

Appeal No. 05-0195A

IN THE COURT OF APPEAL OF ALBERTA

**IN THE MATTER OF THE OIL AND GAS CONSERVATION ACT, R.S.A. 2000, c. O-6, 2000,
c. P-45, THE ALBERTA ENERGY AND UTILITIES BOARD ACT,
R.S.A. 2000, c. A-17, THE ENERGY RESOURCES CONSERVATION ACT, R.S.A. 2000 c. E-10
AND REGULATIONS MADE THEREUNDER;**

**AND IN THE MATTER OF COMPTON PETROLEUM CORPORATION'S
APPLICATION NUMBERS 1276857, 1276858, 1276859, 1276860,
1307759, 1307760, 1278265, AND 1310351 (THE "APPLICATIONS")
FOR LICENCES TO DRILL SIX CRITICAL SOUR NATURAL GAS WELLS,
REDUCED EMERGENCY PLANNING ZONE, SPECIAL WELL SPACING, AND
PRODUCTION FACILITIES OKOTOKS FIELD (SOUTHEAST CALGARY AREA);**

**AND IN THE MATTER OF THE ALBERTA ENERGY
UTILITY BOARD'S DECISION 2005-060 DATED JUNE 22, 2005
RESPECTING THE APPLICATIONS.**

BETWEEN:

CALGARY HEALTH REGION

Applicant

- and -

ALBERTA ENERGY AND UTILITIES BOARD

Respondent

NOTICE OF MOTION FOR LEAVE TO APPEAL

TAKE NOTICE THAT an application will be made on behalf of the Calgary Health Region pursuant to section 26 of the *Alberta Energy and Utilities Board Act*, R.S.A. 2000, c. A-

17, and section 41 of the *Energy Resources Conservation Act*, R.S.A. 2000, c. E-10, at the Court of Appeal in the City of Calgary, in the Province of Alberta, by videoconference before the presiding Justice of Appeal in Chambers in Edmonton on Tuesday the 19th day of July, 2005 at 9:30 a.m., or so soon thereafter as counsel may be heard, for an order or orders of the Court:

1. Granting leave to appeal Alberta Energy and Utilities Board (the "Board") Decision 2005-060 dated June 22, 2005 (the "Decision"), wherein the Board conditionally approved licenses to drill four horizontal sour gas wells, denied Compton's proposed reduced 4 km emergency planning zone (EPZ) and corresponding 8 km emergency awareness zone (EAZ), and directed Compton to use a reduced EPZ of 9.7 km and an EAZ of 15 km;
2. Adjourning this application for leave to appeal for 30 days pending service on interested parties;
3. Adjourning this application for leave to appeal for six months or such time as may be necessary pending the decision of Compton Petroleum Corporation ("Compton") to advise the AEUB by August 15, 2005 whether it wishes to pursue approval of its applications, and the Board's decision on the Applicant's application for review and variance of the Decision which may be being prepared and filed with the AEUB following the deadlines set in the Decision for Compton to advise whether it is proceeding; and
4. Giving directions with respect to the scheduling of this application, the content of and time for service of memoranda of argument, and such other directions as may be required.

AND TAKE NOTICE THAT the grounds upon which leave to appeal is sought are that:

1. The Board erred in law and/or jurisdiction in the following respects:
 - (a) The Board conditionally approved licenses to drill four horizontal sour gas wells in the absence of full consideration of site specific health risk assessments and appropriate health end points, contrary to its mandate to determine whether the

public could be adequately protected from potential fatalities and irreversible health effects, and contrary to its mandate to determine whether the wells could be drilled, completed, serviced and produced safely;

- (b) The Board failed to apply its own guidelines in determining the appropriate size of the EPZ and the EAZ and past decisions and reports regarding the appropriate health end points necessary to protect the public against fatalities and irreversible health effects;
- (c) The Board concluded, in the absence of evidence of the site specific impacts and analysis of the potential social and economic costs of all residents and institutions within the 9.7 km radius EPZ, and the 15 km EAZ that although the hazard of an H₂S release and SO₂ release exists, they can be mitigated to acceptable levels;
- (d) In particular the Board failed to consider the potential health, social and economic impacts the proposed wells may have on the future patients and the operation, construction, and evacuation, of the future South Calgary Hospital, scheduled for completion in 2010 which is located within the Board designated EPZ and EAZ ;
- (e) The Board erred in carrying out its duty to weigh and determine the public interest pursuant to s. 3 of the *Energy and Resources Conservation Act*, and failed to properly take into account the potential social and economic effects and the potential effects of the project on the environment;
- (f) Specifically, the Board established a 9.7 km EPZ, and a 15 km EAZ in its Decision. These zones include densely populated areas within the City of Calgary, as well as a number of institutions such as schools, community centres and health services.
- (g) The Board determined the public interest in the absence of satisfactory relevant evidence relating to the number of people and institutions that would be effected by establishing the zones, and the potential social and economic costs of evacuating, sheltering, and providing medical care to persons affected by a release from the proposed wells.

