

Simon Fish
Vice-President General Counsel and Secretary
Shell Canada Products Limited, Legal Department
400, 4th Avenue S.W.
P.O. Box 100 Station M
Calgary, AB T2P 2H5

Fax: (403) 691-3696

December 19, 2005

Imaging Project #00082402

Dear Mr. Fish:

**Re: Information Routinely Available under
Environmental Protection and Enhancement (EPEA) Legislation
Records Pertaining to the Property Located at 235 Main Street, Baron, Alberta**

Alberta Environment (AENV) is committed to openness and transparency. As outlined in the attached Ministerial Order 23/2004, the Minister of Environment, pursuant to section 35(3) of the *Environmental Protection and Enhancement Act (EPEA)*, and section 88(1) of the *Freedom of Information and Protection of Privacy (FOIP) Act*, has designated specified records as being available to the public without the need for a formal request under the *FOIP Act*.

Section 35(3) of *EPEA*, allows the Minister to disclose to the public, in the form and manner provided for in the regulations, any information in AENV's possession that the Minister considers should be public information. Formally, Ministerial Order 23/2004 lists the specific records designated as public under *EPEA* and the *Disclosure of Information Regulation* under *EPEA* provides the form and manner of disclosure of public information.

EPEA establishes the duty to report substance releases and to take remedial measures to restore the environment to a satisfactory condition and the Minister of Environment has designated this type of information as being publicly available. However, AENV must honour a legitimate claim of privilege to withhold a record deemed publicly available from disclosure.

It is our understanding that the following records were submitted to AENV as a requirement under Part 5 of *EPEA* and are the types of records designated as being publicly available under this legislation. Of all of the records in AENV's custody pertaining to this site, these records have also been identified as being subject to legal privilege under section 27 of the *FOIP Act*.

- Transmittal dated February 19, 2001 from O'Connor Associates Environmental Inc. to Alberta Environment (AENV). Enclosed:
 - November 1999 – Remedial Activities Report, Former Barons Turbo Bulk Station
C42520, 235 Main Street, Barons, Alberta

- July 24, 1998 – Environmental Site Assessment, Former Barons Turbo Bulk Station, 235 Main Street, Barons, Alberta
- May 23, 1997 – Facility Decommissioning and Remedial Excavation, Barons Turbo Bulk Station #2520, 235 Main Street, Barons, Alberta
- November 13, 1996 – Delineation Assessment, Former Barons Turbo Bulk Station No. 2520, 235 Main Street, Barons, Alberta

For section 27 of the FOIP Act to be triggered, you must establish that the elements of privilege apply to the subject records. This information will help the delegated Head of AENV defend the application of privilege in this instance should it be challenged.

With specific reference to the subject documents:

- identify the type of privilege you are claiming and demonstrate how the subject records meet the criteria for the application of that type of privilege [section 27(1)(a)], and
- explain whether the subject records relate to a third party other than AENV [section 27(2)].

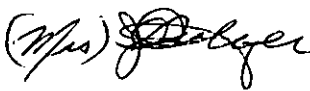
To assist you with your response, refer to Chapter 4: Exceptions to the Right of Access in the *FOIP Guidelines and Practices (2005)* manual, which outlines types of legal privilege and the criteria that must be met in order to apply a claimed privilege. The FOIP manual can be accessed on line at http://www3.gov.ab.ca/foip/guidelines_practices/2005/index.cfm and the Privacy Commissioner's orders referred to can be accessed on line at <http://www.oipc.ab.ca/orders/orders.cfm>.

Please submit your representations to AENV by January 9, 2006 following which AENV will notify you of its decision regarding the application of section 27 of the *FOIP Act*. If we do not hear from you by this date, the subject records will be made public.

Should AENV decide to apply section 27 of the *FOIP Act*, the subject records will be withheld from disclosure under our Routine Disclosure initiative. However, if a request is made for information on this site under the *FOIP Act*, the claim of privilege will be reviewed again at that time.

If you have any questions or concerns, please write to me or call me at (780) 427-2256.

Sincerely,



Joan Tawfik
FOIP Advisor

Enclosure – Ministerial Order 23/2004

MINISTERIAL ORDER

23/2004

APPENDIX

Designation of Public Information Under the *Environmental Protection and Enhancement Act*

1. Pursuant to s. 35(3) of the *Environmental Protection and Enhancement Act* and s. 88(1) of the *Freedom of Information and Protection of Privacy Act*, the following records and information in the possession of the Department shall, as of April 1, 2005, be available to the public without the need for a formal request under the *Freedom of Information and Protection of Privacy Act* regardless of the format of the information or records and the date of receipt or date of production of the information or records:

- a) written Warnings;
- b) a Notice of an Administrative Penalty;
- c) specified penalty violation Tickets issued under the *Provincial Procedures and Offences Act*, for an offence of the *Environmental Protection and Enhancement Act*;
- d) Inquiry Reports prepared under the *Conservation and Reclamation Regulation* [AR 115/93];
- e) records intended as Statements of Concern;
- f) directions of an Inspector or a Director;
- g) Notice of Decision of a Director;
- h) decisions of a Director provided to an applicant, approval holder, registration holder, licensee, preliminary certificate holder or Statement of Concerns filers;
- i) any information or records submitted to the Department pursuant to Part 5 of the *Environmental Protection and Enhancement Act*;
- j) reports and records required under a Code of Practice that are to be prepared or maintained and that are to be submitted to the Department or to be made available to the Department for inspection upon the request of the Department;
- k) scientific and/or technical information, studies, reports, records submitted to the Department pursuant to Part 5 of the *Environmental Protection and Enhancement Act* relating to the environmental condition of a site, including tests and assessments, relating to the delineation or remediation of such sites, or any correspondence between the submitter and the Department pertaining to such information or records;

- l) names and addresses of persons consigning, transporting or accepting hazardous waste, the total quantity, or quantity per class, of hazardous waste consigned, transported or received by the facility or person, but not including information linking generators to carriers or receivers of hazardous waste, or information on individual waste stream names, composition and quantity;
- m) information or records submitted to the Department that relate to an application under the *Environmental Protection and Enhancement Act*, or its regulations, excluding an application for a reclamation certificate;
- n) any correspondence from the Department to the applicant relating to the submitted information or records, excluding correspondence relating to an application for a reclamation certificate;
- o) information or records submitted to the Department in accordance with a regulation under the *Environmental Protection and Enhancement Act*, an approval, authorization, notice or direction, and any correspondence from the Department to the submitter relating to the submitted information or records, excluding information or records submitted to the Department and correspondence from the Department relating to the submitted information or records that relate to an application for a reclamation certificate.

Notwithstanding the foregoing, this Order does not apply to any information or records (i) that relate to a matter that is the subject of an open or ongoing investigation or proceeding or (ii) that is subject to a Director's determination in favour of confidentiality under s. 35(5) of the *Environmental Protection and Enhancement Act*.