



PUBLIC LANDS ACT

BEING CHAPTER P-40, RSA 2000 ("the Act")

ENFORCEMENT ORDER NO. 04/2013

Crew Energy Inc.
2400. 525-8th Avenue SW
Calgary, Alberta
T2P 1G1
("Crew" or "Lessee")

WHEREAS Crew is the holder of MSL 122778 (the "MSL") issued on December 14th, 2012 for purpose of constructing a wellsite ("the "Wellsite");

WHEREAS the MSL is for an area located in LS4, Section 31. Township 16, Range 10, west of the 4th Meridian;

WHEREAS the MSL was issued as a result of an application under the Enhanced Approval Process (the "EAP") application that was made on December 11, 2012;

WHEREAS the MSL was issued on December 14, 2012:

WHEREAS the well drilling began January 26, 2013 and was completed by January 28, 2013;

WHEREAS the well site was constructed as a high impact site.

WHEREAS Crew conducted operations at the Wellsite between the period of March 14th to July 16th, 2013;

WHEREAS on May 30, 2013, a site visit by Environment and Sustainable Resource Development ("ESRD") personnel revealed the presence of an active Ferruginous Hawk nest (the "Nest") approximately 522 meters from the Wellsite and within 200 meters of the Access Road to the Wellsite;

WHEREAS the Nest was located on a small abandoned windmill and was clearly visible and identifiable as an active raptor nest;

WHEREAS a further site visit on July 4th and an examination of the Nest indicated that there had been a failure of the hawk chicks to survive;

WHEREAS the Nest has been identified as an active Ferruginous Hawk nest since 1994, and had been monitored since then by the University of Alberta and ESRD;

WHEREAS on July 22, 2013, Crew was requested by ESRD to stop all activity at the Wellsite;

WHEREAS on July 24, 2013 Crew shut in the well;

Enhanced Approval Process Contraventions

WHEREAS a review of the EAP file revealed that Crew had prepared a Landscape Analysis Tool ("LAT") report on September 27, 2012 that had identified multiple Species at Risk in the area, and that a Wildlife Survey was required;

WHEREAS in the "Note to Applicants" on Page 1 of the MSL LAT report prepared on September 27, 2012, the applicant is advised that "Ground-truthing is required to ensure that the applicant will meet the applicable Integrated Standards and Guidelines";

WHEREAS Crew filed an "Application Supplement-Sites and Installations" document on December 11, 2012, that stated that a Wildlife Survey was required for the activity based on the LAT Report and then went on to state that the Wildlife Survey did not identify any of the listed sensitive species, which included "Sensitive Raptor Nest";

WHEREAS ESRD requested a copy of the Wildlife Survey that was conducted to support the December 11, 2012 application, and the document that was provided by Crew that purported to be the Wildlife Survey, did not conform to the Sensitive Species Inventory Guidelines that are incorporated into the EAP;

WHEREAS the Wildlife Survey did not reveal the presence of the easily identifiable sensitive raptor species nest;

WHEREAS the failure to conduct the Wildlife Survey in accordance with the EAP requirements, and incorrect or misleading information being entered into the EAP resulted in the application being treated as "standard" when it should have been treated as "non-standard", with the result that the disposition was issued in error;

MSL Contraventions

WHEREAS section 11 of the MSL states that the "Lessee shall comply with the Integrated Standards and Guidelines document of the EAP in effect during the issuance of this lease, specifically:

- a) Pre-application Requirements and Information for the EAP
- b) Approval Standards for the EAP
- c) Operating Conditions for the EAP
- d) Best Management Guidelines for the EAP,

and any approval standards and conditions contained in the Landscape Analysis Tool Report";

WHEREAS on Page 13 of the MSL Landscape Analysis Tool Report, under the heading "Sensitivity Section Approval Standards and Operating Conditions", Approval Standard 100.9.1.2.1 provides that the disposition holder shall conduct the appropriate pre-construction wildlife surveys and comply with the setback and timing restrictions specified on the LAT Report for that Species at Risk as described in ESRD's Sensitive Species Inventory Guidelines;

WHEREAS Ferruginous Hawks are "sensitive raptor species" as identified in the "Species at Risk" in the Integrated Standards and Guidelines document;

WHEREAS section 9 of the MSL specifically provides that the "Lessee shall comply with all terms and conditions contained in...b) Landscape Analysis Tool Report" that is attached to and forms part of the MSL;

WHEREAS on Page 14 of the MSL Landscape Analysis Tool Report section 100.9.1.2.2 further provides that "New construction activities shall not occur within 1000 metres of an active sensitive raptor species nest, " with exceptions being provided for medium impact and low impact developments between the periods July 16th to March 14th;

WHEREAS Crew conducted construction activities on the Wellsite within the 1000 meter buffer;

WHEREAS section 4 of Schedule A of the MSL requires that the Lessee notify the Department of entry onto the site within 72 hours of site entry, and the Department has no record of being so notified;

