

# 2005 BCSECCOM 285

April 21, 2005

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - An issuer wants relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation - Alternate financial information will be provided about the issuer that is consistent with the financial information required in the continuous disclosure context for significant acquisitions; information will be provided about the parties to the transaction sufficient for shareholders to assess the transaction as a whole

## Applicable British Columbia Provisions

National Instrument 51-102, *Continuous Disclosure Obligations*, s. 13.1  
Form 51-102F5, s. 14.2

In the Matter of  
the Securities Legislation  
of Alberta, British Columbia, Saskatchewan and Ontario  
and

In the Matter of  
the Mutual Reliance Review System for Exemptive Relief Applications  
and

In the Matter of Birchcliff Energy Ltd.

## MRRS Decision Document

## Background

The local securities regulatory authority or regulator (collectively, the “Decision Makers”) in each of the provinces of Alberta, British Columbia, Saskatchewan and Ontario (collectively, the “Jurisdictions”) has received an application (the “Application”) from Birchcliff Energy Ltd. (the “Filer”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the Filer be exempted from having to (i) include three years of audited financial statements in an information circular in respect of oil and gas properties which could be regarded as a significant probable acquisition; (ii) include in an information circular financial statements for the second and third most recently completed financial years and related management’s discussion and analysis in respect of a

## 2005 BCSECCOM 285

corporation the Filer proposes to amalgamate with pursuant to a plan of arrangement, and (iii) include in an information circular *pro forma* financial statements that are prepared in accordance with applicable securities legislation in respect of the Filer and the corporation with which the Filer proposes to amalgamate with.

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Alberta Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation amalgamated under the laws of Alberta and its head office is located in Calgary, Alberta.
2. The Filer is engaged in the business of identifying, evaluating and capturing opportunities in the oil and natural gas business.
3. The year end of the Filer is December 31.
4. The common shares of the Filer are listed and posted for trading on the TSX Venture Exchange under the trading symbol “BIR” and the Filer is a reporting issuer in the Provinces of Alberta, British Columbia, Saskatchewan and Ontario.
5. To its knowledge, the Filer is not in default of any of the requirements of the applicable securities legislation in any of the provinces in which it is a reporting issuer.
6. On March 29, 2005, the Filer entered into an asset purchase and sale agreement wherein it has agreed to purchase certain oil and natural gas properties (the “Properties”) for a purchase price of \$255 million, subject to certain closing adjustments which are estimated to adjust the net purchase price to be approximately \$240 million (the “Acquisition”). The Properties are located in the Peace River Arch area of Alberta and currently produce approximately 4,800 boe/day. The Acquisition also includes approximately 205,000 gross developed acres of land, 116,000 gross undeveloped acres and

## 2005 BCSECCOM 285

75,000 net undeveloped acres of land (66% average working interest). It is expected by the Filer that the Acquisition will close on or before May 31, 2005.

7. The vendor of the Properties (the “Vendor”) is a significant oil and gas company with offices in Calgary, Alberta.
8. Veracel Inc. (“Veracel”) was incorporated under the laws of the Province of Ontario on August 10, 1994 as Morphometrix Technologies Inc. and changed its name in April 2001 to “Veracel Inc.” From August 1994 to October 2002, Veracel developed products, services and technologies that support the automation of cancer screening.
9. On October 24, 2002, Veracel filed a Notice of Intention to Make a Proposal and on November 15, 2002 lodged a proposal (the “Proposal”) under Part III, Division I of the Bankruptcy and Insolvency Act with Mintz & Partners Limited (the “Trustee”) which Proposal was filed with the Official Receiver on November 15, 2003. On November 19, 2003, the Trustee certified that as of the 18<sup>th</sup> day of November 2003, Veracel fully performed its provisions of the Proposal, as filed with the Official Receiver on November 15, 2003. During the period from October 2002 until March 2005, apart from implementing the Proposal, Veracel’s only activities have been to seek to reorganize and recapitalize itself.
10. At present, Veracel does not conduct any active business.
11. Veracel is not a reporting issuer in any jurisdiction of Canada, nor are its shares listed for trading on any stock exchange or other market.
12. On April 3, 2005, the Filer and Veracel entered into a letter agreement whereby such parties will, subject to certain conditions, merge pursuant to a plan of arrangement (the “Arrangement”) and continue as “Birchcliff Energy Ltd.”
13. The mind and management of the amalgamated entity (“Amalco”) resulting from the Arrangement involving the amalgamation of the Filer and Veracel will be that of the Filer. There will be no involvement in the management of Amalco by the executive management or by the board of directors of Veracel.
14. It is proposed that Veracel will conduct a significant private placement (“Private Placement”) prior to the completion of the Arrangement, which funds will be used by Amalco to fund, in part, the purchase of the Properties. Such Private Placement is a condition precedent to the Arrangement and if the

## 2005 BCSECCOM 285

Private Placement does not occur prior to the effective date of the Arrangement, the Arrangement will not occur.

