

Via Email

February 23, 2022

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

www.aer.ca

Dale and Heather Sorenson

Tidewater Pipestone Infrastructure Corp.

Attention: Dale and Heather Sorenson

Attention: Ryan Connery

Dear Sirs and Madam:

**RE: Request for Regulatory Appeal by Dale and Heather Sorenson
Tidewater Pipestone Infrastructure Corp.
Application No: 1932929; Licence No.: F21177
Location/s: 36-071-07-W6M
Request for Regulatory Appeal No.: 1934734**

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 approve the Licence Amendments. The AER has reviewed your submissions and the submissions made by Tidewater.

For the reasons that follow, your request for a Regulatory Appeal is dismissed.

Section 38(1) of the *Responsible Energy Development Act (REDA)* sets out the test for eligibility to request a regulatory appeal:

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]

There are three key components to section 38(1), which are as follows:

1. **“Appealable Decision”** – Subsection 36(a) defines an “appealable decision”. For the present purposes, the relevant definition is contained in subsection 36(a)(iv). It says an appealable decision includes:

A decision of the Regulator that was made under an energy resource enactment¹, if that decision was made without a hearing

[Emphasis added]

¹ This includes: the *Coal Conservation Act*, the *Gas Resources Act*, the *Oil and Gas Conservation Act*, the *Oil Sands Conservation Act*, the *Pipeline Act*, the *Turner Valley Unit Operations Act*, a regulation or rule under and of the enactments.

Thus, to be an “appealable decision” the decision must be made under an energy enactment and there cannot have been a hearing.

2. **“Eligible Person”** – Subsection 36(b) defines an “eligible person” under an energy resource enactment. For the present purposes, the relevant definition is contained in subsection 36(b)(ii). It says an eligible person is:

A person who is directly and adversely affected by a decision referred to in clause (a)(iv) [a decision made under an energy resource enactment, if that decision was made without a hearing].

[Emphasis added]

Therefore, you must be a person who is directly and adversely affected by a decision.

3. **“In Accordance with the Rules”** – Section 30(3) requires that a request for a Regulatory Appeal be made within 30 days after the making of the decision for which an appeal is sought.

Reasons for Decision

Appealable Decision

The granting of the Facility Licence Amendment is an appealable decision, as the Licence was issued under the *Oil and Gas Conservation Act* – an energy resource enactment – without a hearing.

In Accordance with the Rules

The portion of the request for regulatory appeal relating to the Facility Licence Amendment was filed in accordance with the time requirements under the rules. You were asked to provide the missing information as outlined in the Deficiency Letter be filed with the AER by October 22, 2021; this information was filed outside of the required timeline set out in Section 30(3)(m) of the Rules. However, you provided it within the deadline requested by the AER.

Therefore, the totality of the Request for Regulatory Appeal was filed in accordance with the Rules.

Eligible Person

To be eligible for a regulatory appeal, you must demonstrate that you may be directly and adversely affected by the AER’s decision to issue the Approval. The AER acknowledges the concerns put forward in your request for regulatory appeal, including but not limited to:

- Safety in the event of an incident, including the following sub-issues:
 - No information on an emergency plan; and
 - No information regarding Tidewater’s Liability Management Rating.

- Impacts on groundwater sources and water wells;
- Noise impacts;
- Air emissions;
- Impacts on reservoir integrity;
- Impacts on property value; and
- Notification and consultation by Tidewater about its plans to bring in additional equipment and amalgamate two existing facilities.

Although not stated with the same degree of detail, the concerns you have raised and the impacts you have submitted in your regulatory appeal request are substantially the same as those raised previously in the statements of concern (SOC) filed by you with respect to the initial subsurface, facility and pipeline applications filed by Tidewater which have now been approved and are the subject of your regulatory appeal request, the most recent of which being applications for Licence Amendments in 2019. In the May 2, 2019 response to your Statement of Concern, the AER found that you had not demonstrated you may be directly and adversely affected by the applications, which were subsequently approved². You then requested a regulatory appeal which the AER also found did not contain any additional information to demonstrate that you may be directly and adversely affected by the decisions to approve the applications³. The AER does not find that the current request for regulatory appeal contains any additional information demonstrating you may be directly and adversely affected by the decision to allow the installation of the Additional Equipment.

