

Via Email

August 15, 2022

Bennett Jones LLP

Alberta Energy Regulator – Compliance  
and Liability Management Branch

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**Attention: Brad Gilmour**

**Attention: Candice Ross**

Dear Counsel:

**RE: Request for Regulatory Appeal and Request for Reconsideration by Celanese Canada ULC (Celanese)**  
**Alberta Energy Regulator – Compliance and Liability Management Branch (CLM)**  
**Order 2022-011 issued to Eco-Industrial Business Park Inc. on February 14, 2022**  
**Location: 10-17-053-23W4**  
**Request for Regulatory Appeal No.: 1935909 (Regulatory Appeal)**  
**Request for Reconsideration of Order 2022-011**

The Alberta Energy Regulator (AER) has considered Celanese's request under section 38 of the *Responsible Energy Development Act* (REDA) for a regulatory appeal of the AER's decision to require the shut-in/suspension and abandonment of the disposal well licensed as W0028527, with the unique well identifier 00/10-17-053-23W4/0 (10-17 Well), as per Order 2022-011 issued to Eco-Industrial Business Park Inc. (Eco-Industrial) on February 14, 2022, and follow-up correspondence from CLM dated February 18, 2022 (collectively, the Order). The AER has reviewed Celanese's submissions and the submissions made by CLM.

For the reasons that follow, the AER has decided that Celanese is not eligible to request a regulatory appeal in this matter and there are no extraordinary reasons for the AER to reconsider the decision to issue the Order. Therefore, the requests for Regulatory Appeal and Request for Reconsideration are dismissed.

**Background:**

Eco-Industrial Business Park Inc. (Eco-Industrial) is the holder of AER approvals associated with assets located at 17-053-23W4 (the site):

- well licence nos. W0036962 and W0028527 (Well Licences)
  - facility licence no. WM154 (Facility Licence)
  - pipeline licence no. P32068 (Pipeline Licence)
- (Collectively, the Licences)

There are wells, well sites, facilities, facility sites and pipelines associated with the Licences (Assets). Eco-Industrial was licensed or otherwise authorized by the AER to operate the Assets and is an “operator” as defined in section 134(b) of *Environmental Protection and Enhancement Act* (EPEA). The Assets included Class 1a disposal wells which are identified as Type 3 “high-risk” wells pursuant to section 3.3 of *Directive 013: Suspension Requirements for Wells*.

Celanese is the former owner of the site. Following the sale of the site to Eco-Industrial, Celanese continued to carry out remediation work on the site which included utilizing groundwater recovery systems and disposing of the water pursuant to a contractual arrangement with Eco-Industrial. Celanese is the beneficiary of a restrictive covenant registered against the lands securing ongoing rights of access to the lands including one of the disposal wells, the 10-17 Well.

In November 2021, Eco-Industrial entered into receivership proceedings and a receiver was appointed.

In January 2022, counsel for Celanese issued a letter to the receiver highlighting Celanese’s use of select assets in order to address ongoing contamination, pursuant to Environmental Protection Order No. EPO-2020-02-NR issued by Alberta Environment and Parks (AEP) on May 19, 2019. This order granted Celanese access to the site for use of the select Assets but it did not include operation of the Assets themselves.

In February 2022, CLM issued an order to facilitate the provision of reasonable care and measures and the abandonment and reclamation of the approved licences/assets, as the Licensee had entered into a formal insolvency process and was unable to meet its obligations. An order (2022-011) was issued to Eco-Industrial under sections 26.2 and 27 of the *Oil and Gas Conservation Act* (OGCA), section 22.1 of the *Pipeline Act*, and sections 140 and 241 of EPEA (the Order).

Subsequently, Celanese made a request to the AER for a regulatory appeal or alternatively, a reconsideration, of the Order decision requiring that the 10-17 Well be shut-in/suspended and abandoned; Celanese also requested the AER immediately stay the requirement to shut-in the 10-17 Well pending the outcome of the regulatory appeal or request for reconsideration process. The AER denied Celanese’s stay request in March 2022.

### **Reasons for Decision – Request for Regulatory Appeal:**

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]

An appealable decision means, *inter alia*, a decision of the AER in respect of which a person would otherwise be entitled to submit a notice of appeal under section 91(1) of EPEA<sup>1</sup>, or a decision of the AER that was made under an energy resource enactment, if that decision was made without a hearing (section 36(a) of REDA).

The term “eligible person” is defined in section 36(b) of REDA to include a person entitled to submit a notice of appeal under section 91(1) of EPEA or a person who is directly and adversely affected by a decision made under an energy resource enactment.

