MEDIATION AND ARBITRATION BOARD
Under the Petroleum and Natural Gas Act
#114, 10142 - 101 Avenue
Fort St. John, BC V1J 2B3

Date: 19 November 2002

File No. 1478 Board Order No. 360A

BEFORE THE ARBITRATOR:

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT BEING CHAPTER 361 OF THE REVISED STATUTES OF BRITISH COLUMBIA AND AMENDMENTS THERETO:
(THE ACT)

AND IN THE MATTER OF A PORTION OF THE NORTH WEST ¼ SECTION 23 TOWNSHIP 86 RANGE 18 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT
(NW 23 - 86 - 18 W6M)
(THE LANDS)

BETWEEN:

EDGAR ITEN
SONJA ITEN
BOX 11
ROSE PRAIRIE, BC
V0C 2HO
(THE APPLICANT)

AND:

DEVON CANADA CORPORATION
1600 324 EIGHT AVENUE
CALGARY, AB
V2P 2Z5
(THE RESPONDENT)

ARBITRATION ORDER

BACKGROUND:

On 13 September 2002 the Mediation and Arbitration Board received an application filed by Edgar and Sonya Iten regarding damages sustained as a result of a crude oil release from a flow line currently owned by Devon Canada Corporation (Devon). Pursuant to Section 18 (1) of the *Petroleum and Natural Gas Act*, Rodney J. Strandberg was designated Mediator and a Mediation Hearing was conducted in the Board Office located at 10142 101st Avenue, Fort St. John on 1 October 2002. At the conclusion of the Mediation Hearing it was agreed that the Respondent would make a payment to the Applicant in the amounts on which there was agreement. Two remaining issues would either be resolved between the parties or dealt with at an Arbitration Hearing. These were:

1. The level of compensation due to the Applicant for time spent, truck use and incidental expenses incurred in dealing with the Respondent in connection with remediation of the crude oil release and in preparation for and attendance at the Mediation Hearing.

2. The price per cubic metre to be paid by the Respondent for topsoil removed from the Applicant's land for use in rehabilitation of the pipeline spill site.

Pursuant to the *Petroleum and Natural Gas Act*, these outstanding issues were referred to Arbitration before a panel of the Board consisting of Frank Breault, Ivor Miller and William Wolfe and an Arbitration Hearing was conducted in the Board Office located at 10142 101st Avenue, Fort St. John on 18 November 2002. Mr. and Ms. Iten appeared on their own behalf. Neil Pelletier, Reclamation and Construction Coordinator, Devon Canada Corp., and Chad Moffat, EBA Waberski Darrow appeared for Devon.

FACTS

In the fall of 2000 there was a leak from a flow line, which was then owned and operated by NUMAC ENERGY and subsequently acquired by DEVON CANADA CORPORATION. As a consequence of the leak, soil was contaminated. The flow line was old and a decision was made to install a new flow line within the area subject to the existing pipeline right-of-way. Soil within the area of the right-of-way as well as outside of it was contaminated. The size of the area of

contamination is approximately 189 metres by 24 metres. The contaminated soil was removed. There was admixing of the soil where the new flow line was installed both inside and in the area outside of the lease.

At the conclusion of the Mediation Hearing, it was agreed that the Respondent would pay to the Applicant the sum of $4,270.88 representing those portions of the Applicant's invoices to which no objection was taken by the Respondent, and the $ 2,000.00, which the Applicant felt was fair compensation for costs incurred by them to 31 July 2002. Because it was crucial for the rehabilitation to be carried out this fall, the parties agreed that the Respondent would remove and use the topsoil from the Applicant's property, thereby establishing the volume of topsoil at issue.

To complete the rehabilitation of the surface the Respondent subsequently extracted clay and approximately 1134 cubic metres of additional topsoil from a new dug out site on the Applicant's land. Both Applicant and Respondent agree that the volume of topsoil at issue is 1134 cubic metres, that reclamation of the surface at the spill site has now been completed and the land should be suitable for cultivation in the spring of 2003.

ISSUES

The outstanding issues in the matter are:

1. The level of compensation due to the Applicant for time spent, truck use and incidental expenses incurred in dealing with the Respondent in connection with remediation of the crude oil release and in preparation for and attendance at the Mediation Hearing.

2. The price per cubic metre to be paid by the Respondent for topsoil removed from the Applicant's land for use in rehabilitation of the pipeline spill site.

It is of note that although the Applicants have suffered and continue to suffer crop loss, this is not an issue for this damage claim.

