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1995 ABEAB 25

Appeal No. 95-018

December 12, 1995

IN THE MATTER OF Sections 84, 86, 87, 91 and 92 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 Mr. Larry McLeod and the Mountain View Land Holders Group with respect to an Amending Approval No. 92-AL-398C(95) issued to Shell Canada Limited for the Caroline Sour Gas Processing Plant.

Report and Recommendations

Cite As: Mr. Larry McLeod and the Mountain View Land Holders Group v. J. Nagendran, Acting Director, Air and Water Approvals Division, Alberta Environmental Protection.

PRE-HEARING MEETING BEFORE: Max A. McCann, Board Member

APPEARANCES:

Appellants: Mr. Larry McLeod, Mr. Don Petersen, President, Mountain View Land Holders Group

Also in attendance with the Appellants were Lyle Ringland, Marie Sihlis and Leonard Paget

Shell Canada Limited, represented by Mr. Shawn Denstedt (Counsel), Mr. Reid Thomas, and Mr. Brian Goliss

Director, Air and Water Approvals Division, Alberta Environmental
Protection, represented by Mr. William McDonald (Counsel) and
Mr. Randy Dobko

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I. FACTUAL BACKGROUND

On September 6, 1995, Mr. Larry McLeod (the "Appellant") filed a notice of objection with the Environmental Appeal Board regarding an Amending Approval No. 92-AL-398C(95) issued to Shell Canada Limited for the Caroline Sour Gas Processing Plant. The Amending Approval was issued on August 10, 1995, by J. Nagendran, Acting Director for Air and Water Approvals Division, Alberta Environmental Protection and it changed the stack temperature from 538°C to 330°C.

On October 17, 1995 another notice of objection was filed with the Board by Mr. Don Petersen, President of the Mountain View Land Holders Group (the "Appellant") in conjunction with the same Amending Approval No. 92-AL-398C(95). Both Appellants were concerned that if the temperature of the flue gas released to the atmosphere was lowered from 538°C to 330°C it would greatly impact the health and well being of both people and animals in the area surrounding the Caroline plant.

On September 7, 1995 the Board notified the Director of Air and Water Approvals Division, Alberta Environmental Protection (the "Director") that the appeal had been filed and requested a copy of the Approval as well as the application for it. Also on September 7, 1995, Shell Canada Limited was advised that the appeal had been filed.

Following receipt of the Approval and the application from Dennis Ericksen of Alberta Environmental Protection (Regulatory Approvals Centre), the Board wrote to all parties on October 5, 1995 seeking further information with respect to the Appellants concern.

The Board reviewed the replies that were received from the parties and on November 17, 1995 with the consent of all parties, made a determination to proceed directly to a pre-hearing meeting on this appeal. As Mr. Petersen had not earlier filed a statement of concern, the Board proceeded to the pre-hearing without prejudice to the rights of any party to challenge the standing of Mr. Petersen.

II. THE PRE-HEARING MEETING

The pre-hearing meeting, which was held on December 12, 1995 in Red Deer, was called by the Board for the purpose of attempting to facilitate the resolution of this appeal or, failing that, to make arrangements for the oral hearing by determining all matters set out in s. 13 of the Environmental Appeal Board Regulation.¹ The Board invited three representatives from each party to participate in this pre-hearing meeting and the attendance at this meeting was as follows:

- **Mr. Larry McLeod;**
- **Mr. Don Petersen, President, Mountain View Land Holders Group;**
- **Mr. Lyle Ringland;**
- **Ms. Marie Sihlis;**
- **Mr. Leonard Paget**

¹

Alberta Regulation 114/93.

- **Mr. Brian Goliss and Mr. Reid Thomas representing Shell Canada Limited, Mr. Shawn Denstedt of the law firm Bennett Jones Verchere representing Shell Canada Limited;**
- **Mr. Randy Dobko representing Air and Water Approvals Division, Alberta Environmental Protection;**
- **Mr. William McDonald, Environmental Law Section, Alberta Justice, representing Air and Water Approvals Division, Alberta Environmental Protection.**

Mr. Max McCann provided a review of the appeal and mediation process and explained the purpose of the pre-hearing meeting, then circulated copies of "Participants' Agreement to Mediate". After reviewing the agreement, all parties expressed a willingness to enter into mediation.

The Appellants expressed their concerns that if the stack temperature was lowered to 330°C, it would greatly impact the health and well being of both humans and animals in the area surrounding the Caroline plant.

Representatives from Shell Canada Limited expressed a willingness to work with the Appellants to address their concerns.

Following the discussion of several terms and conditions of mediation, this resolution of the appeal was agreed upon by all parties. This resolution is set forth on the next two pages.

December 12, 1995

Resolution of Appeal No. 95-018 regarding Amending Approval No. 92-AL-398C(95).

Whereas:

- A. Alberta Environmental Protection approved Shell Canada Limited's application to reduce the incinerator stack top temperature; and**
- B. Mr. Larry McLeod and the Mountain View Land Holders Group filed notices of objection seeking to appeal that Approval; and**
- C. Shell Canada Limited has indicated to Mr. McLeod and the Mountain View Land Holders Group that it intends to seek approval to increase throughput at the Caroline plant,**

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

- 1. Shell shall perform additional kinetic modelling of tailgas incinerator emissions (including TRS and SO₂) to better understand those emissions including emissions at Shell's intended higher throughputs.**
- 2. Shell, in cooperation with the parties to this agreement will attempt to identify the meteorological conditions under which impacts may be greater.**
- 3. Shell, in cooperation with the parties to this agreement will continue to develop a fugitive emissions program to identify and remediate odour problems.**
- 4. It is the parties intention that the information gathered under this agreement or as a result of permitted performance testing shall be used to update and improve the existing operating control strategy.**
- 5. Wherever the parties have agreed to cooperate, consult or meet in this agreement, they shall do so through the existing Air, Water and Soils Committee and the parties agree to meet separately from that committee as needed.**

EAB 95-018

6. That the Appellants, Mr. Larry McLeod and the Mountain View Land Holders Group withdraw their notices of objection.

Resolution agreed to by:

“original signed by”

Mr. Larry McLeod

Date: December 12, 1995

“original signed by”

Mountain View Land Holders Group,
represented by Mr. Don Petersen

Date: December 12, 1995

“original signed by”

Department of Environmental Protection

Date: December 12, 1995

“original signed by”

Shell Canada Limited
represented by Mr. Reid Thomas

Date: December 12, 1995

EAB 95-018

IV. RECOMMENDATIONS

The Board recommends that the Minister of Environmental Protection confirm the decision of the Director of Air and Water Approvals in Amending Approval No. 92-AL-398C(95), subject to the Resolution contained herein.

Further, with respect to section 92(2) of the Act, the Board recommends that copies of this Report and Recommendations² and of any decision by the Minister be sent to the following parties:

Mr. Larry McLeod;

Mr. Don Petersen, President, Mountain View Land Holders Group;

Shell Canada Limited;

Mr. William McDonald, Environmental Law, Alberta Justice, Alberta Environmental Protection.

Dated December 20, 1995, at Edmonton, Alberta.

“original signed by”

M A. McCann, Board Member

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:

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

Dated at Edmonton this 3rd day of January, 1996.

Honourable Ty Lund
Minister of Environmental Protection

Refer to attachments (only if applicable)

