

THE SURFACE RIGHTS BOARD OF MANITOBA

BRANDON, MANITOBA

Order No. 3/2002
File No. 600-02
601-02
602-02

IN THE MATTER OF:

THE SURFACE RIGHTS ACT

AND IN THE MATTER OF:

S.W.D. 1-28-1-24 W.P.M.
L.S.D. 2-33-1-24 W.P.M.
L.S.D. 2-33-1-24 W.P.M. (Battery)
L.S.D. 8-33-1-24 W.P.M. all in Manitoba

BETWEEN:



Applicants (Lessors)

- and -

TANCAM CONSULTING LIMITED.,

Respondent (Lessee)

**CONTAMINATED SITES CLEAN UP and ANNUAL
COMPENSATION PAYMENT ORDER**

Manitoba)

The Surface Rights Board)

Order No. 3/2002

File No. 600-02

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602-02

) April 12th, 2002

BEFORE:

Mr. T.A. Cowan, Presiding Member
Mr. Dennis Cochrane, Deputy Presiding Member
Mr. C. Tolton, Member
Mr. Ivan Carey, Member

IN THE MATTER OF *THE SURFACE RIGHTS ACT*

- AND -

IN THE MATTER OF:

S.W.D. 1-28-1-24 W.P.M.,
L.S.D. 2-33-1-24 W.P.M.,
L.S.D. 2-33-1-24 W.P.M., (Battery)
L.S.D. 8-33-1-24 W.P.M. All in Manitoba

BETWEEN:



Applicants (Lessors)

- and -

TANCAM CONSULTING LIMITED.,

Respondent (Lessee)

CONTAMINATED SITES CLEAN UP AND ANNUAL COMPENSATION PAYMENT ORDER

Upon hearing the applications of each of the parties, the evidence, and the submissions on the 12th day of April, 2002; decision being reserved until today's date:

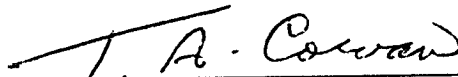
It is the Order of This Board That:

1. Tancam Consulting Limited. is hereby responsible to clean up all salt water contaminated sites on L.S.D. 2-33-1-24 W.P.M. (battery) that require rehabilitation in accordance with the requirements established by the Manitoba Industry, Trade and Mines, Petroleum Branch pursuant to *The Oil and Gas Act*.
2. Tancam Consulting Limited is hereby responsible to clean up the contaminated soil resulting from the flowline leak located on L.S.D. 8-33-1-24 W.P.M. in accordance with the requirements established by the Manitoba Industry, Trade and Mines, Petroleum Branch pursuant to *The Oil and Gas Act*.
3. Tancam Consulting Limited is the Licensed Operator under *The Oil and Gas Act and Regulations* and pursuant to *The Surface Rights Act* must compensate [REDACTED] and [REDACTED] for Right of Entry in accordance with the Surface Lease Agreement dated June 2nd, 1965 with Amending Agreement dated November 29th, 1983 in respect of L.S.D. 8-33-1-24 W.P.M.; Surface Lease Agreement dated January 12th, 1965 with Amending Agreement dated November 29th, 1983 in respect of L.S.D. 2-33-1-24 W.P.M. and L.S.D. 2-33-1-24 W.P.M. (battery); Surface Lease Agreement dated August 1st, 1972 with Amending Agreement dated November 29th, 1983 in respect of S.W.D. 1-28-1-24 W.P.M.
4. Tancam Consulting Limited pay [REDACTED] and [REDACTED] the sum of \$56,850.15 being the amount owing for annual surface lease compensation for L.S.D. 8-33-1-24 W.P.M., L.S.D. 2-33-1-24 W.P.M., L.S.D. 2-33-1-24 W.P.M. (battery) and S.W.D. 1-28-1-24 W.P.M.

