

ALBERTA ENERGY AND UTILITIES BOARD

Calgary Alberta

**DECISION TO ISSUE A DECLARATION
NAMING RICHARD YU
PURSUANT TO SECTION 106 OF THE
OIL AND GAS CONSERVATION ACT**

**Decision 2006-006 Errata
Proceeding No. 1423586**

The Alberta Energy and Utilities Board (EUB/Board) issued *Decision 2006-006* on January 31, 2006. The Board has since discovered a clerical error.

In *Decision 2006-006*, Prince Resource Corporation (Prince) is the licensee that has an outstanding debt to the Board and to the Board to the account of the Orphan Well Association. However, throughout the appendix on page 9 of *Decision 2006-006* Prince is erroneously referred to as “Prince Resources Ltd.” as a result of a clerical error. Therefore, the Board approves the correction to the appendix of *Decision 2006-006* for the name of the licensee to read “Prince Resource Corporation.”

This change has been incorporated into the decision that appears on the EUB Web site.

Dated in Calgary, Alberta, on February 7, 2006.

ALBERTA ENERGY AND UTILITIES BOARD

<original signed by>

A. J. Berg, P.Eng.
Presiding Member

<original signed by>

J. D. Dilay, P.Eng.
Board Member

<original signed by>

F. Rahnama, Ph.D.
Acting Board Member



Decision to Issue a Declaration
Naming Richard Yu
Pursuant to Section 106 of the
Oil and Gas Conservation Act

January 31, 2006

ALBERTA ENERGY AND UTILITIES BOARD

Decision 2006-006: Decision to Issue a Declaration Naming Richard Yu Pursuant to Section 106 of the *Oil and Gas Conservation Act*

January 31, 2006

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary Alberta

DECISION TO ISSUE A DECLARATION NAMING RICHARD YU PURSUANT TO SECTION 106 OF THE *OIL AND GAS CONSERVATION ACT*

**Decision 2006-006
Proceeding No. 1423586**

1 DECISION

The Alberta Energy and Utilities Board (EUB/Board) has decided to issue a Declaration Naming Richard Yu as a person directly or indirectly in control of Prince Resource Corporation (Prince), pursuant to Section 106 of the *Oil and Gas Conservation Act (OGCA)*.

2 BACKGROUND

A division (the Notice panel) of the Board comprising Presiding Member G. Miller and Acting Board Members D. Larder and E. Shirley was appointed to determine whether to issue a Notice of Intention to Issue a Declaration Naming Richard Yu pursuant to Section 106(1) of the *OGCA*.

The Notice panel reviewed documents relating to Prince's contraventions and failures to comply with Board Orders, as shown in Table 1. The Notice panel also reviewed documents indicating that Richard Yu was a person directly or indirectly in control of Prince and found that these documents constituted *prima facie* evidence of the contraventions of Prince and of Richard Yu being a person directly or indirectly in control of Prince.

Based on these findings, the Notice panel decided to issue a Notice of Intention to Issue a Declaration Naming Richard Yu (Notice) under Section 106 of the *OGCA* on September 9, 2005. Attached to the Notice as Attachment A were copies of the 42 documents reviewed by the Notice panel relating to Prince's contraventions and failures to comply and documents indicating that Richard Yu was a person directly or indirectly in control of Prince. These documents included Abandonment Orders and Abandonment Cost Orders dating from 1998 to 2005, a Miscellaneous Order for an unpaid security deposit dated October 16, 2002, Historical Alberta Corporate Registry searches, a Prince Annual General Meeting Information Circular, and correspondence from Mr. Yu to the EUB. In addition, Attachment A contained two EUB decisions, *Decision 2003-029* and *Decision 2002-053*, relating to Abandonment Cost Orders issued against Prince.