- (h) In the absence of such information the Board could not properly carry out its mandate to determine the public interest and weigh the social and economic effects of the proposed project;
- (i) The Board improperly considered the nature of the evidence before it by relying on RWDI's Screening Level Risk Assessment in determining that the risk associated with drilling and completion of the wells can be mitigated such that the applied for wells could be drilled safely and the risk to society would be low;
- (j) The Board erred in determining that an EPZ of less than 15 km is appropriate, in the absence of any site-specific health risk assessments either within the EPZ range or beyond;
- (k) The Board erred, and improperly considered the evidence before it in determining that the public will be protected from the irreversible health effects flowing from SO₂ release upon ignition by establishing an EPZ of 9.7 km, and an EAZ of 15 km;
- (l) The Board erred, and ignored evidence on the record, in failing to set an EAZ which would be adequate for the purpose of informing and protecting all members of the public that may fall within a reasonable distance the SO₂ plumes may carry;
- (m) The Board misinterpreted evidence on the face of the record in determining SO₂ as the main hazard from an ignited well release, and that other pollutants may be considered secondary hazards and therefore failed to properly consider the nature and extent of potential fatalities and irreversible health effects on the public;
- (n) The Board exceeded its jurisdiction in determining the EPZ that would be acceptable to the Board, if it was not prepared to accept the 4 km reduced zone proposed by Compton;
- (o) The Board erred by allowing Compton to amend its Applications in the context of final closing arguments to request a determination from the Board of an acceptable EPZ if the Board denied the 4 km reduced zone, thereby prejudicing

the intervenors and denying them the opportunity to present evidence or argument on the alternative relief Compton sought and the facts underpinning such relief;

(p) The Board erred in applying the *Administrative Procedures Act, R.S.A. 2000, c A-3* in failing to give adequate notice of the power it intended to exercise with respect to the application before it, and the Board erred in failing to adhere to the principles of natural justice and procedural fairness and the requirements of the *Administrative Procedures Act* by imposing conditions and directions as summarized at pages 55-58 of the Decision without first allowing parties to be heard, lead evidence and make submissions in relation to the conditions and directions.

(q) The Board ignored relevant facts on the record.

2. The Board's errors of law and jurisdiction raise seriously arguable points of law which are *prima facie* meritorious which are highly significant for the Calgary Health Region and which have not previously been considered by this Court; and
3. Such further grounds as counsel may advance and this Honourable Court allow.

AND TAKE NOTICE THAT in support of the application for leave to appeal will be read the Affidavit of Dr. Brent Friesen, Medical Officer of Health of the Calgary Health Region, filed, together with the materials referred to therein, and such further and other materials as counsel may advise and this Court allow.

DATED at the City of Calgary, in the Province of Alberta, this 15th day of July, 2005.

FASKEN MARTINEAU DuMOULIN LLP

Per: 

Lewis L. Manning

Counsel for the Applicant

Estimated time of application for leave to appeal: one day.

Estimated time of application for adjournment: less than half an hour.

TO: REGISTRAR, COURT OF APPEAL OF ALBERTA

AND TO: ALBERTA ENERGY AND UTILITIES BOARD
Attention:

AND TO: COMPTON PETROLEUM CORPORATION

AND TO: INTERESTED PARTIES AS PER THE AEUB MAILING LIST

Notice to the Respondent:

A respondent who fails to comply with the requirements of the Alberta Rules of Court and the Court of Appeal Consolidated Practice Directions, within the prescribed time, will not be allowed to present oral argument on the application, nor be entitled to costs of the application, unless otherwise ordered. Failure to appear may also lead to an order or judgment being made against the respondent in their absence.

Appeal

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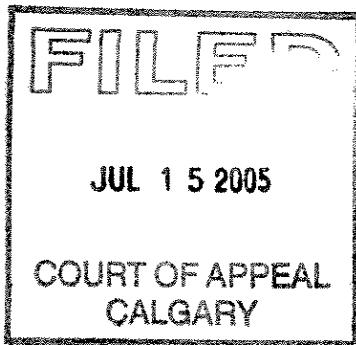
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