ALBERTA
ENVIRONMENTAL APPEAL BOARD

DECISION

Preliminary Meeting: September 30, October 1, 1996
Date of Decision: October 28, 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 Lorraine Vetsch et al. with respect to Approval No. 10348-01-00 issued by the Director, Chemicals Assessment and Management Division, Alberta Environmental Protection to Laidlaw Environmental Services (Ryley) Ltd. for the operation and reclamation of a hazardous waste storage and hazardous recyclable storage and processing facility and the construction, operation and reclamation of a hazardous waste landfill.

Cite as: Lorraine Vetsch et al. v. Director of Chemicals Assessment and Management, Alberta Environmental Protection.

PRELIMINARY MEETING BEFORE Dr. William A. Tilleman, Chair
Dr. John P. Ogilvie
Dr. M. Anne Naeth

APPEARANCES

Appellants	96-015	Lorraine Vetsch, represented by Robert Wilde
	96-017	Donna Clandfield
	96-020	Wendy Davis
	96-021	Mary Trumpener
	96-022	Olga Shklanka
	96-024	Elizabeth Paschen
	96-026	Jean Horne
	96-027	Roberta Robinson
	96-028	Patricia Wishart
	96-029	Thomasine Irwin, represented by Roberta Robinson
	96-034	Mark and Faye Mark Garstad, represented by Robert Wilde
	96-035	Janet Meikle, represented by Roberta Robinson
	96-037	Peter Zagrosh
	96-039	Gloria Foth, represented by Leslie Price
	96-040	Helen Lutz and George Pawluk, represented by Dennis Fenske
	96-041	Helen and Jim Karenko, represented by Leslie Price
	96-042	Isabelle and Mick Meadley, represented by Leslie Price
	96-043	Curtis Basaraba
	96-044	Mariette Chesterman, represented by Leslie Price
	96-045	Edward Barnhard, represented by Leslie Price
	96-046	Vernet Webb, represented by Dennis Fenske
	96-047	Marilyn Fenske
	96-049	Leslie Price
	96-050	Leona Thomas, represented by Leslie Price
	96-051	Gertie Mizera, represented by Dennis Fenske
	96-052	Mrs. Kuzyk, represented by Leslie Price
	96-053	Anton and Lucille Knudslien, represented by Leslie Price
	96-054	Ellen Heilesen, represented by Leslie Price
	96-055	Dennis Fenske
	96-056	Alice Mahlum
	96-057	Debbie Hunka, represented by Dennis Fenske
	96-058	Lloyd Hunka, represented by Dennis Fenske
	96-059	Bernice Kozdrowski
	96-065	Barbara Blackley
	96-067	Muriel Clarke

Other Parties	Director, Chemicals Assessment and Management Division, Alberta Environmental Protection, represented by Sadiq Unwala and William McDonald (counsel)
	Laidlaw Environmental Services (Ryley) Ltd., represented by Dave McNeil, Don White, Jason Krips and Ron Kruhlak (counsel)

BACKGROUND

On June 10, 1996, the Director of Chemicals Assessment and Management, Alberta Environmental Protection [Director] issued Approval No. 10348-01-00 [Approval] to Laidlaw Environmental Services (Ryley) Ltd. This Approval was for the operation and reclamation of a hazardous waste storage and hazardous recyclable storage and processing facility and the construction, operation and reclamation of a hazardous waste landfill near Ryley, Alberta. The Approval is due to expire on April 1, 2006.

