
ALBERTA
ENVIRONMENTAL APPEAL BOARD
DECISION

Date of Decision - April 11, 1996

IN THE MATTER OF Sections 84, 85, 86 and 87 of the
Environmental Protection and Enhancement Act, (S.A. 1992, ch. E-
13.3 as amended);

-and-

IN THE MATTER OF an appeal filed by Bill Lucey, Confederation
of Regions Party dated March 1, 1996, with respect to Approval No.
11602-00-01 issued to Western Steel Partnership by Mr. David Spink,
Director, Air and Water Approvals Division, Department of
Environmental Protection on February 6, 1996.

Cite as: Lucey v. Director, Air and Water Approvals

PANEL MEMBERSHIP: William A. Tilleman, Chair
 John P. Ogilvie
 M. Anne Naeth

BACKGROUND

Mr. Bill Lucey, Leader of the Confederation of Regions Party, Alberta wrote a letter of objection dated March 1, 1996, which was received and filed with the Environmental Appeal Board (the "Board") on March 5, 1996 within the 30 day time limit prescribed by section 84(4)(c) of the *Environmental Protection and Enhancement Act* ("Act"). Mr. Lucey objected to approval No. 11602-00-01 issued to Western Steel Partnership ("Western") by Mr. David Spink, Director, Department of Environmental Protection (the "Department") on February 6, 1996. The approval was advertised in two Calgary newspapers on February 19, 1996. The approval issued to Western was an amendment of an earlier approval for the demolition, decommissioning and reclamation of the primary metal (steel) production plant. This amending approval Mr. Lucey now appeals, expires on December 31, 1996.

After receiving Mr. Lucey's written objection (and attached materials) on March 5, 1996, the Board asked Mr. Lucey to respond to the following questions:

1. How are you directly affected by the decision of David Spink, Director, to amend Approval No. 11602-00-01 regarding the decommissioning of the Western Steel Partnership Ltd. Plant;
2. How are members of the Confederation of Regions Party environmentally affected by the Director's decision; and
3. What purpose would a one-year delay in the project serve from an environmental point of view?

The Board asked the Department and Western to respond to the following:

1. In your opinion, is the Confederation of Regions Party "directly affected" by this amending approval?

All parties responded within the required time period.

THE BOARD'S PRELIMINARY CONSIDERATIONS

The Board must determine whether it has jurisdiction to act on the appeal and, if required, the Board may request further information from one of the parties. Upon receipt of Mr. Lucey's Notice of Objection, the Board requested and received further information from Mr. Lucey because of these jurisdictional concerns. The Board has now reviewed the further submissions of Mr. Lucey and is concerned whether it has jurisdiction to hear this appeal.

ISSUES

The Board identifies the following issues in Mr. Lucey's appeal:

1. Are the issues which form the basis of Mr. Lucey's appeal properly before the Board?
2. Is Mr. Lucey or the Confederation directly affected by the Director's decision?
3. Is the appeal filed by Mr. Lucey frivolous or vexatious?

THE EVIDENCE OF MR. LUCEY

The Board received the evidence from Mr. Lucey in two instalments: (1) his written objection and two newspaper clippings stating his position came on March 5, 1996 (the "first submission"); and (2) supplementary material came on March 26, 1996 (the "second submission").

The essence of Mr. Lucey's appeal is found in his first submission:

“We demand a one year halt on this project, so that we can ascertain what you two groups are up to, eg. Alta Environment [sic] and Western Steel Partners.”; and .."There is deep concern about your whole process at Calgary site, which includes soil, air water, jobs lost to another province, and there is no free trade agreement with Alta, Sask, but there is between Canada, U.SA.".

THE BOARD'S FURTHER CONSIDERATIONS

1. Are the issues properly before the Board?

Section 87(4) of the Act states:

87(4) Where the Board determines that a matter will not be included in the hearing of an appeal, no representations may be made on that matter at the hearing.

It is clear that the Board should not proceed to a hearing unless the appeal raises matters that are properly before the Board. In this appeal, Mr. Lucey raises broad environmental issues generally, but does not describe any specific issues. Rather, he ties his concerns to interprovincial employment and international relations between Canada and the United States. The latter issues are not only beyond the jurisdiction of the Board but they may fall outside the jurisdiction of the Alberta Government. Accordingly, the Board does not believe any of the matters raised by Mr. Lucey should be the subject of a hearing before the Board.

2. Is Mr. Lucey directly affected?

Even if the issues raised in Mr. Lucey's appeal were properly before the Board, (soil, air and water might fall in this category) the Act requires Mr. Lucey to be "directly affected" by the decision in question. This would require him to establish, at least in some way, his relationship between air, land, and water, and Western's amending approval. Section 84 (1)(a)(ii) and (iv) of the Act state:

84(1) A notice of objection may be submitted to the Board by the following persons in the following circumstances:

- (a) where the Director
 - (ii) makes an amendment, addition or deletion pursuant to an application under section 67(1)(a), or

a notice of objection may be submitted

- (iv) by the approval holder or by any person who previously submitted a statement of concern in accordance with section 70 and is directly

affected by the Director's decision, in a case where notice of the application or proposed changes was provided under section 69(1) or (2), or . . .