Table 1. Contraventions and failures of Prince

Order Type	Order No.	Date	Licence No.	Surface Location	Description
Abandonment	AD 98-9	26-Feb-98	0130816	08-351- 75-18W5	Failing to obtain approval for use of the well for injection purposes.
Abandonment	AD 98-9 AD 98-9A AD 98-9B AD 98-9C	18-Jun-98 04-Jan-99 05-Jul-99	0130816	08-31-75-18W5	Well licence suspended and ordered to abandon. Amendments to AD 98-9 as Prince directors were ascertained.
Abandonment	AD 98-14	18-Jun-98	0031081	10-35-75-10W5	Failing to confirm through a successful packer isolation test the integrity of the wellbore. (continued)

Table 1. Contraventions and failures of Prince (concluded)

Order Type	Order No.	Date	Licence No.	Surface Location	Description
Abandonment	AD 1999-358	18-Jun-99	0030121	10-36-75-10W5	Failing to maintain a valid mineral lease.
Abandonment	AD 2000-71	22-Nov-00	0126850	06-4-72-18W5	Failing to maintain a valid surface lease.
Abandonment	AD 2001-14	06-Nov-01	0133581	08-21-74-18W5	Failing to maintain a valid mineral lease and surface lease.
Abandonment Costs	ACO 2001-6	06-Dec-01	00126850	06-04-072-18W5	Costs to abandon 6-4 well AD 2000-71.
Abandonment Costs	ACO 2002-2	21-Jun-02	0031081 0030121 0130816	10-35-075-10W5 10-36-075-10W5 08-31-075-18W5	Costs to abandon 8-31,10-35 10-36 wells AD 98-9,98-14, 199-358.
Abandonment Costs	ACO 2002-2A	29-Jul-02	0031081 0030121 0130816	10-35-075-10W5 10-36-075-10W5 08-31-075-18W5	Change to amount owed by seizing security deposit and adding penalty.
Miscellaneous	MISC 01032	16-Oct-02			Unpaid security deposits - Failure to comply with Section 1.100(2) of the <i>Oil and Gas Conservation Regulation</i> and pay the \$252,625.42 security deposit owed.
Abandonment Order	AD 2003-14	05-Mar-03	0127743	14-21-074-18W5	Failing to maintain a valid mineral lease.
Abandonment Order	AD 2003-26	24-Jul-03	111657	06-29-071-10W5M	Failing to maintain a valid mineral lease.
Abandonment Order	ACO 2003-2	24-Jul-03	0133581	08-21-074-18W5	Costs to abandon 8-21 well.
Abandonment Order	AD 2003-42	18-Nov-03	122184	06-28-075-18 W5	Failure to maintain a valid surface lease.
Abandonment Order	AD 2004-9	29-Sep-04	0042018	06-17-059-02W5	Failing to maintain a valid mineral lease and surface lease.
Abandonment Costs	ACO 2005-1	1-Jun-05	0122184 0111657 0127743	06-28-075-18W5 06-29-071-10W5 14-21-074-18W5	Costs to abandon 6-28, 6-29, 14-21 wells.

The Notice further stated that if any Declaration were issued, the Board may impose such restrictions and sanctions as set out in Section 106(3) of the *OGCA* against Richard Yu and any companies directly or indirectly controlled by Richard Yu as may be appropriate, including

- 1) suspension of any operations of a licensee or approval holder under the *OGCA* or a licensee under the Pipeline Act,
- 2) refusal to consider applications for identification code, licence, or approval from an applicant under the *OGCA* or the Pipeline Act,
- 3) refusal to consider applications to transfer a licence or approval under the *OGCA* or a licence under the Pipeline Act,

- 4) requirement for submission of abandonment and reclamation deposits in an amount determined by the Board prior to granting any licence, approval, or transfer to an applicant, transferor, or transferee, under the *OGCA*, and
- 5) requirement for the submission of abandonment and reclamation deposits in an amount determined by the Board for any wells or facilities of any licensee or approval holder.

In accordance with Subsection 106 (2) of the *OGCA*, the Notice and Attachment A to the Notice were served personally on Mr. Yu on September 13, 2005, as attested to by Fern Schmidt, Process Server. The Notice stated that Mr. Yu had until September 30, 2005, to file a written submission with the Board to show cause why such a Declaration should not be issued and include all supporting evidence.

On September 28, 2005, the Board received an e-mail request from Mr. Yu for an extension of time to file a submission. The Board granted an extension to October 13, 2005, as Mr. Yu wanted to seek legal advice. On October 13, 2005, the Board received a submission by e-mail from Mr. Yu objecting to the issuance of a Declaration against him under Section 106 of the *OGCA*.

