1994 ABEAB 3 **Appeal No. 93-005**

Decision

IN THE MATTER OF Sections 84, 85 and 87 of the *Environmental Protection and Enhancement Act* (S.A. 1992, ch. E-13.3).

-and-

IN THE MATTER OF appeals filed by Ronald Walker for himself, dated December 16, 1993, and Roy A. Haugen, dated December 17, 1993 on behalf of the Concerned Citizens of West Central Lloydminster, with respect to Amending Approval 92-AL-115D (93) issued on November 12, 1993 by David Spink, Director of Standards and Approvals, relative to the United Oilseed Products' vegetable oil refinery located in Lloydminster, Alberta.

Cite as: Walker and Haugen *et al* v. Director of Standards and Approvals

BEFORE: William A. Tilleman, Chair
David H. Marko, Vice-chair
Joan C. Copp
Max A. McCann

REPRESENTATIONS:

Ronald Walker for himself
Roy A. Haugen *et al.* Represented by Bruce C. Scott
United Oilseed Products represented by J. David McInnes and Adrian R. Currie
Director of Standards and Approvals represented by William McDonald

I. CHRONOLOGY OF THIS APPEAL

The Notice of Objection

On December 15, 1993, Mr. Ronald Walker sent a notice of objection to the Environmental Appeal Board. Mr. Walker filed this notice of objection pursuant to section 84 of the *Environmental Protection and Enhancement Act* (the "Act") which the board received and filed on December 16, 1994. His objection related to the proposed construction of a refinery by United Oilseed Products' ("UOP") at its site in Lloydminster, Alberta. UOP operates an existing crushing plant and proposed to expand its operations by the construction of this new refinery. UOP received approval from the Director of Standards and Approvals ("Director") pursuant to a letter sent on November 12, 1993, by Mr. Dan Crumb of the Department of Environmental Protection.

The approval issued by the Director, 92-AL-115D(93) ("115D") amended the original approval, 92-AL-115 ("115") to allow the construction and operation of a new refinery. When completed, the refinery can receive processed canola oil from the existing crushing plant and will refine this oil into a final consumer product. The existing crushing plant had an approval to operate prior to the Act coming into force.

Mr. Walker dealt with the potential odours, emission points, by-products, waste water and monitoring of the new refinery. However, he stated that if UOP could address and resolve his concerns, that it would be good to have the increased business and employment in the Lloydminster area which the new refinery would generate.

On December 17, 1993, the Board received a letter from the lawyer representing Mr. Roy Haugen and a group of concerned citizens in Lloydminster. Attached to the letter was a notice of objection from Mr. Haugen, also filed pursuant to section 84 of the Act, and a 7-page list of those people who wished to appeal the granting of 115D for the construction and operation of the new refinery. The principal concern of Mr. Haugen and his group was that the new refinery was an addition to the existing crushing plant that allegedly had caused odours and emissions to the surrounding neighbourhood for some time. The group also had concerns with respect to an Emission Control Order issued by the Department of Environmental Protection under the *Clean Air Act* on July 23, 1993, to UOP (the "Order") which related to the existing crushing plant.

On December 20, 1993, the Board wrote to the Director and notified him of the two notices of objection. Three days later, the Board wrote again to the Director and requested copies of the original approval and the application from UOP to construct the new refinery.

The Board decided the Walker and Haugen appeals should be consolidated and has treated them

together consistent with section 3 of the Environmental Appeal Board Regulation. [1] While it is not necessary for this decision, the Board is assuming but not deciding that Messrs. Walker and Haugen are "directly affected" within the meaning of section 84(1)(a)(v) of the Act.

The Board seeks clarification

On January 7, 1994, the Board wrote to all of the parties to this appeal to seek additional information and to ask several questions. [2] The Board asked Mr. Haugen, *inter alia,* specifics of how the members of the group were directly affected and where they lived in relation to the new refinery. The Board also wanted to know where Mr. Walker lived relative to the new refinery and how he felt he was directly affected by the Director's decision to issue 115D.

