

Form 12
[Rule 3.33]



COURT FILE NUMBER 0702-00120

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE DRUMHELLER

PLAINTIFF(S) JESSICA ERNST

DEFENDANT(S) ENCANA CORPORATION,
ENERGY RESOURCES
CONSERVATION BOARD and
HER MAJESTY THE QUEEN IN
RIGHT OF ALBERTA

DOCUMENT **REPLY TO DEFENCE**

PARTY FILING THIS DOCUMENT JESSICA ERNST

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This is the Reply of JESSICA ERNST, PLAINTIFF, to the Statement of Defence filed by ENCANA CORPORATION, DEFENDANT, on August 19, 2013.

Statement of facts relied on:

1. This Reply adopts the definitions as set out in the Plaintiff's Fresh Statement of Claim, filed on June 25, 2012, including particularly the definition of "EnCana Wells", "CBM Activities", "Well 06-04", "Well 05-14" and the "Ernst Water Well".
2. In reply to paragraphs 10-11 and 15, the Plaintiff pleads that the EnCana Wells that are the subject of this lawsuit and the cause of the contamination of Ms. Ernst's Water Well,

including Well 06-04 and Well 05-14, were “hydraulically fractured” as part of EnCana’s gas well and CBM Activities.

3. “Stimulation” is a general term that encompasses “hydraulic fracturing”. Consistent with ERCB and industry definitions, “stimulation” is any form of treatment applied to an underground formation to improve the flow of natural gas from the formation to the well-bore. “Stimulation” includes the treatment referred to as “hydraulic fracturing”.

4. For the purposes of the pleadings and consistent with definitions employed by EnCana, the ERCB, the Canadian Association of Petroleum Producers, the Canadian Society for Unconventional Resources, the Alberta Government and other industry participants, “hydraulic fracturing” is defined as the process of stimulating a well by injecting fracturing fluids (whether liquid or gas) at high rates and high pressure into the perforated zone(s) of the well to create new fractures and enlarge existing fractures in the underground formations for the purpose of releasing and encouraging the flow of hydrocarbons.

5. The Plaintiff specifically pleads that the EnCana Wells, including Well 06-04 and Well 05-14, were hydraulically fractured as part of EnCana’s gas well and CBM Activities. These gas well and CBM Activities also included construction, drilling, cementing, acidizing, perforation, commingling, water diversion, production, servicing, waste disposal, remediation and reclamation operations at the EnCana Wells.

6. In reply to paragraph 17 and 19, the Plaintiff denies that EnCana engaged in groundwater testing and monitoring before, during or after CBM Activities in the region potentially impacted by the EnCana Wells. In the alternative, any such testing and monitoring was wholly inadequate.

7. In reply to paragraph 19, the Plaintiff states that she has explicitly agreed to allow EnCana to conduct water tests on the Ernst Water Well on numerous occasions both prior to and after the Ernst Water Well became contaminated. In 2003, prior to issues with the Ernst Water Well, EnCana did in fact conduct a water test of the Ernst Water Well at Ms. Ernst’s request. In the time after the Ernst Water Well was contaminated, the Plaintiff specifically accepted

EnCana's offer of further water tests on the Ernst Water Well. EnCana frustrated the water testing process by:

- a. refusing to first disclose the chemicals that it had injected and would in future inject into the ground during EnCana's CBM Activities, making it impossible to know for which substances to test the water; and
 - b. in one instance, setting an arbitrary deadline by which Ms. Ernst was required to accept water testing and communicating this deadline to Ms. Ernst after the offer had already expired.
8. In reply to paragraph 30, the Plaintiff has not and is not claiming for any personal injury or adverse health impacts suffered by her as a result of the water contamination or the actions or omissions of the Defendants.

9. In reply to paragraph 32, the Plaintiff denies that she failed to take appropriate steps to construct or maintain the Ernst Water Well. On the contrary, the Plaintiff took great care to ensure that the Ernst Water Well and the water supply and handling system were properly maintained, including by receiving professional instruction on proper water well maintenance. In particular, the Plaintiff annually shock-chlorinated the Ernst Water Well in accordance with accepted and established practice. At all material times, Ms. Ernst complied with the standards set out in the *Water Act*, RSA 2000, c W-3 and corresponding regulations.

10. In reply to paragraph 33, the Plaintiff denies that there was a failure to mitigate damages, and puts the Defendant EnCana to the strict proof thereof. On the contrary, Ms. Ernst did take reasonable and adequate steps to mitigate her damages and has taken great care to ensure that the danger to her property, herself and others has been minimized. As a result of the contamination of the Ernst Water Well, Ms. Ernst disconnected the Ernst Water Well from her home water supply and handling system in 2006 and has not used the contaminated water for any domestic purpose since. Ms. Ernst now must purchase clean water from elsewhere in order to meet her daily household water needs. As part of this process, Ms. Ernst must drive to Rosedale to purchase clean water, haul the clean water in a tank on her truck and transfer the clean water into water-holding tanks that were installed in her basement for this purpose in 2006. Ms. Ernst

has also been greatly conserving the amount of water that she uses in order to minimize the costs and inconvenience associated with having to haul clean water from elsewhere.