On June 18, 1996, Lorraine Vetsch of Edmonton filed an appeal of the Approval with the Environmental Appeal Board [Board]. Additional appeals were filed with the Board by Mildred and Robert Rokos on June 25, 1996; Donna Clandfield on July 2, 1996; Donna Enger on July 3, 1996; Wendy Davis, Mary Trumpener, Olga Shklanka, Elizabeth Paschen, Jean Horne and Roberta Robinson on July 5, 1996; Patricia Wishart on July 8, 1996; Thomasine Irwin and Toine Rhemtulla on July 9, 1996; Pamela Laing, Pam Campbell, Robert Wilde, Mark and Faye Garstad, Janet Meikle, Leila Karmy-Jones, Peter Zagrosh, Florence Wood, Gloria and Danny Foth, Helena Lutz and George Pawluk, Helen and Jim Karenko, Isabelle and Thomas Meadley, Curtis Basaraba, Mariette Chesterman, Edward Barnhard, Vernet Webb, Lee and Marilyn Fenske, Ermil and Charles Young, Leslie Price, Leona Thomas, Rudy and Gertie Mizera, Mrs. Kuzyk, Anton and Lucille Knudslien, Ellen Heilesen, Dennis Fenske, Alice Mahlum, Debbie Hunka, Lloyd Hunka and Bernice Kozdrowski on July 10, 1996; Janet Ould, Sharon MacKenzie, William Jones and Lois Larson on July 11, 1996; Robert and Valeria Dueck on July 12, 1996; Barbara Blackley and Maxine Farr-Jones

on July 15, 1996; and Muriel Clark on July 16, 1996. On August 26, 1996, Julia Greer withdrew her appeal. Elizabeth Schwob and Alice Dupuit withdrew their appeals on August 20, 1996 and August 14, 1996, respectively. C.R. Savoir and Peggy Bichel each wrote to the Board on August 6, 1996, but their appeals were dismissed as they were filed after the 30 day time period.

The Board advised the Director and Laidlaw Environmental Services (Ryley) Ltd. that the Approval had been appealed, and the Director was asked to provide copies of all correspondence, documents and materials. On June 18, 1996, the Board wrote to the Natural Resources Conservation Board [NRCB], and the Alberta Energy and Utilities Board [AEUB] asking whether any of these matters have been the subject of a hearing or review under their Board's legislation.

On June 19, 1996, William Kennedy, Solicitor for the NRCB, advised the Board that the appeal does not deal with a matter that has been the subject of a review under the provisions of the NRCB Act.

On July 22, 1996, Mike Bruni, Counsel for the AEUB, advised the Board that they have not reviewed nor held public hearings concerning this appeal.

The Appellants want the Approval revoked because of the danger of pollution to Beaverhill Lake, to health and to the environment.

THE PRELIMINARY MEETING

The Board held a preliminary meeting on September 30 and October 1, 1996, pursuant to s.87 of the *Environmental Protection and Enhancement Act* [the Act]. The purpose of this preliminary meeting was to deal with the jurisdiction of the Board to hear the issues raised by the Appellants, and accordingly, whether or not the Board should proceed with consideration of these appeals to a full hearing.

The Board asked each party in letters dated August 8, 12 and 19, 1996, to provide written representations on the following questions:

1. In the event that the Board determines that it has jurisdiction to proceed further to a pre-hearing or hearing, are the appellants directly affected as contemplated by the Act?

2. Is there any new information that is presented in the various appeals that are relevant to Approval No. 10348-01-00 and that was not available to the Director on the date when he made the decision to issue the said Approval, namely June 10, 1996?

ISSUES

The Board identified the following preliminary issues in this appeal:

1. Which of the parties who submitted notices of objection, if any, are directly affected by the Director's decision to issue the Approval.

2. What are the details of the environmental concerns the appellants have with the decision issued by the Director in this Approval.

3. How will the appellants, who did not file statements of concerns to the issue, respond to the concern raised by the Department of Environmental Protection stating that these individuals did not have the right to appeal the decision relating to Approval No. 10348-01-00.[1]

4. Where are the appellants located relative to the landfill site.[2]

Directly Affected

The Board reiterates and stresses that there is no simple test to determine whether a person is directly affected within s. 84 of the Act. As we stated originally in *Fred J. Wessley v. Director of*

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[1] This statement only applied to the appellants who did not file a statement of concern with the Department of Environmental Protection.