The Board asked the Director several questions, including the status of the Order, whether or not UOP had complied with the Order, and how 115D and the Order are interrelated. The Board asked if the new refinery would meet the concerns identified in the Walker and Haugen appeals. The Board also asked the Director why the granting of 115D was treated as a "routine matter" under the Act.[3]

Similarly, the Board asked UOP questions about the Order and 115D and how 115D responded to the concerns expressed by Haugen and Walker.

Finally, the board invited all parties to comment on any of the issues raised in correspondence to all the other parties. The Board set January 28, 1994 as the deadline for submissions.

All four parties responded. Mr. Haugen *et al.* stated that the entire facility including the existing crushing plant (which received approval before the Act came into force) and the new refinery should be treated as one operating unit and the subject matter of this appeal. In addition to other concerns, Haugen *et al.* stated that the existing plant site for both the crushing plant and the new refinery was not appropriate.

Mr. Walker responded by saying he lived within smelling distance of the existing crushing plant and was not satisfied that UOP had shown conclusively that odours would not be created by the new refinery. Mr. Walker felt that UOP -- not he -- should show precisely how the new refinery would eliminate odours.

The Director responded to the Board's questions by stating that the Order related only to the existing crushing plant and not the new refinery. He further stated that is was beyond the Board's jurisdiction to review the Order because it was issued before the Act came into force. UOP stated

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[1] Alberta Regulation 114/93

[2] The Board wrote to the Director and UOP pursuant to section 87(3) of the Act. For Messrs. Haugen and Walker, the Board also relied on section 85 of the Act.

[3] Section 69(3) of the Act allows the Director to waive the normal public notice requirements if certain conditions exist, including conditions where the Director is satisfied that the proposal is routine.

that there would be no emission problems from the new refinery because it would not produce significant odour or particular emissions. UOP also stated that there was an opportunity for public input and response during a plant tour and discussion period held on October 23, 1993. According to UOP, Mr. Haugen and some of his group attended at the plant. UOP admitted problems with the existing crushing plant, but stated that the problems were being corrected pursuant to the (pre-Act) Order. Finally, UOP stated the new refinery would not add to any existing odour or particulate problem at the existing crushing plant.

The Board distributed copies of these replies to all parties to the appeal.

The Board's first request for a site visit

The Board had some difficulty in envisioning the operation of the existing crushing plant and the new refinery. On February 18, 1994, the Board proposed a site visit and sent a list of "site visit procedures" to all four parties for their review and comment. The Board's proposed date for the site visit (March 1, 1994) was not convenient to UOP.

The Board's subsequent request for written submissions, a site visit and a preliminary meeting

On March 3, 1994, the Board again requested a site visit to include all parties. The Board also asked for written submissions from all parties regarding which issues should be included in the hearing of the appeal should the Board elect to proceed with a hearing. All parties were given the terms of reference for the written submissions, including a list of procedures, and were asked to provide written responses by March 25, 1994.

The date set by the Board for the site visit and preliminary meeting of all parties was April 12 and April 13, if necessary, in Lloydminster. All parties responded with their written submissions which the Board distributed to the other parties. On April 12, 1994, the Board and all parties visited the existing crushing plant and observed the construction of the new refinery. After the visit, the Board held a preliminary meeting in Lloydminster where all four parties presented oral comment and otherwise clarified their written submissions.

The Board seeks new information

On April 20, 1994, the Board wrote to all parties and requested that the parties, including the Director, answer the following question:

> *From reviewing the documents and submissions presented to the Board in this appeal, has there been any new information that is relevant to the Director's decision to approve RS0054 (the refinery) that was not available to the Director at the time he made the decision?*

To assist them with this question, the Board sent all parties the entire transcript of the April 12,

1994 preliminary meeting. They were asked to review not only the transcript but the entire file and to provide any information on or before April 20, 1994.

The Board received submissions from all parties. Both UOP and the Director stated that no new information existed that was not available to the Director at the time he made his decision to issue 115D for the new refinery. Mr. Walker stated that there were some new points which may have been relevant and he referred specifically to his earlier submissions that UOP had provided some information but that more information was needed. He also referred to the cumulative effects argument raised by Mr. Haugen *et al.*

Mr. Haugen *et al.* again raised the issue of the Order and questioned the extent to which the Director gave this issue much, if any, weight in granting 115D for the new refinery. They pointed out that the Director could not have known the level of public concern which led to the two appeals before this Board. Finally, Mr. Haugen *et al.* suggested that the Government of Alberta commissioned a public health report regarding the operation of the existing crushing plant. According to information provided by Mr. Haugen *et al.* the local jurisdiction for health is held by the Province of Saskatchewan whose officials, it is suggested, were only recently made aware of the complaints from residents [4] concerning the operation of the existing crushing plant. The Board has received no evidence in this regard.