A division of the Board (the Declaration panel) comprising Presiding Member A. J. Berg, P.Eng., Board Member J. D. Dilay, P.Eng., and Acting Board Member F. Rahnama, Ph.D., was appointed to conduct this proceeding and determine whether to issue a Declaration naming Mr. Yu pursuant to Section 106 of the *OGCA*.

On January 17, 2006, the Declaration panel wrote to the EUB Corporate Compliance Group requesting a clarification of the outstanding amount of debt owed by Prince Resource Corporation for abandonment costs to the Board and to the Board to the account of the Orphan Well Association. A copy of the request was sent to Mr. Richard Yu. The panel noted that on page 6 of the Corporate Compliance Group Submission dated August 23, 2005, it states that "Prince now owes \$664,477.12 to the Board and \$198,152.38 to the Board to the account of the Orphan Well Association for abandonment costs." However, when the Declaration panel calculated the outstanding amount based on the information set out in the Submission, the amount owed to the Board was \$466,324.74. The Corporate Compliance Group submitted a response on January 23, 2006. Therefore, the Declaration panel considers the close of the evidentiary portion for this proceeding to be January 23, 2006.

3 VIEWS OF THE BOARD

The Declaration panel reviewed Section 106 of the *OGCA*, which states:

Actions re principals

106(1) Where a licensee, approval holder or working interest participant

- (a) contravenes or fails to comply with an order of the Board, or
- (b) has an outstanding debt to the Board, or to the Board to the account of the orphan fund, in respect of suspension, abandonment or reclamation costs,

and where the Board considers it in the public interest to do so, the Board may make a declaration setting out the nature of the contravention, failure to comply or debt and naming one or more directors, officers, agents or other persons who, in the Board's opinion, were directly or indirectly in control of the licensee, approval holder or working interest participant at the time of the contravention, failure to comply or failure to pay.

(2) The Board may not make a declaration under subsection (1) unless it first gives written notice of its intention to do so to the affected directors, officers, agents or other persons and gives them at least 10 days to show cause as to why the declaration should not be made.

(3) Where the Board makes a declaration under subsection (1), the Board may, subject to any terms and conditions it considers appropriate,

(a) suspend any operations of a licensee or approval holder under this Act or a licensee under the *Pipeline Act*,

(b) refuse to consider an application for an identification code, licence or approval from an applicant under this Act or the *Pipeline Act*,

(c) refuse to consider an application to transfer a licence or approval under this Act or a licence under the *Pipeline Act*,

(d) require the submission of abandonment and reclamation deposits in an amount determined by the Board prior to granting any licence, approval or transfer to an applicant, transferor or transferee under this Act, or

(e) require the submission of abandonment and reclamation deposits in an amount determined by the Board for any wells or facilities of any licensee or approval holder,

Where the person named in the declaration is the licensee, approval holder, applicant, transferor or transferee referred to in clauses (a) to (e) or is a director, officer, agent or other person who, in the Board's opinion, is directly or indirectly in control of the licensee, approval holder, applicant, transferor or transferee referred to in clauses (a) to (e).

(4) This section applies in respect of a contravention, failure to comply or debt whether the contravention, failure to comply or debt arose before or after the coming into force of this section.

The Declaration panel notes that the Notice states that if a written submission is received from Mr. Yu in this proceeding, the Board will consider it and determine whether the holding of a public hearing is warranted.

The Declaration panel considered Mr. Yu's submission of October 13, 2005, to determine whether a public hearing was necessary in this matter. The Declaration panel finds that a public hearing is not warranted in this proceeding for the following reasons:

- Mr. Yu has not raised any issues that require testing at a public hearing.
- Mr. Yu has not brought forward any information that contradicts or disputes the information set out in Attachment A to the Notice.
- The purpose of this proceeding is not to reargue the need for abandonment of the wells in question, the amount of abandonment costs, or the circumstances that led to Prince's noncompliance.

- A hearing would not shed any more light on the question of whether Mr. Yu is a person in direct or indirect control of Prince, as the information provided is sufficient for the purposes making a decision.