WHEREAS the inspection conducted on May 30, 2013, by ESRD revealed a number of additional contraventions of the MSL including:

- Activity not suspended during adverse ground conditions on the site, as evidenced by rutting at the Wellsite, contrary to section 200.3.1 of the Landscape Analysis Tool Report which forms part of the MSL;
- Failing to locate activities away from important wildlife features, contrary to section 100.8.1 of the Landscape Analysis Tool Report which forms part of the MSL;
- Failing to conduct an appropriate pre-construction wildlife survey, contrary to section 100.9.1.2.1 of the Landscape Analysis Tool Report which forms part of the MSL;
- Failure to provide a 1000 meter buffer from an active sensitive species raptor nest, contrary to section 100.9.1.2.2 of the Landscape Analysis Tool Report which forms part of the MSL;
- Conducting activities during the breeding season (March 15 to July 15) when only essential site visits are permitted, contrary to section 200.9.1.2.1 of the Landscape Analysis Tool Report which forms part of the MSL;
- Failing to construct the Wellsite in accordance with the minimum disturbance levels as required by the MSL, being contrary to section 200.10.4 of the Landscape Analysis Tool Report which forms part of the MSL;

Legislation

WHEREAS section 56(1)(c) of the *Act* states that it is an offence if any person "willfully provides false or misleading information to an officer, the director, or the Minister concerning public land, a disposition, this Act or the regulations";

WHEREAS section 56(1)(n) of the *Act* states that it is an offence for a disposition holder to contravene a provision of a disposition;

WHEREAS section 56(1)(p) of the *Act* states that it is an offence if a person "contravenes a provision of this Act or the regulations that is prescribed in the regulations for the purpose of this section":

WHEREAS section 59.1 of the *Act* provides that where the director is of the opinion that a person has contravened a section of the Act or the regulations, he may issue an Enforcement Order to that person;

WHEREAS Darryl Johnson Regional Resource Manager, South Saskatchewan Region, has been designated as a Director under the *Public Lands Act* for the purposes of issuing enforcement orders (the "Director");

WHEREAS the Director is of the opinion that Crew has contravened section 56(1)(n) and section 56(1)(p) of the *Act*, all of which are offences under section 56(1) of the *Act*;

THEREFORE, I, Darryl Johnson, the Director, pursuant to section 59.1 of the *Act*, DO HEREBY ORDER THAT:

1. MSL 122778 is immediately cancelled.
2. By October 1, 2013, Crew is to provide the Director with a plan for reclamation and remediation of the site (the "Plan") back to its pre-disturbance condition.
3. The Plan is to be prepared by an independent qualified reclamation specialist in consultation with a qualified professional biologist.
4. The Plan shall include a schedule of work (the "Schedule") so that the work is carried out in a manner and time frame that will not result in any negative impact on the sensitive species in the area, including but not limited to the Ferruginous Hawks.
5. Crew will carry out the Plan in accordance with the Schedule that has been approved by the Director.
4. Within 30 days of the completion of all the work required by paragraph 2, Crew shall submit a final report [the "Final Report"], summarizing all the work that has been done to comply with this Order.

DATED at the City of Calgary in the Province of Alberta, this 12th day of SEPTEMBER 2013.

Original signed by:

 Darryl Johnson
 Regional Resource Manager
 Southern Region

Notwithstanding the above requirements, the Parties shall obtain all other necessary approvals from any regulatory agency (provincial or federal) in complying with this order.

Take notice that this enforcement order is a remedial tool only, and in no way precludes any enforcement proceedings being taken regarding this matter under this Act or any other legislation. Failure to comply with this order may result in further enforcement proceedings.

Section 211 of the *Public Lands Administration Regulation* may provide a right of appeal against this decision to the Public Lands Appeal Board. There may be a strict time limit for filing such an appeal. A copy of section 211 is enclosed. For further information, please contact the Board at:

**Public Lands Act Appeals Coordinator
 9th Floor Petroleum Plaza South Tower,
 9915-108 Street,
 Edmonton, Alberta, T5K 2G8;
 Telephone (780) 638-4189**

Part 10

Appeals and Dispute Resolution

Definitions

209 In this Part,

(a) "appeal body" means

(i) in respect of a summary appeal, the local settlement officer assigned under section 233(3) to hear the appeal, or

(ii) in respect of any other appeal, the panel appointed under section 221(1) to hear the appeal;

(b) "appeals co-ordinator" means the appeals co-ordinator appointed under section 210;

(c) "appellant" means a person that submits a notice of appeal under this Part;

(d) "Board" means the Public Lands Appeal Board established by section 214;

(e) "complex appeal" means

(i) an appeal from a decision

(A) under section 15(2) or (3), 20(7) or 25(1)(b) of the Act,

(B) amending or suspending a disposition under section 26(1) of the Act,

(C) under section 47(1), 59.1, 62(1), 73 or 77 of the Act,

(D) amending a disposition under section 81 of the Act, or

(E) under section 4(6), 17(1) or (2)(a) or (b), 18(4)(b) or (c), 20(3)(b), (c) or (d), 22(1), 23(2) or (4), 27, 64(1)(a) or (b), 72, 81(3)(a), (b) or (c), 96(1), 135(2), 137(1), (2) or (3), 150 or 163,

or

(ii) any other appeal that, in the opinion of the appeals co-ordinator, should be treated under this Part as a complex appeal;