II. HISTORY OF UNITED OILSEED PRODUCTS' LLOYDMINSTER PLANT

It is important to note the history of the UOP operation and licences/approvals relating to its existing crushing plant.

A permit to construct was issued to UOP under the *Clean Air Act* on July 4, 1974 for a rapeseed crushing plant. The existing crushing plant was built and licences to operate have been continuously held to date. Permits to construct and amendments to the licences to operate were issued, as modifications to the existing crushing plant have been made. The current licence to operate (now called an approval as a result of the Act) was issued on March 31, 1992 as licence No. 92-AL-115 (pre-Act), with an expiry date of March 1, 1997. Subsequent to the issuance of -115 a number of amendments have been granted. Only one post-Act (i.e., after September 1, 1993, when the Act came into force) amendment, 115D, relates to the new refinery, and it is the subject of this appeal.

[4] The Board is unsure of who these residents are, for purposes of this appeal. They may or may not be members of Mr. Haugen's group.

Interestingly, two more recent amendments were sought by UOP and approved by the Director (92-AL-115E and 92-AL-115F). These amendments were advertised in Lloydminster yet they were not appealed by Messrs. Haugen or Walker, or anyone else, even though both dealt with the addition of pollution abatement equipment to the existing crushing plant.

III. QUESTIONS CRITICAL TO THIS APPEAL

The approval for UOP's new refinery raises the following critical questions:

1. How do the principles of retroactivity apply to pre-Act licences which have been amended after September 1, 1993 and an appeal is initiated based on the amendment?

2. How does the Board deal with environmental issues raised in post-Act appeals when the environmental issues arise from activities pursuant to pre-Act licences?

3. How is an order relevant to the Board's deliberations when it was issued to a company before the Act came into force but where the Order is still in effect when an appeal involving the company is initiated?

4. Does the Board have jurisdiction to continue with this appeal?

The principles of retroactivity

The written submission of UOP argues that the Board should not exercise its powers in a retroactive fashion. For authority, UOP relies on *Canuck Holdings Western Ltd. V. Fort Nelson Improvement District*,[5] and *Vancouver v. B.C. Telephone Co. et al.* [6] UOP also argues that principles of retroactivity cannot apply to vested rights, and that UOP has established and acted on those vested rights. To support the vested rights argument, UOP relies on *Wilkin v. White* [7] and *Re Hunter and District of Surrey* [8]. To support the common sense which their argument raises, one need not look further than UOP's significant investment in the existing crushing plant and the recently installed pollution abatement equipment.

Although the Board feels a liberal interpretation of environmental concerns is important to its mandate (especially given the purposes of the Act), the Board feels bound by the common law principle of statutory interpretation which, as a general rule, denies retrospective application of law.

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[5] (1963)43 D.L.R.(2d)313(B.C.S.C.)

[6] (1950)4 D.L.R. 289(S.C.C.)

[7] (1979)11 M.P.L.R. 275 (B.C.S.C.)

[8] (1979) 108 D.L.R. (3d)557(B.C.S.C.)

The Alberta Court of Appeal confirmed the importance of this principle under the Act *In The Matter of a Certain Application No. 921321 dated September 22, 1992 by Syncrude Canada Ltd. To the Energy Resources Conservation Board for approvals amending existing Oil Sands Scheme Approval (no.5641).* [9] In *Re: Syncrude* the Court said:

> "The overriding answer is rooted to the common-law principle of statutory interpretation which denies retrospective application to a statute which does not specifically, or implicitly, provide for it. Legislation is not to be read to prejudicially affect existing status or accrued rights unless the way in which it is frame requires it. Parliament or the Alberta Legislature can legislate retrospectively, but its product must expressly say so or at least indicate that such an intention is clear by implication. This principle is also reflected in section 32 of the *Interpretation Act*.[10]

The section of the *Interpretation Act* [11] to which the Court referred states:

> "If an enactment is repealed and a new enactment is substituted for it, the procedure established by the new enactment shall be followed as far as it can be adapted in the enforcement of rights existing or accruing under the repealed enactment."

