

Via Email

May 11, 2021

Kristin Jones

Attention: Kristin Jones**Calgary Head Office**
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Canadawww.aer.ca

Dear Ms. Jones:

**RE: Request for Regulatory Appeal by Kristin Jones
Husky Oil Operations Limited (Husky)
Application No.: 1929317; Licence No.: F52012
Location: 07-11-073-10W6
Request for Regulatory Appeal No.: 1931562**

The Alberta Energy Regulator (AER) has considered your request for regulatory appeal under section 38 of the *Responsible Energy Development Act* (REDA) for a regulatory appeal of the AER's decision to approve Licence No. F52012 for a multi-well battery. The AER has reviewed your submissions dated November 26, 2020 and January 14, 2021 and the response submissions from Husky dated December 23, 2020.

For the reasons that follow, the AER has decided that you are not eligible to request a regulatory appeal in this matter. Therefore, the request for a Regulatory Appeal is dismissed.

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.
[emphasis added]

Reasons for Decision

There are three components to section 38(1) of REDA:

- (a) The decision must be an appealable decision;
- (b) The requester must be an eligible person; and
- (c) The request must be filed in accordance with the rules.

a) Is the Decision an Appealable Decision

The applicable REDA provision outlining what an “appealable decision” is found under s. 36(a)(iv) which states that a decision of the Regulator that was made under an energy resource enactment, if that decision was made without a hearing.

The decision to approve Licence No. F52012 was made under the *Oil and Gas Conservation Act* and it was made without a hearing. Therefore, the decision to issue the licence is an appealable decision.

b) Is Ms. Jones an “Eligible Person”?

For energy resource enactment decisions, an eligible person is a person who is directly and adversely affected by a decision made under an energy resource enactment without a hearing (section 36(b)(ii) REDA.)

Whether you are a person directly and adversely affected by the decision to approve Husky’s licence is the principal question to be decided in this regulatory appeal request.

The AER’s approach in cases such as this, where the development or activity in question has not yet occurred and therefore the actual impacts are not yet known, is to take the position that the phrases “is directly and adversely affected” or “is directly affected” do not require certain proof that the person will be affected. What is required is reliable information in the regulatory appeal request that demonstrates a reasonable potential or probability that the person asserting the impact will be affected.

Alberta Environmental Appeals Board and court decisions indicate that when assessing the directly affected status of a person one must consider how the person will be individually and personally affected. Information about 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 an area, are important factors. The closer these elements are connected (their proximity), the more likely the person is directly affected. Therefore, you must demonstrate that there is a potential or reasonable probability that you may be negatively impacted or harmed by the decision to issue Husky’s licence.

In August 2020, you filed a statement of concern (SOC) in regards to Husky’s original application. On October 27, 2020, the AER dismissed your SOC without a hearing and Licence No. F52012 was issued. You then filed this regulatory appeal request in which you raised concerns that are the same or similar to those raised in your earlier SOC.

Husky’s multiwell gas battery is licensed for a maximum hydrogen sulphide (H₂S) content of 50 mol/kmol (5 per cent) and will be used to measure gas/condensate/water production prior to sending the effluent to a pipeline. The AER reviewed the parameters provided by Husky in its application and the emergency planning zone (EPZ) of 800m is appropriate for this facility.

You own the NE ¼ 10-73-10W6M and your residence and lands fall outside of the 800 metre EPZ. Specifically, you reside approximately 870 m from the multiwell battery. You have raised general concerns about Husky's emergency response plan (ERP) and its ability to execute the ERP in the event of an accidental sour gas release. You also mention that Husky has not provided you with a copy of the ERP.

Your regulatory request does not include information to support your general claim that Husky will not be able to execute its ERP. An ERP defines the actions a company must take during an emergency and it details the emergency response resource available to the company, outlines roles and responsibilities of all responders and describes how a company will work with various government agencies during an incident¹. Husky's ERP was approved by the AER on December 12, 2020 and Husky is required to comply with *Directive 071: Emergency Preparedness and Response Requirements for the Petroleum Industry*. Directive 071 provides the requirements Husky must meet in order to effectively implement its ERP Plan and respond to an emergency. The AER also notes that Husky has offered to include you in their ERP.

You have raised general safety concerns about living 870 metres away from three Husky wells at 7-11-073-10WM, which you state "all had or are expected to have 150,000 ppm of H₂S concentration". In your reply submission, you noted that when Husky was burning fallen trees and brush "to facilitate their pipeline that runs from their newly licenced (sic) facility to their main plant and field office down the road to me", the air on your property was heavy with smoke and it made it difficult to breath.

