**File No. 1592**
**Board Order # 1592-1**

**December 18, 2008**

**MEDIATION AND ARBITRATION BOARD**

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT, R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF
Section 8, Township 88, Range 18, W6M, Peace River District
(The "Lands")

BETWEEN:

Roseland Creek Farms Ltd.

(APPLICANT)

AND:

Pengrowth Energy Trust

(RESPONDENT)

**BOARD ORDER**

Rose Prairie Road
263 Road
Hiebert Rd S
File No. 1592
Rose Prairie Road
Pengrowth Energy Trust location
Rose Prairie Rd

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| Heard by written submissions: | From the Applicant dated November 6 and December 1, 2008<br>From the Respondent dated November 19, 2008 |
| Panel: | Darrel Woods |

## INTRODUCTION

[1] This is an application by both parties for payment by the other party of their costs relating to mediation.

## BACKGROUND

[2] Roseland Creek Farms Ltd. (Roseland) applied to the Board for mediation and arbitration pursuant to section 16(1)(b) of the *Petroleum and Natural Gas Act* (*PNG Act*) in July 2007 seeking damages from Respondent, Pengrowth Energy Trust (Pengrowth), related to an oil spill and the alleged construction of a landfarm facility in the absence of a land use agreement between the parties for the landfarm.

[3] Due to the absence of the landowner from the country, I conducted the mediation by telephone conference. During the pre-mediation telephone conferencing, both parties indicated they would seek costs from the other party.

[4] On October 31, 2008 I made an order refusing further mediation and retaining jurisdiction to deal with the issue of costs relating to the mediation.

## THE RULES

[5] Rule 10(7) of the Rules of the Mediation and Arbitration Board provides that the mediator may make an order for a party to pay costs to another party or to the Board. Rule 16(3) requires that an application for costs be in writing, and include:

(a) reasons to support the application;
(b) a detailed description of the costs sought; and
(c) copies of any invoices or receipts for disbursements

[6] Rule 16(4) provides that in making an order for the payment of a party's costs, the Board will consider

(a) the reasons for incurring costs;

(b) the contribution of counsel and experts retained;
(c) the conduct of a party in the proceeding;
(d) whether a party has unreasonably delayed or lengthened a proceeding;
(e) the degree of success in the outcome of a proceeding;
(f) the reasonableness of any costs incurred;
(g) any other factor the Board considers relevant.

## THE PARTIES' CLAIMS FOR COSTS

[7] Roseland's claim dated November 6, 2008, sets out a table with the date, description of activity and length of time spent on each activity. I understand this claim reflects time spent by Roseland's shareholders rather than that of third parties. The total claim is $5,670 calculated as 94.5 hours at $60.00 an hour.

[8] Pengrowth's claim under cover of letter dated November 19, 2008, is for $6,316 being the amount charged by a third party consultant, W6M Land Ltd. (W6M). Pengrowth provides 4 accounts from W6M setting out the services incurred for a land consultant and land administrator whose time is charged at $85 and $75 an hour respectively. The accounts include nominal disbursements of less than $30 and GST. Pengrowth indicates it is not submitting a claim at this time for the participation of in house legal counsel and various employees in the matter although Pengrowth estimates these in house costs at approximately $6900 at $60 an hour.

[9] In response to Roseland's claim Pengrowth submits:
(a) Roseland initiated the action without even minimal research conducted to substantiate the claim;
(b) Pengrowth has had to provide the documentation and evidence to educate the Board and Roseland on the accepted practice of soil remediation;
(c) costs in this matter are different from when an entry is required; and
(d) Roseland did not meet the requirements of Rule 16(3) in that it did not provide:
    (i) reasons to support the application,
    (ii) detailed description of costs sought and
    (iii) copies of invoices or receipts for disbursements.

[10] Pengrowth asks that Roseland's claim for costs be dismissed.

[11] In response to Pengrowth's claim, Roseland submits that, like Pengrowth, it has incurred other costs not claimed in this application. Roseland questions Pengrowth's need to employ third party agents when Pengrowth has its own staff who could deal with this case.

## ANALYSIS AND DECISION

[12] I will first address the factors listed in section 16(3) of the Rules.

[13] Pengrowth submits it was necessary to engage the services of W6M to compile lease history and analyze the current regulations and landowner documents, and to participate in conference calls to establish the claim put forward by Roseland was unnecessary and unjustified. I find this explanation together with the details in the invoices submitted, provides sufficient reasons in support of Pengrowth's application.