In its decision, the Court spoke not only of the principle of retrospective application of the law, but also the importance of avoiding interference with accumulated rights:

> "[Syncrude's] accumulated rights are no less than those enjoyed by the oil and gas lessee in *Spooner Oils v. Turner Valley Conservation Board* [1993] S.C.R. 629. There Duff J. invoked the presumption against retrospective interference, so as not to inflict an existing and longstanding lessee of oil and gas rights with incoming environmental anti-waste regulatory standards. See also *Gustafson Drilling v.* M.N.R. (1975) 66 DLR (3d)449 (S.C.C.)."[12]

Therefore, unless the Act changes, this Board does not intend to make a recommendation in any of its proceedings which would affect a valid permit, licence or other approval issued before the effective date of this Act. This view is consistent with sections 31(1) and 32(1) of the *Interpretation Act*.[13]

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[9] Appeal #9303-0664-AC (Mar. 4, 1994)

[10] Ibid, p.4

[11] R.S.A.1980, Chapter I-7, as amended

[12] Supra

[13] For example, in section 31(1), the repeal of an enactment does not affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the enactment so repealed; in section 32(1), when repeal occurs, the procedure established by the new and substituted enactment shall be followed as far as it can be adapted in the enforcement of rights existing or accruing under the repealed enactment.

The impact of post-Act approvals on pre-Act licences

The main issue in this appeal is the connection between the existing crushing plant, which has operated for almost 20 years, and the new refinery, which is yet to be built. The existing crushing plant received approvals before the Act came into force.

In this appeal, the Director argued that any post-Act amendment to a pre-Act licence should not be considered by this Board at all. In short, the Director feels the pre-Act licence is irrelevant to post-Act appeals, although the post-Act approval amended the pre-Act licence. With respect, the Board disagrees.

The Board is of the opinion that pre-Act licences amended by post-Act approvals *may* be relevant to issues raised in the post-Act approvals. It may be relevant in law, but it can most certainly be relevant in fact. Where ongoing facilities seek additions or changes to operations and do so through amendments to oil licences, the test is not to rule out the environmental effects of all pre-Act facilities, as a matter of law, simply because there is a pre-Act facility involved. This is potentially unfair because there *may* be a link between the existing facility and the new facility sought by the amendment. In other words, the existing facility may indeed have environmental effects that are tied synergistically or antagonistically to the new facility. Depending on which side of the appeal a party finds itself, it will want to argue this synergism or antagonism of environmental effects.

Where transitional matters arise between old and new facilities, the resolution must come by way of a factual determination of *how* the existing plant's activities are directly linked to the new approval -- from an environmental effects perspective. If, for example, the appellants raise a *prima facie* case that pre-existing emissions from ongoing activities compound the emissions given by a new approval, the Board would hear all of the evidence because it is relevant to the environmental acceptability of the *new* approval.

Further, the Board is entitled to look at whatever regulatory criteria or evidence the Director looked at in granting the approval [14] and these issues can include pre-Act matters. For example, section 6 of the Approvals Procedure Regulation [15] states:

> (1) The review of an application shall be conducted to determine whether the impact on the environment of the activity, the change to the activity or the amendment, addition or deletion of a term or condition of an approval is in accordance with the Act and the regulations made under the Act.
>
> (2) A review may address the following matters, without limitation:

[14] Sections 87(2)(c) and 65(4)(a) of the Act.

[15] Alberta Regulation 113/93

(a) proposed methods of minimizing the generation, use and release of substances and any available alternative technologies;

(b) design plans and specifications for the activity, the change to the activity or the amendment, addition or deletion of a term or condition of an approval;

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c) site (suitability, including soils, air and water quality, groundwater conditions, site drainage, water supply quantity and wastewater disposal alternatives;

(d) the proposed monitoring programs to determine emissions and their effect on the environment;

(e) the proposed methods of management of the storage, treatment and disposal of substances;

(f) the adequacy of the quality and quantity of the potable water used in or produced by the activity to which the application relates;

(g) proposed plans to complete the conservation and reclamation required in connection with the activity;

(h) the past performance of the applicant in ensuring environmental protection in respect of the activity.