Pursuant to Section 106 of the *OGCA*, the issues before the Declaration panel are as follows:

- 1) Is Prince the holder of EUB licences and has Prince contravened or failed to comply with a Board Order? Has Prince an outstanding debt to the Board or to the Board to the account of the Orphan Well Association in respect of abandonment costs?
- 2) Is the Declaration panel of the opinion that Richard Yu was a person in direct or indirect control of Prince at the time of the contravention, failure to comply, or failure to pay?
- 3) Is it in the public interest to issue a declaration naming Richard Yu under Section 106 of the *OGCA*?

1. Contraventions, Failures to Comply, and Outstanding Debts for Abandonment Costs

The Declaration panel finds that Prince was the licensee of the wells listed in Table 1 according to the records of the EUB, as reiterated in Attachment A to the Notice. Mr. Yu in his submission does not dispute that the wells were licensed to Prince, but rather admits that the well licences were transferred to Prince in 1996.

The Declaration panel is also of the view that Mr. Yu's claim that the previous licensee made false representations about the 8-31 well, alleging it could be converted into an injector well, and Mr. Yu's argument that the liability for abandoning that well was that of the previous licensee are not material to these proceedings. The fact remains that the 8-31 well licence was transferred to Prince in accordance with the *OGCA* and has continued to be held by Prince. Therefore, any abandonment liability arising from this well was transferred to Prince, and Abandonment Order 98-9 and subsequent amendments to this Abandonment Order clearly state that Prince had to abandon the well in question.

Furthermore, the Board notes that Mr. Yu lists Prince's financial problems, its inability to comply with EUB requirements, such as having to have a valid surface lease and a valid mineral lease for its wells, that Mr. Yu lays the blame at the feet of others, and that Mr. Yu lays the blame on the Board for its inability to find financing to pay its debts. The Declaration panel is of the view that the circumstances outlined by Mr. Yu in his submission do not mitigate Prince's failures to comply with Board Orders or pay its debt to the Board or relieve Prince of its noncompliance or nonpayment of its debt. Section 27 of the *OGCA* dictates that a licensee shall abandon a well or facility when directed by the Board or required by the regulations. Section 3.068 of the *Oil and Gas Conservation Regulations* adds that a licensee must abandon a well when the licensee does not have a valid surface lease or mineral lease. The licensee is not given the choice to abandon based on its circumstances or to delay compliance with an abandonment order due to its financial situation.

Although Mr. Yu argues that the abandonment costs were excessive, the Declaration panel notes that the Board afforded Prince and Mr. Yu opportunities to make representations to the Board on abandonment costs incurred by the Board to abandon Prince's wells. The abandonment costs were upheld in *Decision 2002-53: Prince Resources Corporation, Richard Yu, Review of*

Abandonment Costs Order No. ACO 2000-1 and Decision 2003-29: Prince Resources Corporation, Review of Abandonment Costs Order No. ACO 2001-06 for the reasons set out in those decisions. These proceedings are not an opportunity to reargue the amount of the abandonment costs.

Having considered the above, the Declaration panel finds that Mr. Yu has neither filed any evidence to contradict the information contained in Attachment A to the Notice, nor has he shown through his submission that the information contained in Attachment A was incorrect. The Declaration panel concludes that the evidence before it clearly and unequivocally demonstrates that Prince is the licensee of the wells in question and is in noncompliance with Abandonment Board Orders listed in Table 1. In addition, Prince has an outstanding debt for failure to pay abandonment costs as follows:

Table 2. Abandonment Costs Orders

Well	Most Recent Order	Type	Issued	Noncompliance	Amount Owing
10-35-075-10W5 10-36-075-10W5 08-31-075-18W5	ACO 2002-2A	Abandonment Costs Order	29-Jul-02	Failure to Pay Abandonment Costs	\$165,394.40
06-04-072-18W5	ACO 2001-6	Abandonment Costs Order	6-Dec-01	Failure to Pay Abandonment Cost	\$29,807.31
08-21-074-18W5	ACO 2003-2	Abandonment Costs Order	24-Jul-03	Failure to Pay Abandonment Cost	\$54,858.26
14-21-074-18W5 06-29-074-10W5 06-25-075-18W5	ACO 2005-1	Abandonment Costs Order	5-Mar-03 24-Jul-03 18-Nov-03	Failure to Pay Abandonment Cost	\$397,004.78
Subtotal owed to EUB (in CDN\$)					\$647064.75
Less Garnishment Recovered from Prince					(\$1,896.60)
Orphan Well Association Reimbursement to EUB					(\$198,152.38)
Outstanding Debt to the EUB					\$447015.77
Outstanding Debt to the EUB on account of Orphan Well Association					\$198,152.38
TOTAL OUTSTANDING DEBTS					\$645,168.15

