

ALBERTA ENVIRONMENTAL APPEAL BOARD

Report and Recommendations

Date of Report and Recommendations - May 31, 1996
Date of Pre-Hearing Meeting - May 27, 1996

IN THE MATTER OF Sections 84, 86, 87, 91, 92 and 93 of the
Environmental Protection and Enhancement Act, (S.A. 1992, ch. E-
13.3 as amended);

-and-

IN THE MATTER OF appeals filed by Alberta Treasury Branches
and the City of Drumheller, with respect to Notice of Designation,
Block 1, Lot 4, Plan 6561C0 issued by the Director of Chemical and
Assessment Management Division, Alberta Environmental Protection
to the Alberta Treasury Branches and the City of Drumheller.

Cite as: Alberta Treasury Branches and the City of Drumheller v. Director of Chemical and
Assessment Management Division

PRE-HEARLNG MEETING BEFORE: Mr. William A. Tilleman

APPEARANCES: Appellants: Mr. K.S. (Stuart) Laird, Manager, Special Debts, Alberta Treasury Branches, represented by Mr. Terry L. Czechowskyj, Miles Davison McCarthy;

Mr. Ray Romanetz P. Eng. , City of Drumheller, represented by Mr. Robert D. Ross, Q.C., Ross, Todd & Company; and

Mr. William McDonald, Environmental Law Section, Alberta Justice, representing the Director, Chemical and Assessment Management Division, Alberta Environmental Protection and Mr. Rod Kaminski, Senior Environmental Technologist, Chemical Assessment and Management Division.

BACKGROUND

On February 2, 1996, Alberta Treasury Branches (ATB) filed a Notice of Appeal with the Environmental Appeal Board regarding Notice of Designation, Block 1, Lot 4, Plan 6561CO₃ as they had been designated through correspondence to be responsible parties to this contaminated site. The Designation Order was dated January 19, 1996, and signed by Mr. J.C. Lack, Director, Chemical and Assessment Division, Alberta Environmental Protection.

On February 8, 1996, the City of Drumheller (City) also filed a Notice of Appeal in relation to the same Designation Order as they had been designated through correspondence to be responsible parties to this contaminated site.

The Board wrote a letter to the Director of Chemical and Assessment Management Division, Alberta Environmental Protection, on February 21, 1996, in order to obtain information and to determine whether the appeals by ATB and the City had been validly filed.

Following receipt of written submissions by the parties, on April 22, 1996, the Board wrote to all parties advising that it would be conducting a pre-hearing meeting on May 27, 1996. The Board also advised that if the meeting did not result in the resolution of the issues in ATB's and the City's appeals, the Board would be requiring written submissions¹ in preparation for a full hearing.

THE PRE-HEARING MEETING

The pre-hearing meeting was conducted on May 27, 1996, in Drumheller, Alberta. According to the Board's standard practice, the Board called the pre-hearing in an attempt to mediate or to facilitate the resolution of these appeals or, failing that, to make arrangements for the oral hearing. The Board invited representatives from each party to participate and the attendance at this meeting included parties identified on page 2.

In conducting the pre-hearing, Mr. Tilleman provided a review of the appeal and mediation process and explained the purpose of the pre-hearing meeting. He then circulated copies of "Participants' Agreement to Mediate". In reviewing the document, all parties presented a willingness to enter into mediation, signed the agreement, and the pre-hearing continued.

The Appellants expressed their concerns which formed the basis and grounds of their appeals in relation to the Designation Order and the contaminated site. The Department provided its response and gave reasons behind designating these two parties responsible and explained the phrase "responsible parties for the contaminated site."

¹ This requirement is found in section 10 of the Environmental Appeal Board Regulation (Alta. Reg. 114/93).

Following the discussion of several issues and the identification of areas of agreement, the parties agreed to the following resolution of this appeal (see page 5 and 6 of this report).