In this matter, section 91(1)(f) provides that for a person to be entitled to file a notice of appeal, they must be the person to whom the Order was directed.

### Appealable Decision

The decision to issue the Order may be an appealable decision. The decision was made in part under the OGCA which is an energy resource enactment and was made without the holding of a hearing. In this regard it is an appealable decision. At the same time, pursuant to section 36(a)(i) of REDA and 91(1) of EPEA the decision is not an appealable decision because Celanese was not the person to whom the Order was directed and therefore could not file a notice of appeal under that section of EPEA.<sup>2</sup>

### Eligible Person

Even if we accept that the decision to issue the Order is an appealable decision, which as described above is not clear, we still do not find that Celanese is eligible to request a regulatory appeal.

To be eligible for a regulatory appeal, Celanese must demonstrate, under section 36(b)(ii), that it may be directly and adversely affected by the AER’s decision to issue the Order; Celanese is not eligible to appeal the decision to issue the Order pursuant to section 36(b)(i) of REDA and section 91(1) of EPEA as it is not the party to whom the Order was directed. The AER acknowledges the concerns put forward in the request for regulatory appeal; however, the AER does not find Celanese has demonstrated that it may be directly and adversely affected by the decision to issue the Order.

Celanese claims that it is directly and adversely affected by the Order because:

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<sup>1</sup> Specifically, s. 91(1)(f) EPEA applies here: “where an inspector issues an environmental protection order regarding conservation and reclamation under section 140 or 141, the person to whom the order is directed may submit a notice of appeal.”

<sup>2</sup> Per s. 91(1)(f)

- The Order interferes with Celanese’s contractual right to use the 10-17 Well;
- The Order may result in Celanese needing to seek the authorization of AEP to suspend operation of the groundwater recovery system under its EPEA Approval;
- The Order will result in additional costs for carrying out remediation activities i.e. utilizing trucking of waste rather than injecting it into the 10-17 Well; and,
- The Order may result in damage to Celanese’s groundwater recovery system and will require additional funds to be utilized not only to shut in the groundwater recovery system but also to restart it.

We are not satisfied, based on the information provided, that Celanese is or may be directly and adversely affected by the decision to issue the Order.

Merely saying a contractual right is “interfered with” is not sufficient to demonstrate possible direct and adverse effect. In any event, the actions of Eco-Industrial are the cause of interference with the contractual right, not the decision to issue the Order.

As well, the information provided does not demonstrate Celanese’s groundwater recovery system has been or may be damaged. The information presented to us is that the system has continued to operate.

The 10-17 Well has been shut-in now for a number of months. No information has been provided demonstrating Celanese’s groundwater recovery has stopped or will be stopped. To the contrary, both parties have confirmed Celanese has continued to carry out its remediation activities following the shut-in of the 10-17 Well and has been trucking the recovered groundwater for offsite disposal since mid-February; the information we have in this matter is that groundwater recovery has continued. Celanese has not denied that it has received approval from AEP for alternate disposal and the water is currently being trucked to a disposal well at another location. For this reason, we are not persuaded that the Order has or may adversely impact Celanese’s remediation activities.

Celanese asserts it has been adversely affected by the shut-in of the 10-17 Well due to incurring a “significant increase” in costs from trucking to alternative sites; however, to date, the AER has not received sufficient information to demonstrate the alleged financial implications of shutting-in the 10-17 Well. Celanese has not established the adverse financial impacts from the change in approach in disposing of contaminated groundwater. The AER acknowledges Celanese’s submission that it has been utilizing the 10-17 Well for over 20 years and requires a way to handle the collected contaminated water; however, Celanese has not shown how a change in operations alone amounts to an adverse affect.

Celanese also suggests that the *Normtek* decision should persuade the AER's decision in this matter.<sup>3</sup> We do not find it helpful because, contrary to Celanese's suggestion, the test under EPEA in this matter is not whether Celanese is directly and adversely affected by the decision to issue the order but rather whether or not the Order was directed to Celanese per s. 91(1)(f) as noted above. Further, while a change in operations of a business could "conceivably" be a direct adverse affect, in this case the facts before us, as we have discussed at considerable length, suggest otherwise. Operations of this type typically evolve and undergo change (such as change in collected volumes and compositions) and that change is not necessarily a direct adverse effect. The information presented does not persuade us that Celanese may be directly and adversely affected by the decision to issue the Order.

