MEDIATION AND ARBITRATION BOARD
#114, 10142 -- 101st Ave.
Fort St. John, BC
V1J 2B3

Date: July 28, 2000

File No. 1395 Board Order No. 307A

BEFORE THE BOARD

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 SECTION TEN, ELEVEN, TWELVE, THIRTEEN, FOURTEEN, FIFTEEN AND THE S ½ SECTION TWENTY-THREE, OF TOWNSHIP ONE HUNDRED THIRTEEN, WEST OF THE SIXTH MERIDIAN (W6M), PEACE RIVER DISTRICT.

(THE LANDS)

BETWEEN:

BERND CONZELMAN
FRANZ CONZELMAN
BOX 6187
FORT ST. JOHN, BC
V1J 3B2
(APPLICANT)

AND:

NEWPORT PETROLEUM CORPORATION
3300 205 5TH AVENUE, SE
CALGARY, AB
T2P 2V7
(RESPONDENT)

ARBITRATION ORDER

On 30 May 2000 an Arbitration hearing was conducted in Fort St. John before the Mediation and Arbitration Board with a panel consisting of Mavis Nelson, Julie Hindbo, Frank Breault and Rodney J. Strandberg, regarding an Application by Franz Conzelman and Bernd Conzelman (the Applicants) for seismic damages pursuant to activities conducted for the benefit of the Respondent. The Arbitration hearing was held at 9:30 a.m. in the Board room of Execuplace Business Centre, located at 10142 101st Avenue, Fort St. John BC.

In attendance were Gary Casement, Consultant to the Respondent responsible for the seismic program; Paul Stevenson, Geophysicist employed by the Respondent; and Dave McIntosh, a Representative for Bighorn Land Services Ltd., which was responsible for obtaining the seismic permit; Tracey Thompson from the Oil and Gas Commission who was an observer and provided technical information; The Applicants Franz Conzelman and Henry Braun, manager of the Applicant's farming operation.

As an initial point, the Board notes that although this Application named Bighorn Land Services Ltd. as the Respondent, in fact Newport Petroleum Ltd. developed the seismic plan which was carried out by Norcana, an independent seismic contractor. Accordingly the Board amends the Style of Proceedings in this matter to reflect this.

BACKGROUND

During the winter season 1998-1999 the Respondent had a seismic program calling for seismic lines through the Applicant's property. The seismic program was completed in February 1999. Franz Conzelman then requested the compensation cheque which was provided in March 1999 at which time a Release of the Respondent was executed, at the insistence of Dave McIntosh, a representative for Big Horn Land Services Ltd.

In the spring of 1999 after the snow had melted, and when the Applicants began working their property, they discovered that the seismic activity had not been properly cleaned up. Specifically, there remained on the Applicant's property, in bush areas, pasture and cultivated fields, holes and mounds left by the seismic activity, plastic caps and wire. Some of the land had, apparently, been properly restored; other portions of the land had not.

The Applicant first became aware of the wire and caps on their property when an employee working a field noted seismic wire in farm equipment. This occurred when an employee cultivated over a wire, cutting it into smaller pieces, causing it to become entangled in farm equipment. Following this discovery there was communication between Franz Conzelman and Dave McIntosh both by telephone and by letter, the details which were before the Panel.

Some remedial work was carried out on behalf of the Respondent. However, it is common ground between the parties, especially following a site inspection by members of the Arbitration Panel, that there remains substantial clean up work to be performed.

POSITION OF THE PARTIES

A THE APPLICANTS

The Applicants wish to receive compensation for inconvenience, and out of pocket expenses incurred in the past in dealing with this problem together with costs associated with future remedial work on the property. The Applicants break down the claim for compensation as follows:

1. A bill for damages provided by the Applicant to the Respondent in September 1998 for down time, inspection, out of pocket expenses, inconvenience and nuisance;

2. Additional damages sustained between 28 September 1999, the date of the Mediation, and the date of this Arbitration; and

3. Future costs which will be incurred and compensation for cleaning up the balance of the fields in issue, in the future.

B THE RESPONDENT

The Respondent accepts that remedial work was not completed as required and that the work remains to be done to restore the Applicants land, as near as possible, to its pre-existing condition. The Respondent would prefer that it arranges for the clean up work to be done rather than for the Applicant to do that work.

The Respondent say that in March 1999 when the Applicant accepted the compensation cheque a Release of the Respondent was executed and therefore the Applicants should be unable to claim further damages from the Respondent. The Respondent say it is troubling or problematic for the industry if this Panel does not give effect to this Release. The Respondent also say that it should not be responsible for any aggravation of the damages to the land caused or contributed to by the Applicants and, specifically, the Respondent say that it offered to return to the lands to work on restoration and reclamation but access was refused by the Applicant on the basis that the seismic permit had expired and the Applicant was not willing to allow re-entry onto their property without a new permit fee being paid. The Respondent also say that it offered to compensate the Applicant in the sum of $ 2,000.00 for inconvenience together with $ 1,140.00 for down time on farm machinery. This was refused by the Applicant.

The Respondent also offered to return and restore the property to the appropriate condition.

DISCUSSION

A THE RELEASE

The specific wording of the Release provides that it is a Release by the Applicants of the Respondent for damages occurred up to the date of the Release. It is clear from the evidence that the Applicants were required to execute this Release prior to the release of funds agreed to in the permit between the Applicant and the Respondent. This Release was executed in March, 1999 before the fields could properly be inspected. The Board feels that the Respondent, through its

agent, knew or should have known had it been properly aware of the activities on the Applicants' property that clean up had not been properly carried out. The Board considers that the Respondent's insistence that a Release be executed prior to payment to previously agreed compensation for entry and disturbance on to the land is poor practice. This is something industry should reconsider bearing in mind the variation in knowledge between landowners and industry of their respective rights and obligations.