**RESOLUTION OF APPEALS NO. 96-003/96-005 REGARDING NOTICE OF
DESIGNATION/BLOCK 1, LOT 4, PLAN 6561C0.**

All parties to the appeals have agreed to the following terms and conditions:

1. All parties agree that the site is a potentially contaminated site and that Alberta Treasury Branches will undertake to conduct, in consultation with Alberta Environmental Protection, further testing of the site to determine what level of contamination, if any, presently exists.
2. All parties agree that the area identified by drawing 1-2 contained within the ME Curtis Environmental Engineering Inc. Phase II Environmental Assessment Study, prepared in May 1996 and submitted to the City of Drumheller, should be reclaimed consistent with reasonable engineering and environmental practices.
3. All parties believe that someone else is primarily responsible for the contamination of the site.
4. All parties agree that the Director, Department of Environmental Protection can rely upon any and all information shared between the parties to date in seeking out further "persons responsible for a contaminated site".
5. All parties are aware that restoring and securing contaminated sites is encompassed by a two (2) step process pursuant to the Act, and that the two (2) appellants appear to have acted **in** good faith in responding to problems at the site.
6. All parties understand that the label "person responsible for the contaminated site" is a definition found within Part IV of the Act, but the parties agree, based upon the current information, at this time the two (2) appellants are not deemed to be persons responsible under s. 114 and have not been allocated responsibility pursuant to s. 114.
7. That further investigations or proceedings regarding this site (under s. 114) may or may not occur.
8. That pursuant to s. 113, the parties will attempt to enter into an agreement with the Director, with or without other persons responsible for the contaminated site, regarding a remedial action plan and providing for the apportionment of the costs of the remedial action plan.
9. That if the investigation of the potentially contaminated site proceeds to an environmental protection order, the current appellants' status as a "person responsible for a contaminated site" will be based upon those factors found in s. 114(2)(a) to (h).

10. That the appellants, Alberta Treasury Branches and the City of Drumheller agree to withdraw their current Notices of Appeal.

11. That the withdrawal of the appellants' appeal is without prejudice to their right to tile an appeal to the Environmental Appeal Board against future actions of the Director involving the appellants' status as persons responsible for a contaminated site.
12. The reports relating to information and data provided by either the Alberta Treasury Branches or the City of Drumheller to date or to be prepared in the future regarding the level of contamination of the site and adjacent areas shall not deem the parties to have been in custody or control of the site or adjacent areas for the purposes of determining "a person responsible for the contaminated site" pursuant to the Act.

RESOLUTION AGREED TO BY:

“original signed by”

Alberta Treasury Branches
Mr. K.S. (Stuart) Laird

Date: May 27, 1996

“original signed by”

City of Drumheller
c/o Mr. Raymond M. Romanetz, P. Eng.

Date: May 27, 1996

“original signed by”

Mr. Rod P. Kaminski, for the Director,
Department of Environmental Protection

Date: May 27, 1996

RECOMMENDATIONS

The Board recommends that the Minister of Environmental Protection confirm the decision of the Director of Chemicals and Assessment Management Division in Notice of Designation, Block 1, Lot 4 Plan 6561CO₃ subject to all of the conditions contained in the Resolution.

Further, with respect to section 92(2) and 93 of the *Environmental Protection and Enhancement Act*, the Board recommends that copies of this Report and Recommendations² and of any decision made by the Minister in these appeals be sent to the following parties:

- Mr. K. S. (Stuart) Laird, Alberta Treasury Branches;
- Mr. Ray Romanetz P. Eng, City Manager, Drumheller;
- Mr. William McDonald, Environmental Law Section, Alberta Justice, representing the Director, Chemical and Assessment Management Division, Alberta Environmental Protection; and
- The Honourable Tom Thurber, Minister of Municipal Affairs.

Dated May 31, 1996, at Edmonton, Alberta.

“original signed by”

William A. Tilleman

² As this appeal concluded by resolution of the parties, a copy of this report is being sent to each party pursuant to section 12 of Alta. Reg. 114/93.

I, Ty Lund, Minister of Environmental
Protection:

 X Agree with the Recommendations of
the Environmental Appeal Board
and order that they be implemented.

 Do not agree with the
Recommendations of the
Environmental Appeal Board and
make the alternative Order set out
below or attached.

Dated at Edmonton this 4th day of June 1996.

“original signed by”

Honourable Ty Lund

Minister of Environmental Protection

 Refer to Attachments (only if applicable)