5. Tancam Consulting Limited pay [REDACTED] and [REDACTED] the sum of \$13,582.26 being the amount of interest owing on the outstanding annual surface lease compensation for L.S.D. 8-33-1-24 W.P.M.;, L.S.D. 2-33-1-24 W.P.M.; L.S.D. 2-33-1-24 W.P.M. (battery); , and S.W.D. 1-28-1-24 W.P.M.
6. In addition to the aforementioned compensation, Tancam Consulting Limited, is to pay to [REDACTED] and [REDACTED], the sum of \$800.00 for costs incurred in preparing for the hearing on April 12th, 2002.
7. All of the aforementioned amounts are to be paid on or before May 31st, 2002 with interest accrued at prime plus 2% after this date.
8. The compensation payments for Right of Entry to the sites mentioned shall continue until such time as Tancam Consulting Limited has carried out the Abandonment and Rehabilitation procedures under *The Oil and Gas Act and Regulations* as well as the Restoration of the sites in accordance with *The Surface Rights Act*.
9. This Board Order is without prejudice to the rights of either party.

Pursuant to Sections 57 and 58 of *The Surface Rights Act* all Board Orders are enforceable as a judgment of the Court of Queen's Bench.

Signed this 24th day of April, 2002.



Presiding Member

THE SURFACE RIGHTS BOARD OF MANITOBA

BRANDON, MANITOBA

File No. 600-02
601-02
602-02

IN THE MATTER OF:

THE SURFACE RIGHTS ACT

AND IN THE MATTER OF:

S.W.D. 1-28-1-24 W.P.M.
L.S.D. 2-33-1-24 W.P.M.
L.S.D. 2-33-1-24 W.P.M. (Battery)
L.S.D. 8-33-1-24 W.P.M. All in Manitoba

BETWEEN:



Applicants (Lessors)

- and -

TANCAM CONSULTING LIMITED,

Respondent (Lessee)

**REASONS FOR DECISION FOR CONTAMINATED SITES CLEAN UP and ANNUAL
COMPENSATION ORDER**

IN THE MATTER OF: **THE SURFACE RIGHTS ACT**

AND IN THE MATTER OF: S.W.D. 1-28-1-24 W.P.M.
L.S.D. 2-33-1-24 W.P.M.
L.S.D. 2-33-1-24 W.P.M.(Battery)
L.S.D. 8-33-1-24 W.P.M. All in Manitoba

BEFORE: Mr. T.A. Cowan, Presiding Member
Mr. Dennis Cochrane, Deputy Presiding Member
Mr. C. Tolton, Member
Mr. Ivan Carey

DATE OF HEARING: April 12th, 2002 - Waskada, Manitoba

DATE OF DECISION: April 24th, 2002

BETWEEN:

[REDACTED]

Applicants (Lessors)

- and -

TANCAM CONSULTING LIMITED,

Respondent (Lessee)

APPEARANCES:

[REDACTED]

for the Applicant (Lessors)

Mr. John N. Fox, Chief Petroleum Engineer,
Manitoba Industry, Trade and Mines, Petroleum Branch

Tancam Consulting Limited,

for the Respondent (Lessee) did not appear.

**REASONS FOR DECISION FOR CONTAMINATED SITES CLEAN UP AND ANNUAL
COMPENSATION ORDER**

BACKGROUND:

The Lessors applied under subsection 21(1) of *The Surface Rights Act* claiming that the surface lease payments due on the aforementioned lands have not been paid and requested that the affected lands be restored to their original condition.

ISSUES:

1. Is the Lessee the Licensed Operator?
2. Is the Lessee responsible to clean up the demised premises?
3. Are the Lessors entitled to receive the annual surface lease payments?
4. Are the Lessors entitled to interest?
5. Are the Lessors entitled to costs?

DECISION:

1. Pursuant to *The Oil and Gas Act and Regulations*, and *The Surface Rights Act* Tancam Consulting Limited is the Licensed Operator and therefore is responsible for all operations carried out on the demised premises. [Part, Sec. 88] [Sec. 1]
2. Pursuant to *The Surface Rights Act*, the Lessee (Tancam Consulting Limited) must compensate the Lessors ([REDACTED] and [REDACTED]) in accordance with the Surface Lease Agreements and amendments thereto dated November 29th, 1983 until such time as abandonment and rehabilitation procedures have been completed under *The Oil and Gas Act* as well as restoration of well sites under *The Surface Rights Act*. [Sec. 25(4)] Therefore, the Lessee must pay the annual surface lease compensation, in the amount of \$56,850.15, which amount includes \$33,250.15 from the Default Judgment dated December 3rd, 1998 due to the Lessors.
3. Pursuant to *The Surface Rights Act*, the Lessee (Tancam Consulting Limited) must pay to the Lessors ([REDACTED] and [REDACTED]) accrued interest, compounded annually on annual surface lease compensation as well as Default Judgment amount due to the Lessors for the years 1999, 2000, and 2001 and since November 29th, 2001 for the year 2002. In accordance with the Surface Lease Agreements the annual compensation shall be paid in advance. Therefore, the total interest payable is \$13,582.26. [Sec. 25(4)].
4. The Lessee (Tancam Consulting Limited) shall pay all of the Lessors ([REDACTED] and [REDACTED]) expenses incurred in preparing and presenting their claims herein providing same are reasonable. [Sec. 26(2)]