[2] This statement only applied to the appellants who lived in Ryley or Tofield.

Environmental Protection,[3] this determination must be made on a case by case basis, taking into account the particular facts and circumstances of each appeal. Cases that raise the directly affected argument are so fact dependent that it is impossible to stabilize a rule that can be followed in each case.

In *Dr. Martha Kostuch v. Director, Air and Water Approvals Division, Alberta Environmental Protection*[4], the Board reviewed the principles and authorities concerning the meaning of "directly affected". The Board stated that the word "directly" requires an appellant to establish that a direct personal or private interest of an economic, environmental or other nature is likely to be impacted or caused proximately by the Approval in question. Generalized concerns or grievances will not be sufficient. The Board concluded its analysis by stating:

> "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.

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3 Appeal No. 94-001, February 2, 1994.

4 (1995), 17 C.E.L.R. (NS) 246.

> Second, a person will be more readily found to be "directly affected" if the interest in question relates to one of the policies underlying the Act. This second issue raises a question of law, i.e., whether the person's interest is supported by the statute in question. The Act requires an appropriate balance between a broad range of interests, primarily environmental and economic."[5]

The first paragraph of the passage was quoted with approval by J. Marceau in a judicial review application[6] brought to challenge the Board's decision on "directly affected" in the *Dr. Martha Kostuch* appeal. The court was satisfied that the Board applied the correct test[7] and dismissed the application.

In its February 2, 1994 decision *Maurice Boucher v. Director, Alberta Environmental Protection*,[8] the Board found appellants not directly affected because their concerns were of a remote, nonenvironmental consequence of the issuing of an Approval.

> "The Board finds that the appellants do not have a substantial interest in the outcome of this proposed water transmission line that surpasses the common interest of all residents in the ID who will be affected by this approval. To be directly affected by this project, the appellants must show some special indicia of environmental effect that will directly be felt by them -- as opposed to the residents of the ID at large. Showing special indicia depends upon the nature of the causal connection between

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5 Ibid., at p. 257.

6 *Martha Kostuch* v. *Alberta 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 CELR (N.S.) 246 (E.A.B., August 23, 1995).

7 Ibid., at p.11.

8 *Boucher v. Alberta (Director, Environmental Protection)*, (February 2, 1994), Doc. Appeal No. 93-004 (Alta. E.A.B.).

> the project appealed and the effect upon the complaining party. It is possible that concerns over economic matters may be relevant in establishing a causal connection with the project appealed, but there must *first* be an environmental effect that is directly felt by the appellants."

The Board's interpretation of "directly affected" is consistent with the January 1996 decisions of the Alberta Court of Appeal in *CUPE Loc. 30 et al. v. W.M.I. Waste Management of Canada Inc.*[9]; and *Friends of the Athabasca Environmental Association et al. v. Public Health Advisory and Appeal Board* [PHAAB].[10] In fact, in Boucher, one of our earliest cases on standing, this Board reached the same general conclusion as the courts in the PHAAB cases although this Board's decision was released before the decision of Justice Agrios in the PHAAB case. In the PHAAB cases, the courts considered the meaning of s. 4(2) of the Alberta Public Health Act which gives a person who is "directly affected" by a decision of a local board of health, the right to appeal to the Public Health Advisory and Appeal Board. In the W.M.I. case, the Court of Appeal stated:

> "The phrase "directly affected" must mean something more than "affected". However, it cannot be given an expanded meaning simply by virtue of expanding social consciousness: *Canada (A.G.) v. Mossop* (1993) 100 DLR (4th) 658 (SCC).
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> In our view, the inclusion of the word "directly" signals a legislative intent to further circumscribe a right of appeal. When considered in the context of the regulatory scheme, it is apparent that the right of appeal is confined to persons having a personal rather than a community interest in the matter."[11]

Further, in both cases the Court of Appeal rejected the view that notwithstanding the words "directly affected", standing to appeal could be based on the principles of discretionary public interest that were outlined by the Federal Court in *Friends of the Island v. Canada (Minister of Public Works*).[12]

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9 *C.U.P.E., Local 30 v. W.M.I. Waste Management of Canada Inc.* (1996), 34 Admin. L.R. (2d) 172 (Alta. C.A.).