Therefore, to determine whether or not to proceed with an appeal, the Board can be expected to look at whatever evidence the Director looked at regardless of when it was obtained, as long as the evidence is relevant to the appeal.

That said, the Board wishes to be clear that unless the legislation specifically requires it (and the Act does not), the Board will not make a decision that unfairly affects the existing status or accrued rights of persons who hold pre-Act licences. Where transitional approvals are appealed, the Board's ultimate mandate is to make recommendations to the Minister. These recommendations will centre entirely on the new approval, not upon any operation tied to the pre-Act licence. Further, the Board believes that the appellant always bears the burden of proof. On a preponderance of the evidence, the appellant must present enough evidence to satisfy the Board that there is a case that can be made involving a direct environmental link between the existing facility and the new refinery. In this appeal, Mr. Haugen and Mr. Walker have failed to establish any link between the new refinery and the problems which apparently existed in connection with the existing crushing plant which resulted in the issuing of the Order. Without establishing this link, the Board is of the opinion that any issues relating to the existing crushing plant have no relation to the matter being appealed - namely, the new refinery and its operation.

The relevance of the Control Order

The Director, made submissions to the Board that the Order issued before the Act came into effect, is wholly irrelevant to the questions raised in this appeal.

Again, the Board disagrees with such a strict and far-reaching conclusion. First, the Order is still in effect today and could affect how the Director determines what pollution abatement equipment may be required and included as a term or condition of a *new* approval or an amendment to an existing approval. If the Order has not been lifted once the new "facility" comes into operation, the Order is only irrelevant if its terms and conditions have nothing to do with the new facility's emissions stream. If the emissions from the existing crushing plant and the new refinery share the same chemical structure, for example, the Order may be quite relevant to the appeal. This is a question of fact and the Board will not ignore such matters. Second, even if the Board looks at pre-Act control orders, the Board's focus is not on the existing facility. For approvals which are appealed, the Board will not make a recommendation that affects pre-Act operations. The Board's focus is to hear all of the relevant evidence tied to the *new* facility or whatever else receives approval under the new Act.

Therefore, the Board may hear pre-Act control order evidence just as it will hear any evidence that is relevant to an appeal. The focus should not be on the *evidence* the Board hears as much as it is on the *decision* that the Board will make and the *relationship* between the evidence and the Board's decision or recommendation. As stated earlier, the Board will not act in such a way that rights, pre-existing before this Act took effect, are harmed by the appeal process.

The party proffering evidence of a control order bears the burden, on a preponderance of evidence, to convince the Board that the control order is indeed relevant to the new approval. The appellant can do this by showing a direct link between the control order and the environmental acceptability of the new approval. In short, the Board is not interested in how the control order affects an existing facility. Indeed, the Board is not interested in pre-Act facilities at all -- unless there is an uninterrupted nexus between the existing facility and the environmental effects of new or add-on facilities.

In this appeal, the Board is of the opinion that Mr. Walker and Mr. Haugen have not established any link between the matters dealt with by the Order and the new refinery.

IV. DECISION OF THE BOARD

Having said that all evidence is potentially of interest to the Board, the Act does not require this Board to hold a hearing in every appeal and the Board will not proceed to advertising and a costly hearing unless (1) the issues which are appealed raise genuine environmental matters that are persuasive enough to cause the Board to proceed, (2) there is no legal impediment which would require the Board to dismiss an appeal such as timing or lack of standing), and (3) that the

appellants raise evidence that convinces the Board that their appeal unquestionably relates to the current Act, as opposed to predecessor legislation (such as the former *Clean Air Act*) or sister legislation (such as the *Public Health Act*).

As the Board stated in an earlier decision, a full hearing under our legislation is not obligatory (*Maurice Boucher et al v. Director, Alberta Environmental Protection*) Section 87(2) of the Act states as follows:

> ***Prior to conducting a hearing*** *the Board may in accordance with the regulations determine which matters included in the notices of objection properly before it will be included in the hearing of the appeal...*[emphasis added].

