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COURT COURT OF QUEEN'S BENCH OF ALBERTA **SEP 18 2015**

JUDICIAL CENTRE CALGARY

APPLICANT KRACK ENERGY INC.

RESPONDENT KARL ENERGY TRUST INC. AND BRADLEY OIL & GAS INC.

DOCUMENT **AFFIDAVIT (OPPOSING DISCHARGE OF RECEIVER)**

ADDRESS FOR SERVICE
AND
CONTACT INFORMATION
OF
PARTY FILING THIS
DOCUMENT

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Attention: Terry L. Czechowskyj

Affidavit of Carole Hachey

Sworn on September 18, 2015

I, Carole Hachey, of Calgary, Alberta, swear:

1. I am a Compliance Officer in the Liability Management, Closure and Liability branch of the Alberta Energy Regulator (AER) and as such have a personal knowledge of the facts and matters hereinafter deposed to, except where stated to be based on information and belief, and where so stated, I verily believe the same to be true.

BACKGROUND

2. I am advised by AER investigations staff that on November 28, 2013, Bryce Lee Karl, in the capacity of Operations Lead for 1506928 Alberta Ltd., advised the AER that vandals opened a valve on a storage tank located at 9-05-115-6-W6M which resulted in oil being released on to the site (Property). It was estimated that approximately 20,000 to 30,000 litres of oil was released. Mr. Karl advised that Big Eagle would be recovering the oil from the lease site and putting it back into the storage tanks. At the time of the incident, the licensee of the Property was 1506928 Alberta Ltd.
3. On May 2, 2014, Bradley Oil & Gas Inc. (Bradley) became the licensee of well licence no. W0338273 and facility licence no. F 35213 located at 9-05-115-6-W6M.
4. On July 21, 2014, Apache Canada Ltd. advised the AER staff that there was oil contamination at the Property and provided four photos which are marked as Exhibit "A".
5. The AER conducted an inspection of the Property on July 22 and 23, 2014 and issued a non-compliance against Bradley for section 8.050(1)(2) under the *Oil and Gas Conservation Rules* for the unaddressed release. A copy of the provision is attached and marked as Exhibit "B".

6. By order dated August 21, 2014, Hardie & Kelly Inc. (Receiver) was appointed receiver of the assets of Bradley. Attached and marked as Exhibit "C" to this affidavit is a copy of the filed order appointing the Receiver.
7. On appointment, receivers and trustees "step into the shoes" of the AER licensee by virtue of the definition of "licensee" in section 1(1)(cc) of the *Oil and Gas Conservation Act* (OGCA) and section 1(1)(n) of the *Pipeline Act*. Specifically, the definitions of licensee in both statutes explicitly include trustees and receiver-managers. As a result, on appointment, receivers and trustees of the properties of AER licensees are subject to all applicable statutory and regulatory obligations to which the licensee is subject. Copies of those provisions are attached and marked as Exhibit "D" to this affidavit.
8. Also on August 21, 2014, an order was issued on behalf of Apache Canada Ltd. providing that funds held by Apache in relation to three properties, including the Property, would be paid into court. Attached and marked as Exhibit "E" to this affidavit is a filed copy of the order.
9. On September 25, 2014, the Receiver advised the AER that it took possession and was providing care and custody of Bradley's properties which included the Property. The Receiver confirmed that it agreed to ensure the responsibilities and obligations of Bradley were carried out in accordance with the *Oil and Gas Conservation Act*, *Oil and Gas Conservation Regulations*, *Pipeline Act* and *Pipeline Regulations* there under, for the protection of the public and the environment to the greatest extent possible given the assets under administration in the estate. Attached and marked as Exhibit "F" to this affidavit is a copy of the September 25, 2014 letter.
10. Paragraph 13 of the Receiver's First Report dated January 8, 2015, the Receiver noted that it received an inspection report that found that the oil and gas interests were "generally in what can be referred to as a neglected condition" and that "a pre-existing oil/salt water spill was present on one site". Attached and marked as Exhibit "G" to this affidavit is a copy of the filed January 8, 2015 First Report of the Receiver.
11. In response to concerns raised by the AER, the Receiver's counsel advised that the Receiver intended to investigate the costs of remediation of the Property after spring break-up, but did not anticipate that it would have sufficient funds to take any further remediation measures and that the cost of remediation would be factored into the purchase price of the assets. Attached and marked as Exhibit "H" to this affidavit is a copy of the emails dated February 23, 2015 and March 2, 2015.
12. On March 24, 2015, the AER wrote to Bradley in care of the Receiver noting that there was evidence or high probability of groundwater contamination at the Property. As a result, the AER directed that the following submissions by April 24, 2015: Phase I Environmental Site Assessment; Phase II Environmental Site Assessment (if applicable); *Directive 006* Appendix 11 Facility Liability Declaration Form; and site-specific liability assessment cost estimate. Attached and marked as Exhibit "I" to this affidavit is a copy of the March 24, 2015 letter.
13. In correspondence dated April 24, 2015, the Receiver advised that it had inspected the Property upon the Receiver's appointment and that free liquids were vacuumed up as required, and disposed of. The Receiver requested an extension to provide the submissions requested in the AER's March 24, 2015 letter. Attached and marked as Exhibit "J" to this affidavit is a copy of the Receiver's April 24, 2015 letter.

