

Via Email

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August 31, 2023

Alberta Energy Regulator – Enterprise
Reclamation Group

Lane Lorenson

Attention: Amanda Huxley, Counsel

Lawson Lundell LLP

Canadian Natural Resources Limited

Attention: Shailaz Dhalla

Attention: Arly Castillo

Dear Sir and Mesdames:

**RE: Request for Regulatory Appeal by Canadian Natural Resources Limited
Alberta Energy Regulator – Enterprise Reclamation Group
Lane Lorenson (Landowner)
Cancelled Reclamation Certificate No.: 30002609
Location: SE-35-056-5-W4M
Request for Regulatory Appeal No.: 1941089 (Regulatory Appeal)**

The Alberta Energy Regulator (AER) has considered the request, filed by Canadian Natural Resources Limited (CNRL), under section 38 of the *Responsible Energy Development Act (REDA)* and section 91(1)(j) of the *Environmental Protection and Enhancement Act (EPEA)* for a Regulatory Appeal of the AER's decision to cancel the reclamation certificate no. 30002609 (the Decision). The AER has reviewed CNRL's submissions and the submissions made by the Enterprise Reclamation Group (ERG).

The AER has decided, after a review of the submissions filed by the parties, that CNRL is eligible to request a Regulatory Appeal in this matter. Therefore, the request for a Regulatory Appeal is granted for the reasons that follow and will be forwarded onto the Hearing Commissioners' Office.

Does CNRL have Standing?

Section 38 of *REDA* provides, in part, as follows (emphasis added):

Request for 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.

The term “eligible person” is defined in section 36(b)(i) of *REDA* to include a person referred to in section 36(a)(i). Section 36(a)(i) of *REDA* provides, in part, as follows (emphasis added):

Definitions

In this Division, “appealable decision” [includes] a decision of the Regulator in respect of which a person would otherwise be entitled to submit a notice of appeal under section 91(1) of [EPEA], if that decision was made without a hearing...

Section 91(1) of *EPEA* provides, in part, as follows:

Notice of appeal

91(1) A notice of appeal may be submitted to the Board by the following persons in the following circumstances:

...

- (j) where the Director or an inspector cancels a reclamation certificate, the operator may submit a notice of appeal;

CNRL’s request for regulatory appeal relates to the cancellation of the reclamation certificate on a site where CNRL was the operator. ERG and Canadian Natural agree that:

- CNRL is an “eligible person”;
- the cancellation decision is an “appealable decision”; and
- the request was filed in accordance with the *Alberta Energy Regulator Rules of Practice*.

The AER concurs with the parties, and concludes that CNRL is an eligible person, requesting a regulatory appeal of an appealable decision, and it did so by filing a request in accordance with the *Alberta Energy Regulator Rules of Practice*.

Is the Request for Regulatory Appeal without Merit?

The ERG submitted “that... parts of [CNRL]’s Request regarding:

- whether it is directly and adversely affected;
- its opportunity to participate in the ERG’s inspection in response to the landowner’s complaint to the ERG and attempt to resolve the landowner’s concerns;

- its opportunity to file an [statement of concern] SOC prior to the issuance of the Decision;
- the conflation of the statutory obligations of an operator under EPEA with obligations imposed by the Decision; and
- the conflation of the complaint inspection assessment with site assessments for reclamation applications

are without merit or not properly before the AER and should be dismissed pursuant to subsections 39(4)(a) or 39(4)(c) of *REDA*.” CNRL opposed the dismissal of any portions of its request for regulatory appeal.

Regarding whether CNRL is directly and adversely affected by the decision to cancel the reclamation certificate, the AER does not dismiss this portion of CNRL’s request for regulatory appeal, so much as the AER is of the view that it does not need to consider it. The AER notes that because of the decision already reached above: that CNRL is an eligible person by virtue of section 91(1)(j) of *EPEA*, that this argument does not need to be decided.

As a previous AER decision has articulated, s. 91(1)(j) of *EPEA* grants an operator a right to a regulatory appeal hearing in these circumstances, and that this right should not be denied, barring extraordinary and obvious circumstances¹. However, s. 91(1)(j) does not guarantee that every argument raised in a request for regulatory appeal shall be heard in an AER hearing. In this case, considering the already contentious nature of the proceedings, the AER finds it appropriate to limit some of CNRL’s procedural arguments so that the parties will focus on the one primary issue for decision in the regulatory appeal: did CNRL’s reclamation of lands at SE-35-056-5-W4M meet the appropriate regulatory standard, and should ERG have cancelled the reclamation certificate?

The AER also highlights that the Request for Regulatory Appeal process as set out in *REDA* and the *AER Rules of Practice* is not akin to a judicial review, where a court might remit a decision back to a government agency for further review and/or to address procedural fairness concerns. Instead, a panel of AER Hearing Commissioner can substitute its own decision on whether reclamation was, or was not, achieved: s 41(2) of *REDA* states “[i]n its decision on a regulatory appeal, the Regulator may confirm, vary, suspend or revoke the appealable decision.” Further, the AER highlights section 31.1 of the *AER Rules of Practice*:

The Regulator may allow new information to be submitted in a regulatory appeal if the information is relevant and material to the decision appealed from and was not available to the person who made the decision at the time the decision was made.

¹ *AER Decision - TAQA North Ltd. Request for Regulatory Appeal No. 1920910 dated August 26, 2019*

Thus, whatever procedural matters or information CNRL felt that ERG was not privy to during its inspection or decision-making process, can be introduced in the subsequent regulatory hearing, provided it is material and relevant to the state of reclamation.

With the foregoing in mind, the AER excepts two further categories of arguments from its main decision above. CNRL has argued that it has been precluded from accessing the site for years, and that the landowner's actions may have affected reclamation. The AER will allow CNRL to raise arguments in the regulatory appeal hearing as to whether their evidence has spoiled with the passage of time, or whether the landowner hindered efforts to achieve reclamation. The AER allows these arguments, noting that they could have a real impact on the AER Hearing Commissioners' conclusions on whether reclamation was achieved.

Given the above, the AER will ask the Chief Hearing Commissioner to appoint a panel of hearing commissioners to conduct a hearing of the Regulatory Appeal on the following issues:

- **Did CNRL's reclamation of lands at SE-35-056-5-W4M meet the appropriate regulatory standard, and should ERG's decision to cancel the reclamation certificate be confirmed, varied, suspended, or revoked?**
 - **CNRL may raise for the AER Hearing Commissioners' consideration:**
 - **Whether there is new evidence that is relevant and material to the reclamation that was not available to the ERG decision-maker;**
 - **whether the passage of time has led to the spoilage of evidence; or**
 - **whether the landowner's actions affected reclamation.**

Sincerely,

<Original signed by>

Stephanie Latimer
Vice President, Law and Associate General
Counsel

<Original signed by>

Tyler Callicott
Director, Enforcement & Emergency
Management

<Original signed by>

Gary Neilson
Senior Advisor, Crown Liaison