The Board's regulations make it clear that not every appeal that is filed will result in an oral hearing. Section 1(f)(i) of Environmental Appeal Board Regulations (114/93) states as follows:

> *"Party" means*
>
> *(i) the person who files a notice of objection* ***that results in an appeal*** [emphasis added]

Further, section 7(1) of the same Regulation states:

> ` Subject to section 87(2) and (5) of the Act, where the Board makes a determination **to process** with the notice of objection...[emphasis added]

And, finally, section 20(1) of the same Regulation states:

> *Where an application for an award of final costs is made by a party, it shall be made at the conclusion of the hearing, if any...*[emphasis added].

Therefore, the Board does not have to proceed to a full public hearing, and it does not intend to do so unless the appeal raises relevant issues and places environmental matters properly before the Board. Some of the issues that the Board is entitled by section 87(2) to consider include:

> *c: whether the Director has complied with section 65(4)(a);*
>
> *d: whether any new information will be presented to the Board that is relevant to the decision appealed from and was not available to the person who made the decision at the time the decision was made;*

In the course of processing this appeal, the Board wanted to be particularly sure that the Director acted properly in issuing an approval for the new refinery which amended an existing crushing plant's licence to operate. During the preliminary meeting in Lloydminster, the Board asked the Director's counsel, Mr. McDonald, if the Director complied with all of the regulations that he should have complied with, knowing that a potential concern was the Air Emissions Regulation.

The answer was that he did look at the information required by law. Specifically, the Board was told that the Director looked at the Air Emissions Regulation (Alberta Regulation 124/93) and the Activities Designation Regulation (Alberta Regulation 110/93) and took into account the operation of *both* the existing crushing plant and the new refinery in reaching a decision to approve the new refinery. Thus, from the evidence before the Board, the Director appeared to act properly in making the decision to approve UOP's application for the new refinery.

To ensure that the parties had a proper opportunity to respond to the evidence at the preliminary meeting and to respond to all information presented during the course of the appeal, the Board gave each party a copy of the transcript in conjunction with all submissions from the other parties. The Board asked all parties to read these materials again and to advise whether or not there was any new information raised during the course of the appeal which was relevant to the Director's decision.

Mr. Walker responded by raising some of the same concerns that he raised earlier in his March submission. During the preliminary meeting, the Board asked Mr. Walker to look at UOP's March written submission which dealt specifically with air pollution control equipment to be used in the new refinery. The Board wanted Mr. Walker to respond to UOP's statements and he did. He basically felt that the approach by UOP seemed reasonable but that he still wanted more information and he expressed concerns about trace impurities. During the preliminary meeting, the Board focused on the evidence from UOP that its pollution control equipment for the new refinery is really more than adequate for the expected emissions and that such elaborate and costly equipment is not used by any other oilseed plant in Alberta. Mr. McDonald confirmed that the Director holds the same view as UOP with respect to this equipment.

Mr. Walker referred to Mr. Haugen's concern about the cumulative effects from the existing crushing plant and the new refinery. This concern was not new. However, in answer to the cumulative effects concern, the Board learned that the Director did look at the emissions streams from both the existing plant and the new refinery. Being cautious, the Board still enquired of Mr. McDonald if Part 2 of the Act (Environmental Assessment) applied to this approval. If it did apply, there would be an opportunity for analysis of cumulative effect as part of an environmental impact assessment report, as set out in section 47(d) of the Act. Mr. McDonald responded that Part 2 of the Act did not apply, and neither of the appellants has taken issue with that assertion. It is hard for the Board to escape the conclusion that Mr. Walker is concerned with the existing crushing plant.

The Board is convinced that Mr. Haugen *et al*. are *mainly* concerned with the existing crushing plant and the Order. This has clearly been stated several times, in pleadings and in the preliminary meeting. In this appeal, the Board's proper approach is to focus on the existing crushing plant only to the extent that it helps to determine the environmental acceptability of the new refinery. This appelant has focused on the reverse of this principle. Mr. Haugen's group is concerned that a Director should not approve a potential new set of problems until the old problems are dealt with and the Order is complied with, today.

