

June 2, 2017

SURFACE RIGHTS BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS
ACT, R.S.B.C., C 361 AS AMENDED

AND IN THE MATTER OF

THE NORTH EAST $\frac{1}{4}$ OF SECTION 30 TOWNSHIP 79 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE SOUTH WEST $\frac{1}{4}$ OF SECTION 30 TOWNSHIP 79 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE SOUTH EAST $\frac{1}{4}$ OF SECTION 30 TOWNSHIP 79 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

ENCANA CORPORATION

(Applicant)

AND:

OLAF ANTON JORGENSEN AND
FRANCIS DIANE JORGENSEN

(Respondents)

BOARD DECISION

[1] By Order dated May 31, 2017 (Order 1939-2), the Board granted the Applicant, Encana Corporation (Encana), a right of entry order over portions of the Lands owned by the Respondent, Olaf Anton Jorgensen and Frances Diane Jorgensen, to construct and operate a pipeline in four segments (the Pipeline) as permitted by the Oil and Gas Commission (OGC). Encana's application for a right of entry order included a 0.180 hectare (0.445 acre) area of the Lands for use as a sump immediately south of the location where the Pipeline right of way crosses two existing Encana pipelines and an access road (the Sump). The Board's right of entry order specifically excluded the area of the Lands to be used for the Sump as further submissions had been requested from the parties on the issue of the Board's jurisdiction to grant the right of entry order to the Lands for the Sump.

[2] Pursuant to section 142 of the *Petroleum and Natural Gas Act*, a person may not enter private land to carry out an "oil and gas activity", to carry out "a related activity", or to comply with an order of the OGC unless entry, occupation and use of the land is authorized under a surface lease with the landowner in the prescribed form or an order of the Board. Pursuant to section 158 of the *Petroleum and Natural Gas Act*, the Board may make an order authorizing a right of entry to private land if the board is satisfied that an order authorizing entry is required for a purpose described in section 142, in other words, to carry out an "oil and gas activity" or "a related activity", or to comply with an order of the OGC. The Board does not have jurisdiction, therefore to issue a right of entry order for a purpose other than to carry out an "oil and gas activity" or "related activity", or to comply with an order of the OGC.

[3] The issue in this case is whether the Sump is an "oil and gas activity" or "related activity" within the meaning of the *Oil and Gas Activities Act* and the *Petroleum and Natural Gas Act* over which the Board has jurisdiction to grant a right of entry order.

[4] "Oil and gas activity" and "related activity" are defined terms. The *Oil and Gas Activities Act* defines "related activity" as follows:

“related activity” means an activity

(a) that, under a specified enactment, must not be carried out except as authorized under the specified enactment or that must be carried out in accordance with the specified enactment, and

(b) the carrying out of which is required for or facilitates the carrying out of an oil and gas activity

[5] “Specified enactment” is also a defined term specifying five particular statutes.

There is nothing before me to indicate the Sump is an activity that requires authorization under a specified enactment. It is not, therefore a “related activity”. For the Board to have jurisdiction to issue the right of entry order, the Sump must be an “oil and gas activity”.

[6] The definition of “oil and gas activity”, also found in the *Oil and Gas Activities Act*, includes “the construction or operation of a pipeline”.

[7] The OGC’s Permit (the Permit) specifically authorizes an oil and gas activity namely, the construction and operation of a pipeline. The Sump is referenced in the Application Report attached to the Permit and the area required for the Sump is included in the Project Area covered by the Permit.

[8] Further submissions from Encana indicate that in order to construct the Pipeline, Encana is required to bore beneath the existing pipelines and access road and pull the Pipeline segments through the crossing. As part of that process, Encana requires the Sump for the disposal of the inert water-based drilling fluid and soil removed from the bores. The Sump contents will be mixed with subsoil and then covered with topsoil in order to effect the reclamation of the area.

[9] Use of the area required for the Sump is intended to be temporary. Once the Sump is no longer required during construction of the Pipeline, the area will be reclaimed and returned to the landowners.

[10] I am satisfied that the Sump, as proposed in the context of this application, is part and parcel of the construction of the Pipeline and is, therefore an “oil and gas activity”. The Sump has no purpose other than for the disposal of drilling fluid and soil removed as part of the construction process for the installation of the Pipeline. Entry and use of the land for this purpose is akin to entry and use for temporary workspace in that its only purpose is to facilitate construction and the area required will be reclaimed and returned to landowners when it is no longer needed for that purpose.

[11] The Board has jurisdiction to issue a right of entry order for use of the Lands for the Sump.

DATED: June 2, 2017

FOR THE BOARD



Cheryl Vickers, Chair