Mr. Lucey believes he is affected in several ways. In his second submission, for example, he stated:

“As a concerned citizen of Alberta, I am deeply concerned mainly about how this industrial site, has and will effect the health of residence [sic] in the area of the site, the health of former workers at this plant and who will supply the millions of dollars (app \$250 million) to clean this site up (Alberta Govt.). I would estimate that if the total bills from this plant are 250 million dollars and the Govt of Alberta ends up with all the bills, this will effect the provincial budget for many years to come. The plant owners stock will go into a “free fall”. because of potential health lawsuits involved, extra care has to taken in cleaning up this site.”

The Board does not believe Mr. Lucey is directly affected. In a recent Environmental Appeal Board case on this point, the Honourable Mr. Justice Marceau discussed the test on directly affected.

“Two ideas emerge from this analysis about standing. First, the possibility that any given interest will suffice to confer standing diminishes as the causal connection between an approval and the effect on that interest becomes more remote. This first issue is a question of fact, i.e., the extent of the causal connection between the approval and how much it affects a person's interest. This is an important point; the Act requires that individual appellants demonstrate a personal interest that is directly impacted by the approval granted. This would require a discernible effect, i.e., some interest other than the abstract interest of all Albertans in generalized goals of environmental protection. ‘Directly’ means the person claiming to be ‘affected’ must show causation of the harm to her particular interest by the approval challenged on appeal. As a general rule, there must be an unbroken connection between one and the other.”

In applying the directly affected test to Mr. Lucey's appeal, he does not meet the first part of the test referred to by the court. The legislation under which we operate requires individual appellants to demonstrate a personal interest in the decision appealed. The interests raised

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Martha Kostuch v. The Environmental Appeal Board and the Director of Air and Water Approvals Division, Justice R.P. Marceau, Action No. 9503-19741, pp. 10-11 (March 28, 1996).

by Mr. Lucey are either group interests or interests raised on behalf of others (e.g. former workers). These broad issues may be valid, however, they cannot normally be used to initiate appeals to this Board. This Board earlier approved standing for a community group, but the facts of that case were far different than the appeal presented by Mr. Lucey.

3. Is Mr. Lucey's appeal frivolous or vexatious?

In responding to the Board's request for further information, the Department made the following comment:

The subject matter that is contained within the Notice of Objection does not evidence environmental concerns that have been directly affected by the decision of the Director. It is submitted that the EAB should utilize its discretion as found in s.87(5)(a)(i) to dismiss this Notice of Objection if it considers the subject matter to be frivolous or vexatious.

The Department makes reference to section 87(5)(a)(i) of the Act, which states:

The Board may dismiss a notice of objection if it considers the notice of objection to be frivolous or vexatious;

Secondly, the Department makes reference to the end of Mr. Lucey's first submission where he makes the statement:

"We demand a one year halt on this project so that we can ascertain what you two groups are up to, eg. Alta Environment [sic] and Western Steel Partnership"

In response to these allegations, no evidence has been presented by Mr. Lucey to substantiate the Department's improper relationship with Western. Western's response to the Board's request for further information echos that of the Department saying that Mr. Lucey is not directly affected by the Director's decision. They state "... the Board should dismiss this

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See e.g. Hazeldean Community League and two citizens of Edmonton v. Director of Air and Water Approvals, Alberta Environmental Protection, Decision Report, May 11, 1995.

notice of objection under section 87(5)(a) as frivolous and vexatious”.

By way of reference, Black’s Law Dictionary defines frivolous appeal as:

One in which no justiciable question has been presented and appeal is readily recognizable as devoid of merit in that there is little prospect that it can ever succeed. . . .

In determining whether this appeal is frivolous or vexatious, we note that the allegations made against the Department do not raise conduct that is specific enough to allow this Board to adjudicate the appeal fairly. Even in his second submission, Mr. Lucey does not personally raise or address environmental issues *vis a vis* the approval. When asked by the Board for further environmental information, Mr. Lucey did not state how the ground or surface waters were affected, nor how the air or soils were affected, nor how they affected him. It appears Mr. Lucey’s concerns with the Department (or Government as a whole) are of a greater importance than specifics of the challenges he makes to the underlying approval.

In order to fairly adjudicate appeals before us, the appellant must set forth material facts as clearly as possible, and do so in a manner consistent with Part 3 of the Act and the Regulations, so that the Respondents can know the nature of the “wrongdoing” and prepare an adequate answer in light of the approval being challenged. A case must be stated upon which relief can be granted. This has not been done.

DECISION OF THE BOARD

After careful consideration, the Board does not believe that Mr. Lucey’s notice of objection meets any of the criteria necessary for it to be taken to a hearing.

1. Mr. Lucey has failed to raise any specific matters related to Western’s approval for which the Board has appellate jurisdiction.
2. Mr. Lucey has not shown that either he or the Confederation of Regions Party is

³ 6th edition, 1990, p. 668.

directly affected by the Director's decision. He does want a further investigation, it seems, but enforcement is a matter contemplated in Part 10 of the Act.

3. Mr. Lucey's objection is more directly focussed on general political issues than on the specific request by the Environmental Appeal Board regarding the environment issues. As a result, the Board finds that he did not fully comply with its written request.

CONCLUSION

This appeal is dismissed pursuant to s. 87(5)(a)(i) in that it fails to disclose any grounds that may justify an appeal, and 87(5)(a)(ii) in that he failed to comply adequately with the Board's written request.

We sympathize with Mr. Lucey's concerns for clean air, pure water, healthy soils and healthy people. These concerns, however, are hopefully shared by all residents of Alberta.

Dated on April 11, 1996 at Edmonton, Alberta.

Dr. William A. Tilleman, Chair

Dr. John P. Ogilvie

Dr. M. Anne Naeth