15. The Filer is preparing an information circular (the “Information Circular”) in connection with the meeting of its securityholders which is expected to be held on or about May 16, 2005 or such other date as determined by the Filer. At the securityholders’ meeting, the Filer’s securityholders will be given an opportunity to vote upon the Arrangement.
16. Pursuant to Section 14.2 of National Instrument 51-102F5, because the Acquisition is a “significant probable acquisition” and pursuant to Part 6 of Ontario Securities Commission Rule 41-501, the Filer is required, in the absence of discretionary relief, to include in the Information Circular in respect of the Properties, (i) audited balance sheets as at the end of the two most recently completed financial years, (ii) audited statements of income, retained earnings and cash flows for the three most recently completed financial years, and (iii) a *pro forma* balance sheet as at the end of the most recently completed financial year and a *pro forma* income statement for the most recently completed financial year in respect of the Filer and the Properties (the “Properties Financial Disclosure”).
17. The Filer proposes to include in its Information Circular certain financial information in accordance with Ontario Securities Commission Rule 41-501 Companion Policy Part 3.3(2), including:
  - (i) audited operating statements relating to the Properties for each of the three years ended December 31, 2004, 2003 and 2002;
  - (ii) information with respect to reserve volume estimates and estimates of future net revenue; and
  - (iii) production volumes of the Properties for each of the three most recently completed years.(collectively, the “Alternative Properties Disclosure”)
18. The financial statements required under Part 6 of Ontario Securities Commission Rule 41-501 do not exist for the Properties as oil companies typically do not produce such financial statements in respect of specific properties. The data in respect of the Properties is not in a form conducive to preparing such financial statements as the assets to be acquired by Birchcliff comprise only a portion of the total assets of the Vendor and accordingly do

## 2005 BCSECCOM 285

not constitute a "reportable segment" of the Vendor, as defined in Section 1701 of the Canadian Institute of Chartered Accountants Handbook.

19. Pursuant to Section 14.2 of National Instrument 51-102F5, as Veracel is a "junior issuer" (as defined in Ontario Securities Commission Rule 41-501), the Filer is required, in the absence of discretionary relief, to include in the Information Circular in respect of Veracel, audited financial statements for its most recently completed year and unaudited financial statements for its second and third most recently completed financial years and related management's discussion and analysis (the "Veracel Financial Disclosure").
20. Financial statements prepared in accordance with generally accepted accounting principles do not exist in respect of Veracel's second and third most recently completed financial years and, accordingly, Veracel's auditor has not issued an auditor's report on such financial statements. The most recently completed financial year for which financial statements of Veracel are to be included in the Information Circular is not less than 12 months in length.
21. The Filer proposes to include in its Information Circular audited financial statements for the year ended December 31, 2004 and related management's discussion and analysis in respect of Veracel (the "Alternative Veracel Financial Disclosure").
22. Pursuant to Section 14.2 of National Instrument 51-102F5, the Filer is to include in the Information Circular *pro forma* financial statements in respect of the Filer, Veracel and Amalco (the "Pro Forma Financial Disclosure").
23. The Filer proposes to include in its Information Circular *pro forma* financial statements giving effect to the Arrangement and the net proceeds of the Private Placement (the "Alternative Pro Forma Financial Disclosure") since the Private Placement is a condition precedent to the Arrangement.
24. The Filer anticipates mailing the Filer's Information Circular to its securityholders on or about April 25, 2005 or as soon thereafter as reasonably practicable.

### Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

The decision of the Decision Makers under the Legislation is that:

## **2005 BCSECCOM 285**

- (a) the Properties Financial Disclosure shall not apply to the Filer, provided that the Filer includes the Alternative Properties Disclosure in the Information Circular;
- (b) the Veracel Financial Disclosure shall not apply to the Filer, provided that the Filer includes the Alternative Veracel Financial Disclosure in the Information Circular; and
- (c) the Pro Forma Financial Disclosure shall not apply to the Filer, provided that the Filer includes the Alternative Pro Forma Financial Disclosure in the Information Circular.

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Alberta Securities Commission