[14] Roseland has prefaced its list of costs with an application form stating "Please see 'Statement of Claim' and issues discussed in previous mediation hearings." I find, for the purposes of this mediation, this reference to the claims that Roseland has made in conjunction with the details of time spent provide sufficient reasons in support of Roseland's application.

[15] Each party has provided a description of the items for which it is seeking costs.

[16] Pengrowth submits invoices for the costs it has incurred for third party services. There is no need for Roseland to do the same as Roseland has not claimed for third party services, only for those of its own shareholders, nor has it claimed disbursements.

[17] With respect to the details, Roseland's application sets out the date of an event for which a charge is made, a description of the activity and the amount of time associated with that activity. It has at least as much as detail as that provided by Pengrowth. In my opinion the descriptions of both parties are sufficient for this application.

[18] Rule 16(4) sets out the factors I must consider in determining whether either party should be required to pay all or part of the costs incurred by the other.

Reasons for incurring Costs

[19] In its letters of November 19, 2008, Pengrowth argues that it has had to incur costs to establish that the claim of Roseland was "unnecessary and unjustified" and that "...throughout the Mediation process it has been Pengrowth Corp. providing all the documentation and evidence..."

[20] Each party has had to educate themselves, the Board and each other about the circumstances resulting in and arising out of Roseland's claim. They have needed to respond to and be prepared to participate in the related Board processes including pre-hearing conferences and mediation sessions. While it may have been possible for Pengrowth to have used 'in house' expertise for its services, presumably there would have been costs associated with using these resources.

Contribution of counsel and experts

[21] Neither party presented costs for the use of counsel. Pengrowth claimed to use the services of W6M staff owing to their knowledge of some of the subject matter, but the staff did not present evidence as independent experts.

Conduct of a party

[22] There was no element in the conduct of either party that would have a bearing on costs.

Unreasonable delay or lengthening of proceeding

[23] In my opinion, neither party has unreasonably delayed or lengthened the mediation process.

[24] There were some delays due to rescheduling when Roseland's representative had technical difficulties in communicating but these were events beyond Roseland's control.

[25] By fax dated January 6, 2008 Roseland, for specified reasons asked that the mediation process be placed on hold. This was in part to have soil and water samples taken after spring break up to provide more information about the state of the contamination from the spill. By letter dated January 8, 2008 Pengrowth stated that it wanted to proceed with the mediation. My minutes of the telephone conference held January 24, 2008 indicate that the parties agreed that they would attempt to resolve outstanding issues between them by email communications.

[26] By letter dated June 26, 2008, Pengrowth, in response to an inquiry from the Board as to the status of the matter, indicated that it wished to proceed. There appears to have been a delay of approximately two weeks in the Board being able to communicate with Roseland for purposes of setting up a pre hearing conference, but no evidence of substantive delay.

[27] The application took some time to get to mediation as the Board raised some jurisdictional issues.

Degree of success

[28] This application did not resolve at mediation; in a sense, neither party has been successful. At the pre-hearing conference of September 11, 2008 Roseland advised that it would not be providing evidence relating to the issues of damages to land outside the leased area or groundwater contamination. I determined the Board did not have jurisdiction to deal with an issue with respect to whether there had been a change of use under the lease.

Reasonableness of costs

[29] I note that in terms of the time charges presented to the Board, Roseland listed 94.5 hours and Pengrowth listed 69.3 hours. The total costs sought by each party are quite similar.

Other relevant factors

[30] There are no other factors that in my opinion would favour the claim for costs of one party over the other.

Conclusion

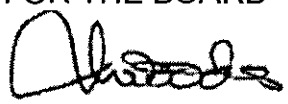
[31] In the circumstances, I find that each party should bear their own costs of the mediation.

**ORDER**

[32] Each party shall bear its own costs of the mediation process.

Dated: December 18, 2008

FOR THE BOARD



Darrel Woods
Board Member

**File No. 1592**
**Board Order # 1592-2**

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**April 15, 2009**

**MEDIATION AND ARBITRATION BOARD**

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT, R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF
Section 8, Township 88, Range 18, W6M Peace River District
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BETWEEN:

Roseland Creek Farms Ltd.