The Declaration panel notes that \$1,896.60 was recovered by the Board through garnishment proceedings against Prince. This amount is deducted from the amount owed. In addition, the Orphan Well Association has reimbursed the Board for the abandonment costs for three Prince wells declared orphans in the sum of \$198,152.38. This sum is deducted from the amount Prince owes to the Board. As a result, Prince owes the Board the amount of \$447,015.77 for abandonment costs and Prince has an outstanding debt to the Board to the account of the Orphan Well Association of \$198,152.38. The total outstanding debt of Prince for abandonment costs is \$645,168.15.

2. Was Richard Yu in Control of Prince?

The Declaration panel reviewed the information contained in Attachment A and Mr. Yu's submission in making a determination as to whether Mr. Yu was a person in control of Prince. The Declaration panel took particular note of EUB *Decision 2002-53* as it relates to one of the Abandonment Costs Order in question in this proceeding. The Board in that decision determined that Mr. Yu was at all material times a person in control of Prince for these reasons:

...Mr. Yu exercised the power to direct the business of Prince; he routinely made policy decisions on behalf of Prince and acted upon those decisions. The Board notes, in that regard, that all of the EUB's contact with Prince was via Mr. Yu; he signed all correspondence and attended all meetings. It was apparently Mr. Yu who arranged the extension on the abandonment orders in the fall of 1999, and it was apparently Mr. Yu who decided that the additional abandonment deposit for the 10-35 well was not something that Prince would entertain.

The Declaration panel further noted that the searches of the Alberta Corporate Registry set out in Attachment A to the Notice indicate that Mr. Yu is a Director of Prince and has been from 1998. Furthermore, Mr. Yu has represented himself in his dealings with the Board as the President or CEO of Prince, as shown in the correspondence contained in Attachment A to the Notice. Although Mr. Yu attempts to cast himself in the light of a consultant to Prince in his submission, the Declaration panel was struck by the contradictory statements made by Mr. Yu in regard to his functions at Prince. Mr. Yu states that he was CEO from 1996 to 1999. Further, Mr. Yu states that the President of Prince, Mr. Lyle, was never involved in the operations of Prince. Therefore, Mr. Yu directed the operations of Prince. Mr. Yu repeatedly states that he does not consider himself a person in control but refers to his restructuring plan for Prince. Mr. Yu admits that he acted in capacity of the President of Prince since 1998, as there was no other person to act on Prince's behalf.

In determining whether a person is in control of a licensee, the Declaration panel adopts the following test set out in Board *Decision 2000-51: South Alberta Energy Corp., Greg Justice, 693040 Alberta Ltd.- Marc Dame, Review of Abandonment Costs Order No. ACO 98-1* and reiterated in *Decision 2002-53*:

Real, effective and practical control over a company's business affairs...may exist in a wide variety of settings and arrangements. Control is ultimately the power to direct the business of a company and make decisions that will be complied with and acted upon by the company. Each case must be reviewed on its own facts and circumstances in order to determine the entity effectively exercising this authority (at 11).

Based on the information before it, including the previous Board finding that Mr. Yu was a person in control of Prince at all times in relation to Abandonment Cost Order 2000-01 and Mr. Yu's admissions contained in his submission, the Declaration panel finds that Mr. Yu had the power to direct the business of Prince and make decisions on Prince's behalf to comply with Board Orders and to pay Prince's outstanding debt to the Board regarding abandonment costs. The Declaration panel finds that Mr. Yu's claims of being nothing more than a consultant to Prince lacks credibility, as Mr. Yu has not submitted any documentation in support of this claim or in support of his claim that others were or are in control of Prince.