It is also the view of this Panel that it is poor practice for a seismic permit to expire before the obligations of the seismic company to comply with Governmental regulations can reasonably be anticipated to be completed.

The Respondent did not rely heavily on the Release. Given the circumstance in which the Release was executed this was appropriate. In other circumstances a Release may be considered by the Board to be binding. Given the inequality in bargaining position and knowledge between the Applicant and Respondent, the Board considers, in the circumstance of this case, that the Release executed by the Applicant is not a Release of the Respondent by the Applicant which would prevent the Applicant proceeding with this Arbitration.

B WHETHER THE APPLICANT HAVE CONTRIBUTED TO THE ON GOING PROBLEM

It appears that the Respondent, or its agents, wished to return to the Applicants' property during the summer of 1999 to carry out remedial and reclamation work. It further appears that the Applicant, because the initial seismic permit had expired, prevented the Respondent from so doing. The Board feels that in acting in that fashion the Applicant was not acting in a reasonable fashion and that, to some degree, the damages and inconvenience which have been incurred since the summer of 1999 are the Applicants' 'responsibility.

Concerning the cultivation of the Applicant's property causing the seismic wire to be severed and spread over the Applicants' property, the Board accepts the Applicants' evidence that their employee believed that the fields had been properly cleaned up. This is especially so given that two (2) other sections which were cultivated were free of debris from the seismic activity. It is not, in the Board's view negligence on the part of the Applicant or their employee, not to have seen the wire which might have been difficult to identify from the cab of farm equipment especially given the clean up on certain sections which might have induced the Applicant to believe that clean up had properly occurred. Accordingly, the Board rejects the Respondent's view that the severing and spreading of the wire is the responsibility of the Applicant and not the Respondent.

However, the Board finds that the means chosen by the Applicant to deal with the wire remaining on his field is not reasonable and appropriate in the circumstances. In the Board's view the reasonable approach for the Applicant to have taken would have been to not cultivate any remaining areas of the seismic lines, which, it was noted, are always "ruler-straight", but to work around that property and to allow the Respondent to re-attend on the property to remove the wire, caps and other debris. Although there would have been some wire spread by the Applicant's employee before the wire was discovered the problem would not be as extensive as it is currently. While this may have reduced the extent of the problem the Applicant would have incurred additional operating expenses which could have formed the basis of a claim for compensation.

It is common ground between the Applicant and the Respondent, that the Respondent is in a position to re-attend on the property to clean up the seismic debris. However, without a permit to do so or the permission of the landowner, the Respondent has no right to re-enter the land. It is the Applicant's position, however, that they wish to be responsible for cleaning up pasture, hay fields and cultivated land. The Applicants are content for the Respondent to clean up the bush areas. The Board accepts that the Applicant may have proper reasons for wishing to be responsible for clean up on the pasture, hay fields and cultivated land. However the Applicant should only receive, as compensation, that which would otherwise be paid by the Respondent for this remedial work.

QUANTUM OF AWARD

The Applicant seek an award of approximately $ 21,440.00 representing the amount claimed at the Mediation in this matter together with the sum of $ 8,000.00 for damages incurred since the Mediation and future expenses in tilling the fields in which the seismic wire remains.

The Respondent say there remains two or three days work on the Applicant's property. The Respondent would prefer to be responsible for hiring or contracting with persons to clean up the debris at a cost approximately $ 700.00 per day. The Board feels that this underestimates the amount of work which remains to be done given that this is the second summer without the remedial work being completed with the debris being more widespread and the mounds being harder that they were in the spring of 1999.

The Board accepts that the Applicant has suffered damages, and will continue to suffer damages, as a result of the Respondent's seismic activities on his property. However, the Board finds that some of the amounts claimed by the Applicant for out of pocket expenses, inconvenience and travel expenses are not appropriate in the circumstances or which reflect expense which the Applicant would have incurred in any event, even had the property been properly cleaned up.

It is the view of the Board that its purpose is to determine fair compensation for the Applicant based on the prevailing market rates for remedial work to restore the Applicant's property. It is also the Board's view that it is attempting to compensate the Applicant for the cost, in the market place, of performing remedial work. In this regard the Arbitration Panel does not accept that the approach of the Applicant to cleaning up their property is the most cost efficient and effective means to do so.

Having considered all the evidence the Board award as follows:

1. Compensation for past inconvenience and damages incurred by the Applicant to the date of Arbitration: $1,940.00;

2. Compensation for the clean up that has already been completed $ 2,780.00;

3. The market value to clean up the remaining cultivated land, hay fields and pasture: $ 2,100.00; and

4. That the Respondent, will at its own expense, attend on the Applicants' property, without compensation to the Applicant, to clean up the bush land portions of the Applicants' property.

IT IS HEREBY ORDERED THAT:

Whereas

1. The Mediation and Arbitration Board hereby order the Respondent, Newport Petroleum Ltd. to pay to the Applicant, Franz and Bernd Conzelman, the sum of $ 6,820.00.

2. Upon payment of the sum awarded in part 1 of this Order, the Respondent shall be entitled to enter onto the land to clean up the bush land portions of the Applicant's property.

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

Dated at the City of Fort St. John, province of British Columbia this 28 day of July 2000.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

_____
Rodney Strandberg, Chair

_____
Mavis Nelson, Member

_____
S. Frank Breault, Member

_____
Julie Hindbo, Member