10 *Friends of the Athabasca Environmental Assn. v. Alberta (Public Health Advisory & Appeal Board)*, 34 Admin. L.R. (2d) 167, (Alta. C.A.).

11 Ibid., at p. 8.

12 (1993), 102 D.L.R. (4th) 696 (F.C.T.D.).

In the *Friends of the Athabasca* case, the Court of Appeal stated:

> "The Appellants urge the application of the principle in *Friends of the Island*, which held that courts have a broad discretion to grant standing to apply for judicial review. We specifically rejected that proposition in *W.M.I. Waste Management*. The mandate of an administrative tribunal and its legal process must be construed in accordance with the legislative intent. In our view, that intent is clear. The use of the modifier "directly" with the word "affected" indicates an intent on the part of the Legislature to distinguish between persons directly affected and indirectly affected. An interpretation that would include any person who has a genuine interest would render the word "directly" meaningless, thus violating fundamental principles of statutory interpretation: *Subilomar Properties (Dundas) Ltd. v. Cloverdale Shopping Centre Ltd.* (1973) 35 DLR (d) 1 (SCC) at 5. An interpretation that would import expanding concepts of judicial discretion, contrary to the intention of the Legislature, would engage the sort of interpretive exercise expressly rejected by the Supreme Court in Canada *(Attorney-General) v. Mossop* (1993) 100 DLR (4th) 658 at 673."[13]

This Board considers that persons who file notices of objection bear the onus of establishing that they are directly affected by the application.[14] Yet it is important to note, as we did in *Hazeldean Community League and Two Citizens of Edmonton v. Director of Air and Water Approvals, Alberta Environmental Protection*,[15] that in special circumstances this onus may be discharged without proof of direct causation. The Board is concerned that appellants face a labyrinth of procedural barricades which must be hurdled or avoided before they can be heard on the merits of their case. The Board does not want to dismiss a case that is clearly meritorious when there is a likelihood that a hearing on the merits will substantiate standing in law.

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13 Ibid., at p. 4.

14 Environmental Appeal Board, Rules of Practice, Section IV, K, Burden of Proof, at p. 12.

15 Decision Report (May 11, 1995) EAB Appeal No. 95-002 at p. 4 (Alta. E.A.B.).

As we noted in *Dr. Martha Kostuch v. Director, Air and Water Approvals Division, Alberta Environmental Protection*,[16] the Alberta Court of Appeal recognized and commented on this dilemma in *Leduc (County No. 25) v. Local Authorities Board*[17]. The Court of Appeal stated that:

> "If the section is to be construed as requiring the person proposing to intervene to show with certainty that his rights *will* be affected, how is he to do it? A tribunal cannot know with any certainty at the start of the hearing what the proceeding will involve . . . "
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> "The Board, by the nature of its task, is bound to make its ruling at an early stage of the proceeding. It is bound to rule fairly on a balance of probabilities whether the hearing has the potential to affect or vary a person's rights given the variations in result possible at the conclusion of the hearing".[18]

We are persuaded by the comments of the Court of Appeal. Our task is to determine at this preliminary stage of the proceedings whether on a balance of probabilities there is a potential, that is, a reasonable possibility, that any of the parties will be directly affected by the application.

Mr. McDonald, on behalf of the Director, submitted that the onus is upon the appellants to prove to the Board how they are directly affected, and that it will be the Board's decision that will allow these appellants to proceed further.