(APPLICANT)

AND:

Pengrowth Energy Trust

(RESPONDENT)

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**BOARD ORDER**

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| Heard: | By Written submissions<br>From Applicant received February 16, 2009 & March 13, 2009 & March 17, 2009<br>From Respondent received February 27, 2009 |
| Panel: | Simmi K. Sandhu |
| Submissions: | Hans-Joachim Kopp for the Applicant<br>Sean Lacroix, for the Respondent |

## INTRODUCTION

[1] Roseland Creek Farms Ltd. operates a farm on lands that it owns and that are located in the Peace River Regional District (the "Lands").

[2] The Respondent, Pengrowth Energy Trust ("Pengrowth") leases a portion of the Lands for the drilling, development and operation of an oil well facility, including a well head, piping, and ancillary uses.

[3] In July, 2007, Roseland applied to the Board pursuant to section 16(1)(b) of the *Petroleum and Natural Gas Act* (the "Act") seeking damages against Pengrowth related to an oil spill that occurred in 2002 and to the construction of a land farm facility without permission.

[4] On October 31, 2008, Mr. Darrel Woods, mediator for the Board, conducted a mediation and issued an order refusing further mediation, resulting in this arbitration, held by written submissions.

## BACKGROUND:

[5] On September 30, 1998, Roseland entered into a surface lease (the "Lease") giving Pengrowth right of entry and access to leased areas on the Lands for the development and operation of an oil well, and incidental uses.

[6] On June 22, 2002, an oil spill occurred as result of a pop tank overflow at Rigel 15-8-88-18 WGM. Approximately 70 square metres of primarily produced oil was spilled in to the leased area. According to a letter dated October 17, 2002, from Pengrowth to the Ministry of Environment, Land, Parks, spill containment was initiated immediately after the spill and the contaminated topsoil and subsoil excavation proceeded on June 29, 2002. Approximately 1000 $m^3$ of soil was removed and stockpiled for testing and remediation. In early October 2002, Pengrowth proceeded with construction of a land farm to remediate the hydrocarbon contaminated soils, which land farm was positioned along the east boundary of the surveyed lease outside of the tear-dropped portion of the lease.

[7] A Certificate of Restoration has not been applied for or granted. However, remediated topsoil and subsoil has either been replaced up to the teardrop berm surrounding the oil well facility or conserved for replacement.

## THE LEGISLATION:

[8] Section 16(1)(b) of the *Act,* provides that a person may apply to the board for mediation and arbitration if the person is the "...owner of land that is entered, occupied or used for a purpose referred to in paragraph (a), and damage to the land or suffering to the owner is caused by the entry or occupation".

[9] Under section 20(3)(b) of the *Act,* the Board must determine "the amount of money to be paid to a person...for damage caused, up to the date stated in a certificate of restoration, for the entry, occupation or use..."

[10] Section 21(1) sets out some factors the Board may consider in determining an amount to be paid under this application, including "temporary and permanent damage from the entry, occupation or use." The factors in section 21(1) do not speak to speculative future loss or damage, and compensation under the *Act* is only intended to compensate for loss or damage that has occurred or is reasonably probable and foreseeable; it is inappropriate to make a speculative award *(Arc Petroleum Inc. v. Piper*, MAB Order 1598-2).

## ISSUE:

[11] The issue for the Board is whether there is damage to the land or suffering to the owner caused by the entry or occupation by Pengrowth, and in particular by the 2002 oil spill and land farm activity.

[12] If so, what is the appropriate compensation for that damage or suffering, and based on what criterion? I have not been referred to any prior decision on this matter or applicable legal principles that would govern the determination of these issues.

## EVIDENCE AND ANALYSIS:

[13] Roseland claims compensation for damage to the land caused by the use and occupation of the leased lands by Pengrowth, namely damage and destruction of the topsoil and subsoil as a result of the 2002 oil spill and land farm activities. In addition, Roseland makes claims for the reimbursement of costs for the suffering of the owner, legal/professional fees, destruction of a fence opposite the entrance, weed control, inconvenience for increased traffic for the land farm,

and other costs. Unfortunately, many of these claims are not clearly delineated in Roseland's submissions and are confusingly presented. The major claims for damages are as follows:

**Damage to Land:**

[14] Roseland says that all topsoil on 3.73 acres was destroyed and that the oil contamination was soaked and washed into the ground by rain, which also resulted in damage to the subsoil. No evidence is provided by Roseland, other than photographs, to support this claim.