While the Order and the existing crushing plant's past performance may have something to do

with UOP's credibility regarding the new refinery, this was not the focus of the written and oral presentations of the appellant Haugen. Although Mr. Haugen *et al.* raise matters that involve the new refinery, the Board feels their concerns are really directed to the existing crushing plant. This conclusion is drawn from all of their submissions. In December, Mr. Haugen appealed in large part on the basis of the pre-Act Order and the effect that the existing crushing plant had on residential neighbours. Later, in their written submission, he raised the cumulative effects of the existing crushing plant and new refinery. As expected, much emphasis was placed on the Order. However, the focus seemed to be on the inappropriateness of expanding the existing crushing plant as opposed to the appropriateness of building or not building the new refinery. In the preliminary meeting.

Mr. Haugen made it clear that he did not expect the Board to suggest altering the terms of the pre-Act licence. Yet, his desire to have the Order complied with points directly at the existing crushing plant. The Order could not possibly apply to the new refinery because it is not yet built. The Board is not suggesting that these concerns are not valid; they may be. The problem is that these concerns relate to activities covered by pre-Act matters and the appellants have not made the critical link to the new refinery.

It is significant to look at the evidence of UOP which focuses on the new refinery. First, the company points out that the new refinery is a separate process, although electrical and other utilities, canola feedstock and staff will be shared between the existing crushing plant and the new refinery. Second, UOP points out that the new refinery's emission abatement equipment and the new refinery's emissions will be different and totally separate from the equipment in the existing crushing plant. This makes sense because the new refinery turns the crude vegetable oil into salad oil whereas the existing crushing plant extracts raw oil from seed. Third, UOP responded to the emissions concerns of both appellants by stating that the closed nature of the design means there will be little venting or aspiration. UOP will install a baghouse filter, a pollution control device which is intended to operate at 99.7% efficiency for particulates as small as one micron. Further, UOP will install a caustic scrubber, equipment that is not required by similar refineries in Alberta, and this scrubber is intended to provide additional insurance to capture fugitive emissions, if they do occur.

In dismissing this appeal, the Board is mindful of the purposes of the Act. Indeed, Mr. Haugen made reference to a section of this act that is perhaps the most relevant to this appeal, and that is section 2(b) which confirms the purpose of the Act is:

> *--to support and promote the protection, enhancement and wise use of the environment while recognizing...the need for Alberta's economic growth and prosperity in an environmentally responsible manner and the need to integrate environmental protection and economic decisions in the earliest stages of planning;*

This particular section guides this Board to the conclusion that it must encourage a balance between public participation, industrial leadership and the need for Alberta's economic growth and prosperity to move forward in an environmentally responsible manner. If the Board decided

to proceed to a full public hearing at this point, in light of the evidence received (which implicates the existing crushing plant more than the new refinery), this would contradict the sound balance that must be achieved by the Act. A continued delay also runs contrary to the responsive action expected of the Board in the Administration Act. [16] Most importantly, a public hearing is not consistent with the evidence received in this appeal, namely, that the new refinery will have negligible emissions.

Since the evidence in the appeals seems tied to the existing crushing plant, and because the appellants have not raised any new issues (except a health report, discussed below), continuing to hear the same evidence which the Board feels has not been sufficiently linked to the new refinery would be unfair to UOP. It would also violate the legal principle of non-retroactive application of the law.

Of course, the appellants are not without a remedy for their concerns about the existing crushing plant. First, the Director can change any terms or conditions of the new refinery. [17] Second, enforcement or environmental protection orders can be made in the event of non-compliance. Third, when the existing crushing plant's licence (approval) comes up for renewal, it can be appealed. In fact, two amendments made in January and March of 1994 to the original licence provided the appellants with an opportunity to appeal the terms of the existing crushing plant's licence. At least one of these amendments dealt specifically with the pollution abatement equipment for the existing crushing plant. They did not appeal those amendments. Fourth, Mr. Haugen raises the possibility of a health report, which the Board has not seen, being issued in the future. If it is relevant, the appelants may have recourse to a public health authority with is own jurisdiction for health-related matters.

Accordingly, the Board has decided not to proceed with these appeals.

Dated on May 17, 1994, at Edmonton, Alberta.

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WillaimA. Tilleman, Chair David H. Marko, Vice-chair

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Joan C. Copp, Board Member Max A. McCann, Board Member

[16] Section 2(j)

[17] Section 67(3)