

VIA EMAIL AND MAILED

April 26, 2018

Dean Smith

Canadian Natural Resources Limited
Attention: James Agate, Manager Reclamation

Dear Sirs:

**RE: Request for Regulatory Appeal by Dean Smith
Canadian Natural Resources Limited (CNRL)
Reclamation Certificate No. 00389417-00-00
Location: 09-55-04W4M
Request for Regulatory Appeal No. 1909839**

The Alberta Energy Regulator (AER) has considered Mr. Smith's request for a one day extension of time to file his request for a regulatory appeal of the AER's decision to issue the reclamation certificate identified above. Mr. Smith had one year to file his request for a regulatory appeal, but emailed it to the AER on the day after the year expired. This fact is not in dispute. For the reasons set out in this letter, the extension is granted and Mr. Smith's request will be processed by the AER as though it was filed within the deadline provided in the *Alberta Energy Regulator Rules of Practice* (Rules).

The AER has discretion under sections 41 and 42 of the Rules to extend the time within which a person may request a regulatory appeal. The AER's exercise of that discretion must have regard for established legal principles. The AER uses its authority to extend the time for filing a regulatory appeal in limited cases, where circumstances indicate that an extension is warranted to protect procedural fairness for all of the parties concerned. The onus is on the person requesting an extension to demonstrate special circumstances exist that support extending the filing deadline. He or she must show that a *bona fide* intention to file a regulatory appeal existed prior to the deadline passing, and that the failure to file on time was by reason of special circumstances that serve to excuse or justify such failure.

Mr. Smith stated that he attended a site inspection on October 11, 2016, and at that time voiced his disagreement with the suggestion that the site met reclamation certification criteria. The certificate was issued in February 2017. Mr. Smith stated his concerns with the condition of the site again in a meeting in June 2017. In his extension request he stated that he waited one more growing season (*i.e.*, 2017) after receiving notice the reclamation certificate had issued before filing his request for a regulatory appeal. He also stated that he attempted to fax his request to the AER on the deadline date but could not do so because of a fax machine malfunction. The AER received the request the next day as an attachment to an email from a sender who was not Mr. Smith. The AER is satisfied that Mr. Smith has never accepted that the site meets reclamation certification criteria, and that he always intended to file a request for a regulatory appeal if his concerns were not addressed to his satisfaction. He does not provide an explanation why he did not file his request closer to the end of the 2017 growing season but instead waited until February of 2018 to file. Ultimately, that proved to be a risky decision but the fact remains that the request was filed a single day late.

If the AER does not grant the extension, Mr. Smith's request could be summarily dismissed for the reason that it was not filed within the time required by the Rules. The consequence of that would be that the

merits of his concerns would not be considered even in a cursory way, and the reclamation certificate would be final. On the other hand, if the extension is granted the AER will proceed to decide if a regulatory appeal hearing should be held or if the request or parts of it should be dismissed. In other words, CNRL will still have the opportunity to argue that the test for a regulatory appeal is not met, or that one or more of the provisions in s. 39 of the *Responsible Energy Development Act* applies and all or part(s) of the request should be dismissed.

Section 15 of the *Responsible Energy Development Act* and s. 3 of the *Responsible Energy Development Act General Regulation* direct the AER to consider the interests of landowners and the impacts on them as a result of the use of the land on which an energy resource activity is or will be located. That consideration may not happen in this case if the extension to file is not granted to Mr. Smith. Conversely, granting the extension will not require CNRL to do (or refrain from doing) anything—except respond to the regulatory appeal request and, potentially, participate in a regulatory appeal hearing. On balance, the AER considers that not granting the extension is a far greater detriment to Mr. Smith than granting the extension is for CNRL. While timelines for filing regulatory appeals are an important part of ensuring fairness and certainty in the regulatory process and parties are expected to make every effort to abide by filing deadlines, in this case the AER is satisfied that a one day extension to file should be granted to Mr. Smith. To be clear, in making this extension decision the AER has not assessed the merits of Mr. Smith's request, except to note that the concerns cited are ones that are commonly raised in reclamation matters.

Yours truly,

<original signed by>

Gary Perkins
Associate General Counsel