[15] Roseland quantifies damages for soil contamination based on the assumption that the topsoil and subsoil need to be replaced and provides information from what appears to be a landscaping website by Pyke Farms. According to the website, the volume quantity for topsoil for an area of 4,800 inches wide x 4,800 inches long, at 10 inches thick at $28 per cubic yard costs $138,272. However, no other information concerning this website or where the information comes from is provided. For example, the website allows one to enter the cost value per cubic yard of soil (which Roseland says is $28.00), however, there is no evidence provided on where that $28.00 comes from or what that cost is based upon. Also, Roseland uses a 10 inch thickness for topsoil, however, evidence from Pengrowth (in the form of a pre-site assessment report) indicates that there was 6.25 inches of topsoil that existed on the leased area prior to the construction of the well site and the oil spill, not 10 inches. Similarly, with the subsoil layer, Roseland quantifies damages at $3,320,593 by using the same inputs, except for the thickness (i.e. 4,800 inches width x 4,800 inches length x 240 inches thick x $28). Again, no supporting evidence for these inputs is provided.

[16] Pengrowth responds that there is no evidence that topsoil was destroyed and says that the oil spill was contained within the tear dropped portion of the Lease where only clay subsoil was affected. Pengrowth argues that Roseland has not suffered any damages on the leased lands unless or until Pengrowth is relieved of its obligations and responsibilities under the Lease, which includes returning the site, at a future date, to acceptable standards as near to the original condition as possible (clause 14 of the Lease). That has not yet occurred as the Lease and the operations are still in place. Pengrowth will assess the topsoil prior the issuance of the Certificate of Restoration and if necessary, will improve or replace it. If that is not done, then there may be a claim for damages at that time.

[17] Pengrowth also argues that there has been no damage to the lands beyond what could be expected in the normal operation of an oil well and that clean up and remediation is a normal part of the oilfield operations.

[18] Also, in its submissions, Roseland argues that the annual consideration paid under the Lease is for use of the leased area by Pengrowth for the drilling and operation of a single well. Roseland says that instead, Pengrowth had approximately 4 metre deep excavations in the leased area, with resulting damage to the soil layer, subsoil and the whole natural layer was mixed, turned over and is no longer in the same original state.

[19] In response, Pengrowth says that the excavations were as a result of its mitigation steps, and presumably, part of remediation efforts. Pengrowth denies any damage to the topsoil or subsoil and says that damage or harm suffered is for Pengrowth's account as it is responsible for the leased area, and, as a result, Roseland does not suffer damage. Also, the development of a well site requires a common oil field practice stripping of the topsoil, building of a road, well and other operational facilities on top of the subsoil.

[20] Roseland also claims that the land has lost value as a result of the oil spill. No evidence in support is provided. Pengrowth responds that this claim is unsubstantiated and that the oil spill was part of the normal lease operations. It points to the 2007 to 2009 property assessments as evidence that there has not been a diminishment in the land value. Finally, Pengrowth says that the effect on the value of the land will not be a factor until the Lease expires and if the land is not returned in substantially the same condition as prior to construction of the oil well.

Decision:

[21] There is no dispute that an oil spill occurred in 2002 and resulted in soil contamination, which Pengrowth contained and remediated. Therefore, there was some damage to the leased areas due to the occupation and use by Pengrowth.

[22] The environmental reports filed set out the containment and remediation efforts, which included the excavation of the contaminated topsoil and subsoil, testing, and bioremediation by way of the land farm facility. After remediation had occurred, the soil was largely replaced within the leased area. The environmental report by Meridian Environmental Inc. dated February 22, 2008 provides some information on the testing results and concludes that "...based on the analytical data presented in this report, the contaminants of concern have been reduced to meet the applicable standards."

[23] Therefore, although there was temporary damage to the land due to the oil spill and the construction of the land farm, that damage has been mitigated and remediated such that the land and the soils have been cleaned to applicable standards and replaced within the leased area. There is no evidence provided that the soil or subsoil continues to be contaminated or damaged or, in other words, that there is permanent or continuing damage to the land.

[24] There may be compensation payable to Roseland as a result of temporary damage to the land as contemplated by section 21(1)(d) of the *Act*. However, there is insufficient evidence provided on how that damage should be compensated or the quantification of compensation. Roseland has provided information on the potential cost to replace the topsoil and subsoil, however, there is no evidence provided that the soil needs to be replaced at all as the soil has been remediated. As for Roseland's calculation on the cost to replace, no evidence is provided on how that calculation was arrived at or the basis for the cost used. Therefore, I cannot rely on the evidence of potential costs of soil replacement for the purposes of determining compensation.