POSITIONS OF THE PARTIES

A. Applicant

The Applicants had kept track of their time spent on this matter and submitted as Exhibits 8A and 9A, itemized and annotated invoices for 49 hours of time spent between 1 August 2002 and 18 November 2002 in dealing with Devon, including preparing for and attending Mediation and Arbitration Hearings on 1 October 2002 and 18 November 2002. The Applicants were seeking compensation for this time at an hourly rate of $ 125.00 per hour. In addition, the Applicants were seeking interest in the amount of $213.90 on unpaid invoices.

The Applicants sought a price of $ 46.00 per cubic metre for their own topsoil and introduced as Exhibit 3A, an invoice and cheque stub indicating that NUMAC ENERGY INC. had previously paid $46.00 per cubic metre for 61.3 cubic metres of topsoil purchased from the Applicant in January 2001. They indicated that they would be able to sell the topsoil from the dugout location into the local market at prices ranging from $69.00 per cubic metre in pickup load quantities to $ 22.25 per cubic metre by the box truck. It appeared that the Applicants might reduce this price to $ 30.00 per cubic metre if it would settle the matter.

B. The Respondent

The Respondent submitted that the $ 125.00 hourly rate was excessive and not justifiable, indicating that the market hourly rate, which it would pay for some of the work performed by the Applicants, such as cleaning up sites or marking sites with stakes, would be considerably less than the amount sought by the Applicants. In particular, the Respondent rejected the concept of paying hourly rates to compensate land owners for time, nuisance and disturbance related to activities of oil and gas companies indicating that there was no precedent for hourly compensation in British Columbia. The Respondent felt that the $ 2,000.00 lump sum already paid for nuisance and disturbance was fair compensation for the Applicants' costs of proceedings before the Board and for time spent in this matter.

The Respondent rejected the $46.00 price for the topsoil indicating they had never paid this rate for topsoil in the Fort St. John area. A table of Soil Price Comparisons with attached documentation was submitted as Exhibit 1A in support of the contention that stripped and piled agricultural topsoil was available for purchase in the Fort St. John – Dawson Creek area at $6.00 to $8.00 per cubic

metre. The Respondent submitted as Exhibit 1B, a letter from the Oil and Gas Commission confirming that in circumstances where the land owner is not prepared to provide a fair market price for replacement soil on his land then the company is entitled to seek material elsewhere at fair market value. Agriculture Canada soil classification maps (Exhibit 1D) were submitted to show that class 2C topsoil similar to soils on the Applicants' land were available in the Fort St. John area. Taking account of the trucking costs involved in moving the topsoil from Fort St. John to the site, the Respondent was prepared to offer a price of $10.00 per cubic metre and eventually offered a figure of $16.00 per cubic metre to settle the issue.

It appeared that the parties were too far apart to reach an agreement on fair value for the topsoil.

DECISION

The Applicants sought compensation totaling $6,338.90 for costs involving time spent in dealing with the Respondent and preparation for and attendance at Mediation and Arbitration Hearings, vehicle use, interest charges and other incidental expenses incurred between 1 August 2002 and 18 November 2002. After carefully considering the issue and the submissions of the parties, the Board determines that an appropriate award of compensation to the Applicants for their all inclusive costs is $3,000.00.

The Applicants sought a price of $ 46.00 per cubic metre for topsoil removed from a dug out site on the Applicants' land for use in remediation of damage caused by crude oil release from a broken flow line owned by the Respondent. After carefully considering the evidence and submissions of the parties, the Board determines that an appropriate value for the 1134 cubic metres at issue, is $28.00 per cubic metre or $ 31,752.00 in total.

IT IS HEREBY ORDERED THAT:

1. Pursuant to Section 9 (2) (a) of the *Petroleum and Natural Gas Act*, the Respondent will pay to the Applicant the sum of $ 34,752.00 by 15 December 2002. Proof of this payment being

provided to the Board office on or before 20 December 2002 at 4:00 p.m. Mountain Standard Time.

2. The Applicant will serve a copy of this Order to the Respondent by 30 November 2002 and proof of this service being provided to the Board Office on or before 10 December 2002 at 4:00 p.m. Mountain Standard Time.

3. Nothing in this order is or operates as consent, permit, or authorization that by enactment a person is required to obtain in addition to this order.

Dated at the City of Fort St. John, British Columbia, this 19th day of November 2002.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

_____
Frank Breault, Member

_____
William Wolfe, Member

_____
Ivor Miller, Member