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# ALBERTA ENVIRONMENTAL APPEAL BOARD DECISION

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**Date of Decision** - October 15, 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 Political Party (Federal) dated August 21, 1996, with  
respect to Approval No. 94-01-01 issued to Suncor Inc., Oil Sands  
Group by Mr. David Spink, Director, Air and Water Approvals  
Division, Department of Environmental Protection on August 15,  
1996.

Cite as: Lucey #2 v. Director, Air and Water Approvals

## BACKGROUND

Mr. Bill Lucey, Leader of the Confederation of Regions Political Party (Federal), wrote a letter of objection dated August 21, 1996, which was received and filed with the Environmental Appeal Board (the "Board") on August 26, 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. 94-01-01 issued to Suncor Inc. Oil Sand Group ("Suncor") by Mr. David Spink, Director, Department of Environmental Protection (the "Department") on August 15, 1996. The Approval issued to Suncor was an amendment of an earlier Approval for the operation of the Fort McMurray oil sands processing plant and the operation and reclamation of the associated oil sands mine. This Amending Approval Mr. Lucey now appeals, expires on June 24, 2006.

After receiving Mr. Lucey's written objection (and attached materials) on August 26, 1996, the Board, in a letter dated September 18, 1996, asked Mr. Lucey to respond to the following questions:

1. How are you directly affected by the decision of Mr. David Spink, Director, regarding Approval No. 94-01-01? When responding to this question please keep in mind the purpose of the Act as outlined in Section 2.
2. Please outline in detail the grounds for your appeal as they are not specifically noted on your initial Notice of Appeal.
3. Please respond to the comments supplied by the Department of Environmental Protection in their letter of September 17, 1996, in relation to the issue that your appeal does not fall under the jurisdiction of the *Environmental Protection and Enhancement Act*.

The Board asked both the Department and Mr. Lucey to respond to the following:

1. In the event that the Board decides to proceed with this appeal, do you wish to have a pre-hearing meeting under section 11 of the Environmental Appeal Board Regulation? If so, what would you contemplate to be the agenda for that meeting?
2. In your opinion, are there any other persons who have an interest in this matter?

A portion of this letter contained a word of caution which stated:

“You should be aware that the Board has the ability to dismiss an appeal if you do not provide us with all of the information which we need and which we seek at this time. Accordingly, please answer all of the questions as thoroughly as possible and send them to this office within the deadline. Failure to respond to this request may result in the Board’s dismissal of your appeal.”

“The Board must decide whether there are issues raised in this matter which will be included in any hearing of the appeal. This is your opportunity to address that issue. A failure to address this issue adequately may result in the Board deciding, without further notice, that some or all of the issues raised will not be included in the appeal.”

All parties responded. However, Mr. Lucey did not respond to the question of the issue that his appeal does not fall under the jurisdiction of the *Environmental Protection and Enhancement Act*.

## **THE BOARD'S PRELIMINARY CONSIDERATIONS**

The Board must determine whether it has jurisdiction to act on the appeal. If required, the Board may request further information from one of the parties.

## **ISSUES**

The Board identifies the following issues in this 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?

## **THE INFORMATION OF MR. LUCEY**

The Board received information from Mr. Lucey in two instalments: (1) his written objection and a copy of a letter dated August 15, 1996, from Dennis Eriksen to Mr. Lucey responding to his statement of concern (the "first submission"); and (2) supplementary material provided to the Board on October 1, 1996 (the "second submission").

The essence of Mr. Lucey's appeal is found in his first submission, a portion of which follows:

“Core demands a two year halt on this project so that Envionment [sic] Canada in Ottawa, can proceed with a through [sic] Envionmental [sic] Impact Study of this project.”

## **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 the NAFTA Agreement on trade and Environment Canada. Both 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 or CORE directly affected?

Even if the issues raised in Mr. Lucey's appeal were properly before the Board, 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 the environment and Suncor’s Amending Approval. Section 84 (1)(a)(ii) and (iv) of the Act states:

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 all Canadians are affected by this Approval. In his second submission, for example, he stated:

“This decision effects [sic] all Canadians so we are requesting a decision from Industry Canada in Ottawa, (North American Free Trade Aggrement [sic] section) as to how this project effects [sic] waters, fisherys [sic], and the enviorment [sic] in general.”

Surely, from an environmental perspective, the effect on different Canadians (in different provinces, for example) is distinguishable. Further, there is nothing in the information we have that suggests CORE’s position is any different than Mr. Lucey’s. The Board does not believe Mr. Lucey or CORE are directly affected. In a recent Environmental Appeal Board

case on this point, the Honourable Mr. Justice Marceau discussed the test on directly affected.<sup>1</sup>

“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 by Mr. Lucey continue to be group interests or interests raised on behalf of others. These broad issues raised in this appeal cannot normally be used to initiate appeals to this Board.

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

“The facsimile message that acts as the Notice of Objection does not outline the grounds for its appeal, but requests certain relief. The relief set out does not fall within the provisions of the Environmental Protection and Enhancement Act and are therefore beyond the jurisdiction of the EAB. We request that the Board, in its initial consideration of this matter, dismiss the appeal as falling outside of the jurisdiction of the Environmental Protection and Enhancement Act. I also refer to the requirement that an appellant must be directly affected and advise that in our view, that neither the Confederation of Regions Party or Mr. Lucey falls within that term.”

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<sup>1</sup>

Martha Kostuch v. The Environmental Appeal Board and the Director of Air and Water Approvals Division, 35 Admin L.R. (2d)160 (Q.B. March 28, 1996); the original decision is found at 17 C.E.L.R. (N.S.)246 (EAB, August 23, 1995).

## **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 Suncor's Approval for which the Board has appellate jurisdiction.
2. Mr. Lucey has not shown that either he or the Confederation of Regions Political Party (Federal) is directly affected by the Director's decision.
3. Mr. Lucey's objection is more directly focussed on NAFTA 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)(ii) in that Mr. Lucey failed to comply adequately with the Board's written request.

Dated on October 15, 1996 at Edmonton, Alberta.

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William A. Tilleman