Reasons:

Pursuant to subsection 25(2) of *The Surface Rights Act*, the Board inspected the S.W.D. 1-28-1-24 W.P.M. site on the 12th day of April, 2002. From this inspection, the Board determined that there was oil producing equipment, as well as a salt water disposal unit located on this site. The Board could not view the other two sites in question as the access roads were impassable.

The Board then proceeded with the scheduled April 12th, 2002 hearing.

Evidence as prepared by Mr. John N. Fox (Sworn), P.Eng., Chief Petroleum Engineer, Manitoba Industry, Trade and Mines, Petroleum Branch distributed at the hearing and read into the records. (Exhibit No. 1)

This report was prepared at the request of The Surface Rights Board for the hearing between [REDACTED] and Tancam Consulting Limited regarding the Lessors request for surface lease payments for S.W.D. 1-28-1-24 W.P.M., L.S.D. 2-33-1-24 W.P.M., L.S.D. 2-33-1-24 W.P.M. (battrey), and L.S.D. 8-33-1-24 W.P.M. as well as the rehabilitation and restoration of the affected lands.

This report addresses the following matters in respect of the wells, Tancam Waskada SWD RE1-28-1-24 W.P.M.; Tancam Waskada 2-33-1-24 W.P.M.; Tancam Waskada 8-33-1-24 W.P.M; and Tancam Waskada 2-33-1-24 W.P.M. (Battery)

1) Current Well Status

The well, Tancam Waskada SWD RE1-28-1-24 W.P.M., Well Licence No. 1861, is licensed to Tancam Consulting Limited ("Tancam"). This well went on salt water disposal in August 1966 under Salt Water Disposal Permit No. 82 and last injected in July, 1998.

The well, Tancam Waskada 2-33-1-24 W.P.M., Well License No. 2044, is licensed to Tancam. This well went on production in May, 1965 and last produced in July, 1998.

The well, Tancam Waskada 8-33-1-24 W.P.M., Well License No. 2081, is licensed to Tancam. This well went on production in August, 1966 and last produced in April, 1998.

All of the aforementioned wells are flowlined to a battrey operated by Tancam at 2-33-1-24 W.P.M.

Tancam Consulting Limited is the licensee of the 1-28, 2-33, and 8-33 wells and battery. A licensee is defined in Part 8, Section 88 of *The Oil and Gas Act* as "Licensee" means the holder of a well license issued under this part.

An operator is defined in Section 1 of *The Oil and Gas Act* as "Operator" means with respect to a well, a person who holds a well license issued under Part 8 or who has control or management of the well.

For purposes of *The Oil and Gas Act*, Tancam is both the licensee and operator of the 1-28, 2-33 and 8-33 wells and battery. Under Section 96 of *The Oil and Gas Act*, a licensee is responsible for all operations carried out at a well including the abandonment of wells and rehabilitation of the wellsites.

2) Sites Requiring Rehabilitation

There are two damaged sites (R-01310-W and R-0406-W) located at the 2-33-1-24 W.P.M. battery site that require rehabilitation.

- (a) R-01310-W This site involves two areas of severe long term damage. One is a large area on the west side of the battery that extends off-lease into the surrounding field. It appears to be mostly salt damage. There has been some improvement over the last 10 years without the aid of any rehabilitation work. The other damaged spot is on the north side of battery over an old salt water pit and has not had any rehabilitation work performed in the recent past. Both sites require amendments to be applied and incorporated, and then seeded to a salt resistant variety of plant.
- (b) R-0406-W This site was caused by a flowline leak on the 8-33-1-24 W.P.M. flowline. A small quantity of fluid was spilled, so very little land is involved. It is located on the east side of the battery into the cultivated field. The hole in the flowline was not repaired. No physical damage due to excavation of the line. This site also requires to have amendments applied.

