

File No. 2218
Board Order No. 2218-1

August 16, 2024

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 SOUTH EAST $\frac{1}{4}$ OF SECTION 31 TOWNSHIP 81 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(The "Lands")

BETWEEN:

Darcy Hofstrand and
Angela Hofstrand

(APPLICANTS)

AND:

R360 Environmental Solutions Canada Inc.

(RESPONDENT)

BOARD ORDER

Heard by written submissions dated:	June 4, 2024, and July 9, 2024, from the Respondent; June 25, 2024, from the Applicants
Submissions received from:	Kristian Toivonen, Barrister and Solicitor, for the Applicants; Darron K. Naffin, Barrister and Solicitor, for the Respondent

INTRODUCTION

[1] The Respondent, R360 Environmental Solutions Canada Inc. (“**R360**”), operates two oil and gas waste disposal facilities (the “**Plant Site**”) on the Lands which are owned by the Applicants, Darcy and Angela Hofstrand (“the **Landowners**”). The Plant Site is subject to a surface lease entered into between previous owners of the Lands and the predecessor to R360 (the “**Surface Lease**”).

[2] The Landowners apply to the Board under section 158 of the *Petroleum and Natural Gas Act* (**PNGA**) seeking either a right of entry order or an amendment to the existing Surface Lease for two areas outside of the Surface Lease area. The two areas include:

- a. a 2.63 acre workspace area which is subject to a Temporary Workspace Agreement with the previous landowners (the “**Workspace Area**”). The present Landowners allege the Workspace Area is used without their authorization; and
- b. a 0.11 acre unused area which the present Landowners allege is severed land (the “**Unused Area**”).

[3] The Landowners also apply under section 163 of the *PNGA* seeking damages.

[4] R360 submits the Board does not have jurisdiction to hear the two applications.

[5] The original application to the Board also sought remedies in relation to a 0.50 acre area subject to a right of way agreement for a power line. The claim in regard to this property has been discontinued.

ISSUE

[6] The issue is whether the Board has jurisdiction to hear the applications brought by the Landowners under section 158 and section 163 of the *PNGA*.

DECISION

[7] For the reasons that follow, I find as follows:

- a. The Board does not have jurisdiction to deal with the section 158 application with respect to either the Workspace Area or the Unused Area.

- b. The Board does have jurisdiction to hear the Landowners' claim for damages under section 163.

THE SECTION 158 APPLICATION

[8] Section 158 of the *PNGA* provides that a person requiring a surface lease, or a landowner may apply to the Board for mediation and arbitration if the person and landowner are unable to agree on the terms of a surface lease. "Surface lease" is a defined term; "surface lease" means a lease, easement, right of way or other agreement authorizing the entry occupation or use of land for a purpose described in section 142 (a) to (c)".

[9] In an application under section 158, the Board may make an order authorizing a right of entry on terms and condition if it is satisfied that an order authorizing entry is required for a purpose described in section 142 (a) to (c). The Board's jurisdiction under section 158 to authorize right of entry is, therefore, limited to those activities described in section 142(a) to (c).

[10] The activities described in section 142, for which a surface lease or order authorizing entry from the Board is required, are:

- (a) to carry out an oil and gas or storage activity
- (b) to carry out a related activity, or
- (c) to comply with an order of the regulator

[11] The terms "oil and gas or storage activity" and "related activity" are defined in the *Energy Resource Activities Act (ERAA)*. I have set out the definitions in full at Appendix A to this decision.

[12] Based on the evidence, I find that R360 uses the Workspace Area for soil piling. While I assume the carrying out of the soil piling is required for, or facilitates the operation of, the Plant Site (as required by subsection (b) of the definition of "related activity"), I have no evidence that the soil piling must be carried out in accordance with a "specified enactment" (also defined) so as to meet the requirement of subsection (a) of the definition of "related activity".

[13] It is not disputed that R360 does not use the Unused Area. The Unused Area may be severed, making it unavailable for use by the Landowners, as a result of other uses of the Lands. However, the fact that land may be severed does not mean the land is used for an "oil and gas or storage activity" or a "related activity."

[14] There is no evidence that either the Workspace Area or the Unused Area is used by R360 to comply with an order of the regulator.

[15] As R360 does not use either the Workspace Area or the Unused Area for an activity described in section 142(a) to (c), I find that the Board does not have jurisdiction to make an order authorizing entry.

THE SECTION 163 APPLICATION

[16] Pursuant to section 163, the owner of land subject to a right of entry may claim compensation for damage to the land or loss to the landowner caused by the right of entry.

[17] The Landowners are the owners of land subject to a right of entry, namely the Surface Lease for the Plant Site. The Landowners submit the Temporary Workspace Agreement is not in force and that R360's use of the Workspace Area and the severance of the Unused Area creates a continuing trespass for which they claim compensation. R360 submits that its use of the Workspace Area is authorized by the Temporary Workspace Agreement so there is no continuing trespass.

[18] Whether the Temporary Workspace Agreement is in force or enforceable against the Landowners goes to the heart of the issue of whether there is a continuing trespass by R360. That is an issue the Board will have to resolve in considering and determining the merits of the Landowners' claim. It is not an issue that goes to the Board's jurisdiction to hear that claim.

[19] R360 submits severance is not compensable under section 163 or alternatively has already been compensated for in the surface lease. Likewise, these submissions go to the merits of the Landowners claim, not to the Board's jurisdiction to hear the claim.

CONCLUSION

[20] I find the Board does not have jurisdiction with respect to the Landowners' application under section 158 of the PNGA. The section 158 application is dismissed.

[21] I find that the Board does have jurisdiction with respect to the Landowners' claim under section 163. The section 163 application will be referred for mediation.

DATED: August 16, 2024

FOR THE BOARD



Cheryl Vickers, Vice Chair

APPENDIX “A”

Relevant Definitions from *Energy Resource Activities Act*

Definitions

"energy resource activity" means any of the following:

- (a) the exploration for or development of petroleum or natural gas;
- (b) the production, gathering, processing, storage or disposal of petroleum or natural gas;
- (c) the exploration for or development or use of a storage reservoir
 - (i) in relation to another energy resource activity, or
 - (ii) for the purposes of storing or disposing of carbon dioxide or a prescribed substance, whether or not in relation to another energy resource activity;
- (d) the construction or operation of a facility for the purposes of an activity described in paragraph (a), (b) or (c);

"oil and gas or storage activity" means

- (a) an activity described in paragraph (a), (b), (c) or (d) of the definition of "energy resource activity",
- (b) the construction or operation of a pipeline that is used to
 - (i) transport petroleum or natural gas, or
 - (ii) facilitate the carrying out of an activity described in paragraph (a) of this definition, or
- (c) the construction or maintenance of an energy resource road, if that activity is being carried out to facilitate the carrying out of an activity described in paragraph (a) or (b) of this definition;

"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 energy resource activity or making an application for a permit under section 24;

"specified enactment" means any of the following Acts:

- (a)*Environmental Management Act*;
- (b)*Forest Act*;
- (c)*Heritage Conservation Act*;
- (d)*Land Act*;
- (e)*Water Sustainability Act*;