14. On August 7, 2015, the AER wrote to the Receiver asking for a status update on the site-specific liability assessment that was required in relation to the Property. The letter further advised that it would require that the discharge of the Receiver be conditional on the Receiver fulfilling its obligations on behalf of the licensee to adequately respond to and address the environmental impacts of the spill on the Property. Attached and marked as Exhibit "K" to this affidavit is a copy of the August 7, 2015 letter.
15. On August 31, 2015, the AER inspected the site and noted that the oil contamination was still on the Property and was not contained or cleaned up. AER Inspector Wayne Spracklin took six photos of the Property between 12:41 p.m. and 12:48 p.m. which are marked as Exhibit "L" to this affidavit.
16. On or about September 1, 2015 the AER issued another non-compliance against the Licensee under section 8.050(1)(2) of the *Oil and Gas Conservation Rules* for the unaddressed release.
17. On September 10, 2015, the AER inspected the site again and noted that there was still oil contamination on the Property that was not contained or cleaned up. It was noted that in addition to the spill within the secondary containment, beyond the secondary containment, and at the base of the flare stack. AER Inspector Clint Neville took 128 photos on the Property between 12:41 p.m. and 1:11 p.m. which are marked as Exhibit "M" to this affidavit.
18. The AER wrote to the Receiver on September 10, 2015 advising that the Receiver was required to remove all free product from the site by September 16, 2015 to prevent further contamination or potential wildlife impact. Attached and marked as Exhibit "N" to this affidavit is a copy of the AER's September 10, 2015 letter.
19. The Receiver responded on September 11, 2015, that it is not in a position to take any steps to address the release and that the Receiver and the receivership estate would not accept any responsibility for same or for any costs incurred by the AER as a result. Attached and marked as Exhibit "O" to this affidavit is a copy of the Receiver's September 11, 2015 letter.
20. I am advised by AER investigations staff that the condition of the Property has worsened since the AER's inspection in July 2014.
21. Based on its concerns that the state of the Property poses an environmental and public safety hazard, on September 14, 2015, the AER issued Abandonment Order AD 2015-88 and on September 18, 2015 the AER issued an amended Abandonment Order AD 2015-88A that corrected errors contained in and rescinded Abandonment Order AD 2015-88. Attached and marked as Exhibits "P" and "Q" respectively, to this affidavit are copies of Abandonment Orders AD 2015-88 and 2015-88A.
22. Based on its concerns that the state of the Property poses an environmental and public safety hazard, on September 18, 2015, the AER issued an emergency protection order (EPO) under the *Environmental Protection and Enhancement Act*. Attached and marked as Exhibit "R" to this affidavit is a copy of the EPO.
23. Both Abandonment Order AD 2015-88A and the EPO direct the Receiver, Bradley and all working interest participants in the Property to carry out all actions necessary to address the environmental and public safety hazards posed by the current state of the Property.

24. The authority to name the Receiver and the working interest participants can be found in sections 1(cc), 27, 28, 29 and 30 of the *Oil and Gas Conservation Act*, section 3.012(d) of the *Oil and Gas Conservation Rules* and sections 1(tt), 113 and 241 of the *Environmental Protection Act*. Copies of the provisions are attached and marked as Exhibit "S".
25. I understand the Receiver is seeking to distribute funds from the estate to one or more of the parties that are statutorily obligated to comply with the issued orders.
26. It is unclear as to whether there would be anyone to provide care and custody of the Property should the Receiver be discharged.
27. I swear this affidavit in support of the AER's request that the Court deny the Receiver's application for discharge and proposed distribution of funds in the estate and order the Receiver to comply with the orders issued by the AER.

SWORN BEFORE ME on

September 18th 2015 at Calgary, Alberta.


Commissioner for Oaths in and for the
Province of Alberta, O.C.

A Commissioner for Oaths
in and for Alberta
being a Barrister and Solicitor


Carole Hachey