The Petroleum Branch is prepared to begin rehabilitation work on these sites and will consult with the landowner to develop an acceptable rehabilitation plan.

3) Non-Compliance under *The Oil and Gas Act*

Tancam Consulting Limited failed to comply with Notice of Non-Compliance No.s W-0194 and 0195 dated August 12, 1999. In order to mitigate any environment hazards associated with Tancam's operations the Petroleum Branch carried out the following remedial measures in November 1999 to correct the non-compliance:

Description of Operations

- (a) Bled down, winterized and secured the RE1-28, 2-33 and 8-33-1-24 wells;
- (b) Displaced and suspended the flowlines between the wells and battery;
- (c) Drained and cleaned out the tanks and vessels. A small quantity of water remain in storage at the battery;
- (d) Cleaned up the contaminated soil, disposed of chemical containers and debris, and suspended the battery.

The Petroleum Branch inspected Tancam's operations on March 6th, 2002 and identified the following major non-compliance items;

- (a) Outstanding 1999 and 2000 inactive well levy in the amount of \$642.49 including interest;
- (b) Outstanding performance deposit in the amount of \$21,534.54, to increase the amount on deposit to \$30,000.00;
- (c) Failure to submit rehabilitation plans for and carry out active rehabilitation of damage sites at the 2-33 battery;
- (d) Housekeeping issues at the 2-33 well and battery sites including vegetation control and clean up and removal of debris.

In addition there are a number of operational issues that would have to be addressed before the wells could be reactivated.

Evidence provided by [REDACTED] (Sworn) and recorded as follows:

- (a) Copy of Title No. 184401 covering SE ¼ 28-1-24 W.P.M. (Exhibit No. 2).
- (b) Copy of Title No. 1576481 covering SE1/4 33-1-24 W.P.M. (Exhibit No. 3)
- (c) Copy of Surface Lease Agreement dated June 2nd, 1965 with Amending Agreement dated November 29th, 1983 in respect of L.S.D. 8-33-1-24 W.P.M. Commencing on June 2nd, 1984 the annual compensation shall be \$1,700.00.(Exhibit No. 4)
- (d) Copy of Surface Lease Agreement dated January 12th, 1965 with Amending Agreement dated November 29th, 1983 in respect of L.S.D. 2-33-1-24 W.P.M. Commencing on January 12th, 1984 the annual compensation shall be \$2,000.00.(Exhibit No. 5)
- (e) Copy of Surface Lease Agreement dated August 1st, 1972 with Amending Agreement dated November 29th, 1983 in respect of L.S.D. 1-28-1-24 W.P.M. Commencing on August 1st, 1984 the annual compensation shall be \$1,700.00.(Exhibit No. 6)
- (f) Copy of Statement of Claim in Queen's Bench Brandon Centre Suit No. 98.02.182 Cl. Total amount claimed for annual compensation \$31,000.00. (Exhibit No. 7)
- (g) Copy of Default Judgment dated December 3rd, 1998 in Suit No.98.02.182 Cl The Court of Queen's Bench, Brandon Centre ordered and adjudged that Tancam Consulting Limited pay to [REDACTED] and [REDACTED] the sum of \$32,730.15 and the sum of \$520.00 for the costs incurred with interest at the rate of 6.0% per year from the date of the order.(Exhibit No. 8)
- (h) Copy of Certificate of Judgment dated August 4th, 1999 in Suit No. 98.02.182 Cl The Queen's Bench Brandon Centre Deputy Registrar certified that on December 3, 1998 Judgment was signed and entered in this Honourable Court in favour of [REDACTED] and [REDACTED] (Applicants) against Tancam Consulting Limited (Respondent) for \$33,250.15 for damages and costs at 6.0% interest per annum and that no satisfaction of said Judgment appears in the Records of this Court. (Exhibit No. 9)
- (i) Copy of Order of the Court of Queen's Bench Judicial Centre of Regina under the Reciprocal Enforcements of Judgment Act dated Septmeber 23rd, 1999 it was ordered that [REDACTED] and [REDACTED] recover from Tancam Consulting Limited the sum of \$33,250.15. (Exhibit No. 10)
- (j) Copy of letter dated March 25, 2002 to Tancam Consulting Limited advising of the documents that [REDACTED] and [REDACTED] will be submitting as evidence at the Surface Rights Board Hearing scheduled for April 12th, 2002 in Waskada, Manitoba. (Exhibit No. 10)

Tancam Consulting Limited did not appear to provide evidence at the hearing.

