby dismissed.

The Law

The applicable provision of REDA in regard to regulatory appeals, 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)(v). 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.

The term "eligible person" is defined in section 36(b)(ii) of REDA to include:

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

With regard to a person being directly and adversely affected by a decision, the Alberta Court of Appeal, in *Kelly v. Alberta (Energy Resources Conservation Board)*,¹ found 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.

The AER’s predecessor, the Energy Resources Conservation Board, 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 area.²

Reasons for Decision

Appealable Decision

The decision that is the subject matter of this appeal request is a well licence issued pursuant to section 2.020 of the *Oil and Gas Conservation Rules*, which, in accordance with subsection 1(1)(j) of the *REDA*, is an energy resource enactment. And since the well licence was made without holding a hearing, it is an appealable decision under section 36 (a) of the *REDA*.

Eligible Person

In this particular case, Mr. Wynne would be an eligible person to request a regulatory appeal if he is or may be directly and diversely affected by the well licences issued to Point Loma.

Mr. Wynne’s primary grounds for requesting a regulatory appeal are that the public consultation was not adequate, the drilling may adversely affect the water aquafer (including potential impacts on his water

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

² *Compton Petroleum Corp., Re* 2011 ABERCB 008, at para 57.

wells), health problems from flaring and, the existence of a well-site diminishes his future agri-tourism recreation plan and decreases the property value.

With regard to public consultation Mr. Wynne states that he did not receive the courtesy notification that Point Loma sent by mail to his old address on the title and that the other neighbours in the vicinity would have strenuously objected to the location of the well-site, had they been properly consulted. However, Mr. Wynne conceded in his submissions that that Point Loma has satisfied the technical “metric” distance requirements for notification in section 3.10.3 of Directive 056. The AER notes that the distance from the well to the closest point of your land is approximately 152 metres and that for a B140 category well (which is the well approved in the licences) notification is required for landowners and occupants within 0.1 km or 100 metres. Thus, and even though Point Loma did send a notification package to Mr. Wynne, there was no requirement to notify him of the application. With regard to the claim that Mr. Wynne’s neighbours would have objected to the locating of the wellsite, there is no evidence provided on the record suggesting that Mr. Wynne is authorized to speak on his neighbours’ behalf or that his claim about the neighbours’ objections is true. No other landowners have expressed any objections to the project. As a result, the AER finds that Point Loma has complied with the Directive 056 notification requirements for this project.

In relation to the water aquifer and water wells concerns, the AER notes that potential effects of the wells on the landowners’ water wells are addressed by the AER requirements that surface casing be set and cemented to a depth that is intended to protect the deepest aquifer. Additionally, Point Loma has tested Mr. Wynne’s water wells and has committed to work constructively with Mr. Wynne and other stakeholders to address any potential issues. These AER requirements must be followed by every proponent and the AER is satisfied that Point Loma will follow all regulatory requirements for the project.

Furthermore, Mr. Wynne’s concern that flaring may cause health problems is general in nature and he has not provided any evidence in support of specific health issues. In any event, Point Loma must follow the provisions of Directive 060: *Upstream Petroleum Industry Flaring, Incinerating and Venting*. All AER-regulated parties must comply not only with the conditions of their authorizations, but with all of the AER’s regulatory requirements, including Directive 060. Directive 060 requirements are aligned to ensure compliance with Alberta Environment and Parks (AEP) *Alberta Ambient Air Quality Objectives (AAAQO) and Guidelines*, developed to protect Alberta’s air quality and provide protection of the environment and human health to the extent technically and economically feasible. This includes requirements that flares are designed to operate safely under the intended conditions and that there are operating procedures in place to ensure compliance with the AAAQO. Emissions from flares also cannot exceed the AAAQO.

Mr. Wynne also stated that the proposed wellsite may have impacts on his plans for development of agri-tourism and recreation on the property, including the property value. It is not clear, however, how detailed and firm these plans are. Mr. Wynne submitted that the planning began in 2008, that there was some delay caused by Imperial Oil failing to reclaim four wellsites on your property in 2014, a matter beyond the scope of this application, and that he plans to seek approvals from the Leduc County to situate tiny rental cabins on the property.

There is, however, nothing provided on the record regarding any details or the current status of this plan i.e. how imminent the implementation of the plan is and whether Mr. Wynne has obtained the required

approvals from the county. The potential impacts from the wellsite on the agri-tourism and the property value cannot be assessed from the general information Mr. Wynne provided, considering the location of the wellsite in relation to his property, the size of the property and the length of the planning period, which began in 2008, over a decade ago. Based on this, it is very difficult to see any direct and adverse effects on the potential tourism business since it is not clear whether and when the business will materialize.

For the foregoing reasons, the AER finds that Mr. Wynne has not established that he is or may be directly and adversely affected by the decision. Mr. Wynne is, therefore, not an 'eligible person' pursuant to the REDA, and is hereby dismissed.

Sincerely,

<original signed by>

David Helmer,
Director, Industry Operations

<original signed by>

Paul Ferensowicz,
Senior Advisor, Industry Operations

<original signed by>

Scott Fallows,
Senior Advisor, Authorizations