Additionally, information has not been provided to demonstrate that trucking the water collected to undertake remediation activities will likely cause or has caused adverse compliance, liability, or safety impacts to Celanese. While having a means to dispose of contaminated groundwater in the area would reduce the need to truck to offsite facilities, thereby reducing the potential for accidents and having emissions associated with trucking, references to potential impacts to the environment and the public generally do not demonstrate direct impacts to Celanese.

In addition, it would have been helpful for Celanese to have included information such as the trucking frequency and distance travelled, trucking costs, on and offsite alternatives considered, and/or a comparison to the operating and liability costs of utilizing the now shut-in 10-17 Well in its submissions to substantiate the alleged additional costs for carrying out remediation activities.

For these reasons, the AER has concluded that Celanese has not demonstrated it may be directly and adversely affected by the decision to issue the Order and as such is not eligible to request a regulatory appeal in this matter. Therefore, the request for a regulatory appeal is dismissed.

We also note that Celanese does not satisfy the test for eligible person under section 36(b)(i) of REDA as it was not the person to whom the order was directed.

### Without Merit

Even if Celanese satisfied all the requirements of sections 36 and 38 of REDA such that it was eligible to request a regulatory appeal, we would dismiss its request because it lacks merit. Pursuant to s. 39(4)(a) and (c) of REDA, the AER may dismiss all or part of a request for regulatory appeal if it considers the request to be without merit.

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<sup>3</sup> *Normtek Radiation Services Ltd v. Alberta Environmental Appeal Board*, 2020 ABCA 456

Celanese has alleged a “significant increase” in costs from carrying out its remediation activities at alternative sites; as noted above, the AER has not received sufficient information to demonstrate this. Even if there was information that demonstrated this alleged impact, the AER does not have the ability to address financial concerns resulting from contractual relationships between parties. Further, the AER is unable to grant the continued operation of a well that is not in compliance with regulatory requirements.

Additionally, the 10-17 Well is classified as “high risk” Class 1A waste disposal pursuant to section 3.3 of *Directive 013*. The information before us is that visits to the site have shown that compliance and safety concerns with the 10-17 Well continue to exist and as such, a risk to the public and environment remains. This risk has not been diminished by having the receiver involved; there is no information before us to demonstrate the receiver has any regulatory and technical knowledge or experience related to the operation of the 10-17 Well. Without having the 10-17 Well transferred to another party with industry experience, such as Celanese, there is a risk the 10-17 Well will not be operated safely or properly. However, as noted by Celanese, there is little chance of a third party accepting a transfer of a well that is subject to an abandonment order as is the 10-17 Well. While Celanese has also asserted that the quality of the collected groundwater is not such that it requires disposal into a Class 1A well and that it will work with the receiver to apply to have the well reclassified, Celanese has made clear it is not willing to have the 10-17 Well transferred to it so that it can directly address these issues.

In these circumstances, we consider the request for regulatory appeal to be without merit and should be dismissed.

### **Reasons for Decision: Reconsideration Request**

Section 42 of the REDA sets out the authority for the AER to reconsider its decisions:

42. The Regulator may, in its sole discretion, reconsider a decision made by it and may confirm, vary, suspend or revoke the decision. [underlining added].

The AER has previously stated:

Given the appeal processes available under REDA, and the need for finality and certainty in its decisions, the AER will only exercise its discretion to reconsider a decision under the most extraordinary circumstances where it is satisfied that there are exceptional and compelling grounds to do so. Mere disagreement with a decision is not sufficient, particularly if another suitable appeal process is available or was available but was not used. The AER considers that the reconsideration power in section 42 of REDA should be used sparingly, and only in the most

compelling cases where no other review power exists to address a situation that is in obvious need of remediation.<sup>4</sup>

Further to the submissions provided by both parties, there does not appear to be any extraordinary reasons for the AER to reconsider the decision to issue the Order and shut-in the 10-17 Well. To the contrary, there are significant reasons to leave the Order in place. There remains a real risk associated with the continued operation of the 10-17 Well under improper (or no) supervision based on the lack of information regarding the receiver's knowledge in the area. Further, as noted above, Celanese has not experienced a cessation in its remediation activities but rather has continued remediation activities with trucking the recovered groundwater offsite.

For these reasons, the request for reconsideration is denied.

Sincerely,

*<Original signed by>*

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Paul Ferenowicz  
Principal Regulatory Advisor

*<Original signed by>*

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Steve Thomas  
Director, Oil & Gas Subsurface, Waste & Storage

*<Original signed by>*

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Niki Atwal  
Senior Advisor, Policy Coordination

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<sup>4</sup> Regulatory Appeal No. 1797095, AER decision on the request for regulatory appeal and reconsideration, dated July 22, 2014.