The Board is of the opinion that sufficient evidence was submitted which would allow them to make the decisions for which the Lessors had requested.

Therefore, all evidence considered, it is the Order of the Board

THAT:

- (a) Tancam Consulting Limited is the Licensed Operator pursuant to *The Oil and Gas Act and Regulations* and further that Tancam Consulting Limited is the Operator in accordance with the definition of an "Operator" pursuant to Part 1, of *The Surface Rights Act*, which reads as follows:

"Operator" means a person who has the right to conduct any operation for the purpose of exploring for a mineral, or for drilling a well for the production of a mineral, and includes any person who has the control and management of a well.

- (b) [REDACTED] and [REDACTED] are the Lessors of S.W.D. 1-28-1-24 W.P.M., L.S.D. 2-33-1-24 W.P.M., and L.S.D. 8-33-1-24 W.P.M.

Therefore, Tancam Consulting Limited must compensate the Lessors for Right of

Entry in accordance with the Surface Lease Agreements dated June 2nd, 1965 with Amending Agreement dated November 29th, 1983 in respect of L.S.D. 8-33-1-24 W.P.M.; Surface Lease Agreement dated January 12th, 1965 with Amending Agreement dated November 29th, 1983 in respect of L.S.D. 2-33-1-24 W.P.M. and L.S.D. 2-33-1-24 W.P.M. (battery); Surface Lease Agreement dated August 1st, 1972 with Amending Agreement dated November 29th, 1983 in respect of S.W.D. 1-28-1-24 W.P.M. and/or has carried out the Abandonment and Rehabilitation procedures under *The Oil and Gas Act and Regulations* as well as Restoration under *The Surface Rights Act* of all of the aforementioned sites.

- (c) In accordance with the Amended Surface Lease Agreements the annual compensation was to be paid in advance of each anniversary date of the lease, which is June 2nd, for L.S.D. 8-33-1-24 W.P.M.; January 12th, for L.S.D. 2-33-1-24 W.P.M.; and August 1st, for L.S.D. 1-28-1-1-24 W.P.M. The Board cannot change the ruling of the Default Judgment dated December 3rd, 1998 in Suit No. 98.02.182 CI. Therefore, Tancam Consulting Limited is liable for the outstanding annual surface lease compensation as well as the Default Judgement order as follows:

Calculation of Annual Surface Lease Compensation as per amended Surface Lease Agreements dated November 29th, 1983 and Default Judgment Order dated December 3rd, 1998 as follows.

<u>Location</u>	<u>Year</u>	<u>Owing</u>	<u>Anniversary Date</u>
Court Order	No. 98.02.182 CI	\$33,250.15	Dec. 3 rd /98
8-33-1-24	1998 to 2002 Incl	6,800.00	June 2 nd
2-33-1-24	1998 to 2003 Incl	10,000.00	Jan. 12 th
1-28-1-24	1998 to 2002 Incl	6,800.00	Aug. 1 st


- (d) It is further ordered by the Board, pursuant to subsection 25(4) of *The Surface Rights Act*, interest, compounded annually be paid by Tancam Consulting Limited to [REDACTED] and [REDACTED] as follows:

<u>Location Days</u>	<u>Interest Rate %</u>	<u>Days</u>	<u>Amount</u>	<u>Interest</u>
Court Order				
98.02.182 CI	6.00	1,639	\$33,250.15	\$9,962.58
8-33-1-24	6.00	1,458	6,800.00	1,080.62
2-33-1-24	6.00	1,599	10,000.00	1,531.79
1-28-1-24	6.00	1,398	6,800.00	1,007.27

- (e) The Board is also of the opinion that the Lessors are entitled to reimbursement of costs incurred. Subsequently, the Board allows the Lessor the sum of \$800.00 for their costs in preparing for the hearing held on April 12th, 2002

All of the above amounts shall be paid by the Lessee in full on or before May 3rd, 2002 with interest accrued at prime plus 2% after the applicable due date,

Dated this 24th, day of April, 2002



 Presiding Member