NOTICE OF DECISION **No. (0111) 002-2010**

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T2R 1L9	T5J 4G8
File No.: 5596GJL	File No: 72,470-0040

This is the M.D. of Foothills Composite Assessment Review Board (CARB) decision of a Preliminary Matter rendered on August 11, 2010 for the 2010 assessment of roll number 1928195000.

Before: H. Kim, Presiding Officer

Cargill Limited, represented by Wilson Laycraft – Complainant

vs.

M.D. of Foothills, represented by Brownlee LLP - Respondent

Background

This hearing proceeded on written submissions only on agreement by the parties.

The original hearing for this complaint was set for September 21, 2010. The parties agreed that five days were required for the merit hearing and agreed to request that the hearing be rescheduled. The parties agreed to suggest that the rescheduled merit hearing occur in either the week of November 29, 2010 or December 6, 2010.

The parties were not able to agree on the revised disclosure dates. The legislated disclosure dates for a November 29, 2010 hearing are:

Complainant's disclosure:	October 18, 2010
Respondent's disclosure:	November 15, 2010
Rebuttal:	November 22, 2010

Preliminary Issues:

1. What is the rescheduled date for the hearing that was originally scheduled to begin on September 21, 2010?

2. What is the disclosure timeline to be followed by the parties?

Respondent's position

The Respondent suggested the timeline in the legislation, *Matters Relating to Assessment Complaints Regulation*, Alta. Reg. 310/2009 (MRAC), contemplates 70 days notice of the merit hearing date. In view of the greater notice period, assuming notice is provided to the parties on July 23, 2010, the following disclosure timeline was proposed:

Complainant's disclosure:	September 17, 2010 (56 days after notice of merit hearing)
Respondent's disclosure:	November 12, 2010 (56 days after Complainant's disclosure)
Rebuttal (if any):	November 22, 2010 (7 days before merit hearing)

This timeline would meet the disclosure requirements set out in s. 8(2) of MRAC and provide equal time to the Complainant and Respondent to prepare their submissions for the hearing, which is the spirit of the current disclosure provisions in MRAC s. 8(2).

This additional time is required because the Respondent does not know the case to be met until the Complainant's evidence is reviewed. The Respondent's submissions are more than merely defending an assessment; they must respond to the evidence submitted by the Complainant. The Respondent does not, at this stage, know what evidence the Complainant will enter in support of their case. It is only fair to provide the Respondent with the same amount of time to prepare their evidence as is given to the Complainant because the same amount of effort is required by both parties.

Complainant's position

The Complainant did not agree with the submissions of the Respondent and proposed that the disclosure dates set out under MRAC were sufficient. The Complainant disputed that the Respondent requires as much time as the Complainant to prepare their submissions because the Respondent has possession of any and all knowledge and details with respect to the assessment. The Respondent's role in this hearing is to merely defend their assessment, which does not require a great deal of time to prepare since the bulk of the work was done in preparing the assessment.

Earlier legislation provided the Respondent with only 14 days in which to prepare their submissions. See the *Assessment Complaints and Appeals Regulation*, Alta. Reg. 238/2000, s. 9(2)(a)(ii). The new legislation, MRAC, provides the Respondent with 28 days to prepare and disclose their submissions in s. 8(2)(b), doubling the amount of time available to the Respondent to compile their evidence. There is no reason to provide the Respondent with any time in addition to what is required by s. 8(2)(b) of MRAC.

However, the Complainant was prepared to compromise with respect to additional time, if the Respondent could provide details with respect to the machinery and equipment assessment and the backup for the building and structure assessment. The Complainant suggested the following compromise for the disclosure timeline:

Complainant's disclosure:	October 5, 2010
Respondent's disclosure:	November 10, 2010
Rebuttal:	November 22, 2010

The Complainant confirmed in a further response that the information requested with respect to the machinery and equipment assessment, as well as the backup for the building and structure assessment, had been received from the Respondent.

Decision

1. The rescheduled hearing will begin on November 29, 2010.

2. The disclosure timeline to be followed by the parties is as follows:

Complainant's disclosure:	October 5, 2010 (electronic copy) October 13, 2010 (paper copies)
Respondent's disclosure:	November 10, 2010 (electronic copy) November 18, 2010 (paper copies)
Rebuttal, if any:	November 22, 2010 (electronic copy) November 29, 2010 (paper copies to be delivered at commencement of the hearing)

All evidence is to be disclosed to the other party and the CARB by 4:00 p.m. on the dates listed above. The parties should note that the CARB requires five paper copies.

Reasons

Section 15(1) of MRAC specifies that, except in exceptional circumstances as determined by an assessment review board, an assessment review board may not grant a postponement or adjournment of a hearing. The CARB is satisfied that the complexity and magnitude of this case and the need for five hearing days for the merit hearing provides for an exceptional circumstance that would justify postponement to a date agreeable to the parties. The parties agreed that either November 29 or December 6, 2010 were acceptable dates upon which to begin this hearing. The *Municipal Government Act*, R.S.A. 2000, c. M-26, s. 468(1) requires that the CARB render a

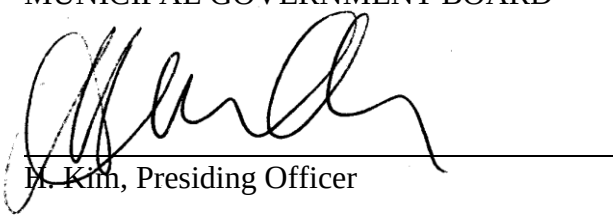
written decision within 30 days of the last day of the hearing or before the end of the 2010 taxation year, in this instance. The earlier of the acceptable dates will better allow the CARB to meet the requirements of the legislation. Therefore, the CARB orders that the rescheduled hearing begin on November 29, 2010.

With respect to disclosure dates, the practical reality is that the hearing notice will not have been provided until the issuance of this order, therefore the Respondent's timelines are not reasonable. In any event, the CARB does not agree that the intent of the legislation was to provide equal time to both parties. Had that been the intent, MRAC would have had provisions for expanded time for disclosure in cases where parties are notified more than 70 days before the merit hearing date.

In the opinion of the CARB, the timeline suggested by the Complainant is a reasonable compromise which gives the Respondent additional time.

Dated at the City of Edmonton, in the Province of Alberta, this 12th day of August, 2010.

MUNICIPAL GOVERNMENT BOARD



H. Kim, Presiding Officer