(f) "director's file", in respect of a prescribed decision made by the director, means records of the Department that are considered by the director in making the decision;

(g) "local settlement officer" means a person designated under the Exploration Dispute Resolution Regulation (AR 227/2003) or the Recreational Access Regulation (AR 228/2003) as a local settlement officer;

- (h) "officer's file", in respect of a prescribed decision made by an officer, means records of the Department that are considered by the officer in making the decision;
- (i) "panel" means a panel of the Board;
- (j) "panel chair" means
- (i) the panel member designated under section 223(2), in the case of a panel consisting of 3 persons other than the appeals co-ordinator,
- (ii) the appeals co-ordinator, in the case of a one-member panel consisting of the appeals co-ordinator or a 3-member panel on which the appeals co-ordinator sits, or
- (iii) the member, in the case of any other one-member panel;
- (k) "party", in respect of an appeal, means
- (i) an appellant,
- (ii) the director or officer who made the decision objected to,
- (iii) a person that elects to participate as a party under section 212(4), or
- (iv) a person the appeal body allows under section 212(5) to be a party to the appeal;
- (l) "prescribed decision" means a decision prescribed in section 211;
- (m) "record" means record as defined in the Freedom of Information and Protection of Privacy Act;
- (n) "summary appeal" means an appeal referred to in section 233.

Division 1

General

Appeals co-ordinator

210 (1) The Minister may, in accordance with the Public Service Act, appoint an employee of the Department as the appeals co-ordinator.

(2) The appeals co-ordinator may establish rules respecting procedures for the hearing of appeals by an appeal body and for mediation processes under section 226.

Decisions that can be appealed

211 The following decisions are prescribed as decisions from which an appeal is available:

- (a) the issuance, renewal, amendment or suspension of a disposition issued under the Act;

- (b) the rejection of an application under the Act for a disposition,
- (c) a refusal to issue a disposition or to renew or amend a disposition applied for under the Act;
- (d) the imposition or variation under the Act of a term or condition of a disposition;
- (e) a deemed rejection under section 15(1);
- (f) an order under section 35(1) to vacate vacant public land;
- (g) a refusal under section 43(1) of the Act;
- (h) an enforcement order, a stop order or an administrative penalty;
- (i) a removal under section 69(2)(f)(iii) of the Act;
- (j) an order under section 182;
- (k) a refusal to admit, or a requirement to remove, a pet animal under section 194(2);
- (l) an order under section 201(b) to vacate a public land recreation area;
- (m) an order under section 204(1) to vacate a campsite;
- (n) an order under section 205.

Who may appeal

212 (1) The following persons have standing to appeal a prescribed decision:

- (a) a person to whom the decision was given;
- (b) a person, including a commercial user referred to in section 98, that is directly and adversely affected by the decision.

(2) A person referred to in subsection (1)(a) or (b) is a prescribed person for the purposes of section 121 of the Act.

(3) An appeal body must not consider an appeal unless it is satisfied that the appellant is a person described in subsection (1)(a) or (b), and the appeal body's decision on that matter is final.

(4) Where the decision objected to was made in respect of land that is the subject of one or more dispositions or that adjoins other land, any of the disposition holders and any of the owners of the adjoining land that are directly affected by the decision may elect to participate as parties in the appeal.

(5) Subject to the rules established by the Board, the appeal body may allow persons other than those referred to in subsection (4) to be parties to the appeal if the appeal body considers it appropriate.

Grounds for appeals

213 A decision is appealable only on the grounds that

(a) the director or officer who made the decision

(i) erred in the determination of a material fact on the face of the record,

(ii) erred in law,

(iii) exceeded the director's or officer's jurisdiction or authority, or

(iv) did not comply with an ALSA regional plan,

or

(b) the decision is expressly subject to an appeal under section 59.2(3) of the Act or section 15(4).

Division 2

Public Lands Appeal Board

Public Lands Appeal Board

214 (1) The Public Lands Appeal Board is established consisting of

(a) the appeals co-ordinator, and

(b) other members appointed by the Minister.

(2) The appeals co-ordinator is the chair of the Board.

Application of certain sections

215 Sections 216 to 232 do not apply in respect of summary appeals.

Notice of appeal

216 (1) A notice of appeal must

(a) identify the director or officer who made the decision objected to,

(b) identify the provision of the enactment on which the appeal is based,

(c) include a copy of the decision objected to or, if the decision is not written, a description of it including the date on which it was made,

(d) include the legal description of, or the approximate global position system co-ordinates of the location of, the area of public land to which the appeal relates,

(e) set out the grounds on which the appeal is made,