3. Is Issuance of Declaration in the Public Interest?

The Declaration panel is of the opinion that the purpose of a Section 106 Declaration is to prevent a licensee or a person in control of a licensee from continuing to breach EUB requirements or Board orders or from incurring abandonment costs or incurring new breaches or additional debts, thereby safeguarding the public interest.

The Declaration panel is also of the view that continued confidence in the EUB regulatory scheme for oil and gas is best assured when licensees comply with EUB requirements and Board orders. Without compliance with EUB requirements, the protection of the public and the environment may be jeopardized and the public interest may be at risk. Licensees should not be permitted to conduct noncompliant activities with impunity, as it would be contrary to the mandate of the EUB to ensure the orderly and efficient development of energy resources. A licensee that cannot pay its debts to the EUB or the Orphan Well Association or pay its security deposit should not be permitted to continue to operate.

In this case, the Declaration panel finds that the essence of Mr. Yu's argument is that because of Prince's financial difficulties, EUB requirements should not have been applied to Prince. Further, Mr. Yu would argue that Prince should have been allowed to continue to operate without attaining compliance. This argument is unacceptable to the Declaration Panel, as it is not in the public interest for the reasons stated above.

Based on these findings, the Declaration Panel issues a Declaration Naming Mr. Richard Yu, pursuant to Section 106 of the *OGCA*, and imposes the restrictions set out in the appendix, as authorized by Subsection 106(3) of the *OGCA*. Accordingly, the Board orders that the Declaration included as the Appendix be issued forthwith to Mr. Richard Yu.

Dated in Calgary, Alberta, on January 31, 2006.

ALBERTA ENERGY AND UTILITIES BOARD

<original signed by>

A. J. Berg, P.Eng.
Presiding Member

<original signed by>

J. D. Dilay, P.Eng.
Board Member

<original signed by>

F. Rahnama, Ph.D.
Acting Board Member

APPENDIX

DECLARATION NAMING RICHARD YU PURSUANT TO SUBSECTION 106(3) OF THE *OIL AND GAS CONSERVATION ACT* (OGCA)

For the reasons set out in the decision in this matter, the Board has determined that Richard Yu is the person in control, direct or indirect, of Prince Resource Corporation and that Prince Resource Corporation has contravened EUB requirements and failed to comply with Board Orders while Richard Yu has been in control of this company. Therefore, the Board names Richard Yu under Section 106 of the *Oil and Gas Conservation Act* and places the following restrictions on him and Prince Resource Corporation:

- 1) Richard Yu and any company directly or indirectly controlled by Richard Yu must inform the EUB that a Section 106 Declaration is in effect against Richard Yu and that he has direct or indirect control of the company applying to the Board for an identification code, licence, or approval or the transfer of a licence or approval under the *OGCA* or the *Pipeline Act*.
- 2) Richard Yu cannot act as an agent of a company as defined in the *OGCA* or the *Pipeline Act* for any company.
- 3) The EUB may refuse to consider any application from Prince Resource Corporation, Richard Yu, or any other company over which he has direct or indirect control for an identification code, licence, or approval or a transfer of a licence, or approval under the *OGCA* or the *Pipeline Act*.
- 4) If the EUB were to consider an application from Prince Resource Corporation, Richard Yu, or any other company directly or indirectly controlled by Richard Yu, the EUB may require the submission of abandonment and reclamation deposits in an amount determined by the Board prior to granting any licence, approval, or transfer to an applicant, transferor, or transferee under the *OGCA*.
- 5) Richard Yu must submit a sworn declaration by March 3, 2006, that he is not in direct or indirect control of any company, other than Prince Resource Corporation, that is an applicant to the EUB, a licensee, or an approval holder under the *OGCA* or the *Pipeline Act*, or if he is, a declaration stating the name of the company or companies and specifying the applications it has before the EUB and the EUB licences and approvals the company holds.
- 6) This declaration is in force at the date of this decision and will remain in force until Prince Resource Corporation has complied with the abovementioned Board Orders, rectified its contraventions, and paid its debt owed to the Board and to the Board to the account of the Orphan Well Association for abandonment costs, or until the Board orders otherwise.

Dated: January 31, 2006