[25] In any event, the cost to replace the soil with new topsoil and subsoil would result in an over compensation for any temporary damage because the soil has been remediated and replaced to applicable standards. Also, Roseland is claiming a total of $3,458,865 for replacement of both the topsoil and subsoil, well in excess of the value of the entire property as evidenced by the 2008 property assessment for the Lands at $445,000. The property assessment provides some notion of the value of the Lands. It is incongruous to compensate Roseland for damage to the leased area at an amount that is approximately 8 times the value of the entire property. As stated by the Court in *Western Industrial Clay Products Ltd v. Mediation and Arbitration Board*, 2001 BCSC 1458, the Board exceeds its jurisdiction if it orders an amount to be paid that exceeds the loss sustained.

[26] As for the claim that the oil spill affected the value of the land, no evidence is provided to substantiate this claim. Roseland does not submit any evidence to show what the value of the Lands are. Although, I have before me the 2007 and 2008 property assessments of the Lands, which provides some evidence of value, there is no evidence to show how those assessed values were derived (i.e. whether part of the Lands valued as farm land based upon statutory farm class rates), or what the value of the leased areas are in relation to those assessments. Therefore, I have insufficient evidence to show what the unimpaired value of the land is and no evidence of what effect the contamination and/or remediation has had on that land value.

[27] There is no evidence provided that Roseland has incurred or will incur any costs to further remediate and clean up the soil. Roseland cannot claim the loss for use of the contaminated soil as the contaminated area was part of the leased area used and occupied by Pengrowth and could not be used by Roseland in any event.

[28] Some of Roseland's claims relate to the inconvenience and increased traffic resulting from the remediation efforts. However, Roseland is being compensated for the entry, occupation and use by Pengrowth of the leased areas by way of the annual and one time payments in the Lease, and subsequent renewal. In

addition, the parties agreed to the sum of $7,071.00 for damages to the leased area, inconvenience and disturbance to Roseland, and loss of use and severance of the leased area (clause 2 of the Lease). There is no evidence before me that would substantiate Roseland's claim that it should receive an additional award for these heads of compensation.

[29] As I do not have evidence on which to base a determination of an amount for compensation for any damage to the land or loss of land value as a result of the oil spill and remediation efforts, I dismiss Roseland's application.

**Suffering to Owner & Miscellaneous Claims:**

[30] Roseland submits that its reputation as an organic farm has been affected by the oil contamination, however, again, no evidence is provided to substantiate this claim. There is no evidence provided that Roseland is an organic farm or what crop Roseland is farming, or that the oil spill has had an effect on its operations or resulted in a loss of profit or crops as a result. As a result, I cannot make a determination that there has been a loss suffered to Roseland's reputation that can be compensated for.

[31] Roseland argues that excavator work, fertilizing and chemicals were used in the land farm operation without its permission. Pengrowth responds that permission of Roseland is not required for the use of any equipment in the leased area and that Pengrowth has the right to conduct any and all operations related to or incidental to the oil and gas operations on the lease, which includes the land farm operation. I agree that oil spills are incidental to the "development, production and storage of petroleum..."(clause 1 of the Lease) and a risk of operating an oil well. If an oil spill occurs, it is the obligation of the oil company under the *Act*, and regulations to act quickly to mitigate the contamination and remediate the contaminated area. The construction and operation of a land farm is part of that obligation and incidental use. If it is not, then the issue becomes one of whether Pengrowth has breached the contractual provisions of the Lease by using the leased area for a use not contemplated by the Lease and without properly notifying the owner under clause 3 of that change in use. However, whether a breach of contract has occurred is not a matter for the Board. Rather, the question is whether or not the owner has suffered as a result of Pengrowth's occupation and use of the leased area and if so, what amount should be awarded to compensate for that. What is the loss or suffering to the owner due to the lack of permission for or notification of the land farm? There is no evidence before me of such a loss or suffering to Roseland, either in terms of damage to its operations, loss of profit, loss of use of the rest of its property, loss of crop value, etc.

[32] In addition, Roseland claims that it was not notified or provided information by Pengrowth of the 2002 oil spill. Pengrowth responds that it complied with the requirements of the *Act* (section 99) by posting the appropriate signage and that

notification to the landowner is not required if the spill is within the leased area. Subsequently, in July, 2003, Pengrowth requested and was granted by Roseland, an agreement for additional workspace for the land farm. At the same time, the rent was renegotiated with Roseland. Although, there is no requirement in the Lease that the landowner be notified in the event of an oil spill, it would have assisted the relationship between the parties for Pengrowth to have promptly notified Roseland of the event and to keep Roseland apprised of its remediation operations. However, as set out above, there is no evidence provided to suggest that Roseland has suffered as a result of the lack of notification; or, if it has suffered, there is no evidence to quantify what compensation should be provided for any suffering.