Specifically, you have expressed concerns with Tidewater's ability to finance remediation efforts and/or liability issues if an accident were to occur. You provided two examples to the AER regarding concerns of possible leaks or spills resulting from Tidewater's gas storage project, one of which involved a solution mined storage salt cavern at a pumping tank in Saskatchewan in 2014 and the other involved safety valves being intentionally removed and not replaced from a well dug in 1953 in California. The AER previously found these incidents were not relevant to your request as they involved incidents relating to different operators in different jurisdictions who were subject to different regulatory requirements. A company's Liability Management Rating relates to its eligibility to hold or transfer licences under *Directives 006: Licensee Liability Rating (LLR) Program* and *Directive 024: Large Facility Liability Management Program*, it is not related to potential emergencies.

With respect to your safety concerns, Tidewater has submitted to the AER that it has a corporate Emergency Response Plan in place to deal with an emergency should one occur. This meets the requirements as set out in *Directive 071: Emergency Preparedness and Response Requirements for the Petroleum Industry* as there is no H2S associated with Tidewater's gas storage project, including the proposed Facility Licence Amendment.

² AER Letter to Dale and Heather Sorenson - Statement of Concern No. 31454, dated May 2, 2019

³ AER Disposition Letter - Request for Regulatory Appeal No. 1921585, dated September 4, 2019, pg. 2 at para. 1.

The AER acknowledges you have also raised concerns regarding sound, odour, and water contamination. These concerns were addressed in the September 16, 2021 Decision Letter the AER sent to you regarding your Statement of Concern⁴. The letter noted that AER staff had reviewed the Noise Impact Assessment completed by Motive Acoustics in March 2021 which was submitted as a requirement of Tidewater's application and found that the predicted overall sound level was within the permissible limits under *Directive 038: Noise Control*. Further, you addressed the "Attachment Description" in the AER's Integrated Application Registry, stating noise requirements will not be met, this description is automated by the AER's system and is automatically added to any noise impact assessment uploaded to the AER's system. The Noise Impact Assessment provided by Motive Acoustics confirms all noise requirements will be met with the addition of the proposed equipment.

The September 16, 2021 Decision Letter also noted your concerns regarding air pollution were addressed through Tidewater's required compliance under *Directive 060: Upstream Petroleum Industry Flaring, Incinerating, and Venting*, and that the Additional Equipment, specifically the incinerator, was being added to mitigate odor concerns as gases would be combusted on site, rather than vented. The letter further advised that your concerns surrounding decreased property value due to traffic, noise, and safety were outside of the jurisdiction of the AER.

Regarding stakeholder engagement on behalf of Tidewater, you confirmed you were in fact notified of the proposed application by Tidewater.

Your lands and residence are approximately one kilometer (1.0 km) away from the lands to which the Facility Licence Amendment relates. You have not established a sufficient connection between the Facility Licence Amendment and the impacts with which you are concerned.

For the above reasons, the AER has decided that you have not demonstrated that you may be directly and adversely affected by a decision made under an energy resource enactment and as such are not eligible to request a regulatory appeal in this matter. Therefore, your request for a regulatory appeal is dismissed.

Sincerely,

<Original signed by>

Andrew Beaton
Vice President, Alberta Geological Survey

⁴ 2021-10-14 Sorenson Request for Reg. Appeal, pg. 27

<Original signed by>

Todd Shipman
Senior Advisor, Induced Seismicity and
Geologic Hazards

<Original signed by>

Jennifer Zwarich
Senior Advisor, External Innovation and
Industry Performance