You further explained that you and your son have seasonal allergies, and in this regard, you may be impacted by environmental pollution. Specifically, you submit that "repeated exposure to excess dust, low non-fatal concentrations of H₂S, sulphur dioxide emissions from flaring can and will cause health problems, especially for those who are already more susceptible to respiratory problems."

In response, Husky submitted that these concerns were previously addressed in its response to your SOC. The AER notes that Husky previously committed to installing H₂S detection sensors at strategic locations on site. With respect to your dust concerns, Husky stated that it would not pass by your residence, expected there to be only minimal traffic on Range Road 102, and that it will nonetheless employ dust control measures on the access road. Husky noted that it is highly unlikely that any dust from Husky's use of the access road in connection with the project will reach your residence and that you had not provided any specific information to establish otherwise.

With respect to your concerns about Husky's three wells, your regulatory appeal request is of the multi-well battery licence at the lease site and does not include the wells you refer to in your submissions. Your concerns about dust falls outside of the AER's jurisdiction and should properly be raised with Alberta

¹ Emergency Planning, Preparedness and Response Fact Sheet, AER website.

Transportation or the municipality. Furthermore, the AER notes that Husky has committed to implementing dust control measures on the access road.

With regards to your concerns with flaring, Husky must comply with flaring requirements set out in *Directive 060: Upstream Petroleum Industry Flaring, Incinerating and Venting*. The flare for the multiwell battery will be used during blowdown or emergency scenarios, and gas is not expected to be continuously flared.

Your health concerns are general in nature and insufficient information is provided to demonstrate that you and your son's health may be directly and adversely affected by the decision to approve the multi-well battery.

Licensees are required by Directive 071 to use the ERCBH2S computer software to calculate EPZs. The ERCB has carefully selected the numbers, or inputs, used in ERCBH2S calculations to ensure that the resulting EPZ meets emergency planning objectives. The EPZ calculation includes multiple conservative assumptions. Uncertainty and variability in key parameters for calculating an EPZ are accounted for to ensure that the resulting EPZ errs on the side of public safety and an EPZ that may be larger than necessary. This affords a greater distance for initial response than would be needed in practice during a major sour gas release.

You also raised concerns with the lease access road, and that the road is not gravelled properly for access to three of Husky's sour gas wells. You allege that in the event of any kind of failure Husky would not be able to access their lease in non-frozen weather conditions putting the public at risk. The AER notes that you have not provided any information to substantiate your concerns and that the wells, including their access, are not part of the subject regulatory appeal request.

The AER finds that you have not demonstrated that you or your son may be directly and adversely affected by the AER's decision to approve Facility Licence No. F52012. This is because your concerns are general in nature and do not provide specific information how you or your son may be directly and adversely affected as a result of the approval of the multi-well battery licence. As a result, you are not an eligible person as required by section 36(b)(ii) of REDA and you have failed to meet the second requirement for a regulatory appeal.

Conclusion

For the above reasons, the AER finds that you are not "an eligible person" as required by section 38 and defined in section 36(b)(ii) of the REDA and you have failed to meet the second requirement for a regulatory appeal of the decision to approve Facility Licence No. F52012. Accordingly, as you have not met the requirements for a regulatory appeal, the AER has decided to dismiss your request for regulatory appeal.

Future Applications

Section 3.2 of *Directive 056: Energy Development Applications and Schedules (March 2021)* speaks to an applicant planning a participant involvement program for an application:

Tables 1-5 set out the category type and the consultation and notification radii for planning a participant involvement program. The radii are the minimum. It is industry's responsibility to assess the area beyond a specified radius to determine if the radius should be expanded. The radius may need to be expanded to include public interest groups or others who have expressed an interest in development in the area.

Section 3.2.1 Who to Include specifies in requirement 4) The applicant must also include those people that it is aware of who have concerns regardless of whether they are inside or outside the radius of personal consultation and notification indicated in tables 1-5.

Since Husky is aware of your concerns with development at the site, should Husky plan to submit future applications for development at the site, it is required under section 3.2.1 of *Directive 056* to include you in its participant involvement program, as applicable.

Sincerely,

<Original signed by>

Michael D. Brown, P.Eng., M.Eng.
Senior Advisor, Air

<Original signed by>

Shaunna Cartwright
Senior Advisor, Regulatory

<Original signed by>

Tyler Callicott
Acting Director, Enforcement & Emergency
Management

cc: Daron Naffin, Bennett Jones LLP
Brent Verner, Husky Oil Operations Limited
Tracy Millar, Husky Oil Operations Limited