[33] Roseland says that it has suffered from the inconvenience and stress of the oil spill and dealing with an uncommunicative company. It seeks reimbursement of $10,000 for legal costs/professional fees (no evidence is provided of what type of legal costs and professional fees or why they were incurred, nor is any supporting documents/invoices provided), $6,900 for extra management fees (no evidence provided to support this amount or how it is calculated), $480 for computer, stationary, telephone, fax (no evidence is provided to support this amount, why it was incurred, or how it is calculated). Pengrowth responds that it, too, had difficulty communicating with Roseland on a regular basis as they only had an answering service as Roseland's telephone contact and address for delivery of correspondence. It seems from the evidence that both parties have been frustrated in communicating with the other, therefore, both parties share some responsibility for the difficulty with communication. I am unable to find that this amounts to suffering to the owner that should be compensated for, particularly, as Roseland's claims for professional and management fees and costs are unsubstantiated and because Roseland provides no explanation as to why and how these fees and expenses were incurred or how they are calculated.

[34] Roseland also says that the work of the excavators has brought contaminated seeds onto the Lands resulting in a Canada thistle and chamomile infestation. It asks for $3,600 for hand picking chamomile. As for the infestation, Pengrowth argues that chamomile is found throughout the area and these seeds are dormant in the Lands. Pengrowth has a vegetation control program and is responsible under the Lease for monitoring and controlling weeds within the leased areas. There is no evidence provided that the thistle or chamomile infestation has been caused by the activities of the excavators or of Pengrowth in general. In addition, there is no explanation provided as to how the $3,600 claim has been calculated or what it is based on.

[35] Roseland asks for compensation for damage to the fence opposite the entrance of the wellsite caused by the contractor's machines. Pengrowth responds that it is not aware that a fence exists at the entrance of the wellsite nor is it aware of any damage. If the damaged fence is within the leased area, it was installed by Pengrowth and therefore, Roseland has not suffered any harm.

Although Roseland has provided two photographs of the fence damage, the photographs are black and white copies and unreadable. I am unable to make out the fence, let alone any damage. Even if the photographs did adequately show the damaged fence, there is no evidence that the damage was caused by the operation of Pengrowth or its contractors. It is unclear as to who erected and owns the fence. According to the terms of the Lease, Pengrowth has an obligation to repair all fences it may damage. If the damage is caused by Pengrowth, then they should repair it. However, that evidence is not provided.

[36] Finally, Roseland says that it has suffered increased inconvenience due to additional heavy equipment and traffic, and that it has had to use more weed control as a result. Roseland requests $16,000 for the increased traffic, etc. ($2,000 per acre for the years 2002 to 2009– with no evidence provided on what the $2,000 is based on). Pengrowth responds that they have the right to access the leased area and that it conducts a regular weed inspection and control program. Again, as with other items claimed, there is no evidence provided to specify how Roseland has been inconvenienced or what loss or damage Roseland has suffered. Nor is there any evidence provided on what the $16,000 claim is based on, or how $2,000 per acre has been arrived at.

[37] Many of the items that Roseland has requested compensation for, such as weed control, inconvenience due to the use of equipment and traffic, are matters that are compensated for within the terms of the Lease. As indicated, Roseland receives annual payment for the entry, occupation, and use by Pengrowth to the leased area, which includes compensation for damages and inconvenience. Weed control is regulated within the terms of the Lease as well. Roseland is asking for compensation for factors that have already been compensated for by the Lease, such as the compulsory aspect of the occupation and use and the ongoing inconvenience and loss of intangible rights due to that occupation and access to the leased area. If Roseland believes the compensation is insufficient, then this can be dealt with at the time of rental renegotiations, which has already occurred in 2003 (after the oil spill had occurred and land farm facility and remediation efforts were in operation).

## CONCLUSION

[38] There is insufficient evidence provided for me to conclude that there has been damage to the land or suffering to the owner as a result of Pengrowth's occupation and use of the leased areas for which compensation should be awarded.

## ORDER

[39] The Board dismisses the application of Roseland.

Dated April 15, 2009

FOR THE BOARD

Simmi K. Sandhu.
Panel Chair