The Board wishes to remind parties of the differences between burden of proof and the standard of proof. While the burden is on the appellant, and while the standard accepted by the Board is a balance of probabilities, the Board may accept that the standard of proof varies depending on whether it is a preliminary meeting to determine jurisdiction or a full hearing on the merits once jurisdiction exists. If it is the former, and where proof of causation is not possible due to lack of information and proof to a level of scientific certainty must be made, this leads to at least two

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16 Ibid., at pp. 15-16.

17 (1987), 54 Alta. L.R. (2d) 396.

18 Ibid., at pp. 399-400.

inequities: first that appellants may have to prove their standing twice (at the preliminary meeting stage and again at the hearing) and second, that in those cases (such as the present) where an Approval has been issued for the first time without an operating history, it cannot be open to individual appellants to argue causation because there can be no injury where a plant has never operated.

We must also refer to the judgment of the Alberta Court of Queen's Bench in *Slauenwhite v. Alberta Environmental Appeal Board*. In *Slauenwhite*[19] J. Wilkins emphasized that s.6(1) of the Approvals Procedure Regulation[20] imposes a duty on the Director in an approval decision to consider the environmental impacts of the entire project in question. His Lordship stated that it would be patently unreasonable for this Board to conclude that the Act precluded it from hearing and determining whether or not the environmental impacts of the whole project had been weighed in accordance with the Act and regulations.

SUMMARY OF PARTIES TO THE PROCEDURES OF THE PRELIMINARY MEETING

The Board initially categorized the appellants as:

1. Those who did not file a statement of concern,[21]
2. Those who withdrew their appeal but attended the preliminary meeting,
3. Those who had no written submissions,[22] and

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19 (1995), 175 A.R. 42 (Alta. Q.B.).

20 Alta. Reg. 113/93.

21 Section 70(1) of the Act states:

70(1) Where notice is provided under section 69(1) or (2), any person who is directly affected by the application or the proposed amendment, addition, deletion or change, including the approval holder in a case referred to in section 69(2), may submit to the Director a written statement of concern setting out that person's concerns with respect to the application or the proposed amendment, addition, deletion or change.

22 Section 87(5)(a)(ii) of the Act states:

87(5) The Board

4. Those who completed all steps of the appeal procedure appropriately.

No appellant in category 2 attended at the preliminary meeting. Appellants in category 4 were considered full participants in the preliminary meeting. Appellants in categories 1 and 3 were given the opportunity to explain why they did not file statements of concerns and written submissions, respectively.

Appellants who did not file written submissions included those who believed the person representing them had taken care of the details of the written submissions (Vetsch, Mizera), those who believed the original statement of concern was sufficient since they did not have anything further to add (Zagrosh, Foth, Karenko, Chesterman, Barnhard, Kuzyk, Knudslien, Heilesen, Meadley, Thomas, Price, Fenske, Wood) and those who were too involved in other life concerns at the time to respond to the Board's request (Basaraba, Clarke).

Appellants who did not file statements of concern included those who did not see the advertisements of the Approval in the local papers because they do not receive the local papers (Trumpener, Robinson, Wishart, Irwin, Zagrosh, Mizera, Blackley), those who thought they were already represented by other groups and did not need to file an individual statement of concern (Vetsch) and those who could not meet the deadline for submission for personal reasons (Shklanka, Paschen, Fenske).

Mr. McDonald indicated that those appellants who failed to write submissions in response to the Board's request left the validity of their appeal at the discretion of the Board. He stated that those appellants who failed to file statements of concern were not eligible to participate further in the preliminary meeting because they did not follow a legislated requirement and their appeals should be dismissed.

(a) may dismiss a notice of objection if (ii) the person who submitted the notice of objection fails to comply with a written notice under section 85.

Mr. Kruhlak agreed with the statements of Mr. McDonald.

SUMMARY OF STATEMENTS OF DIRECTLY AFFECTED

The appellants fall into three broad categories based on location to the Laidlaw facility:

1. Those living in Ryley,
2. Those living in the area near Ryley, and
3. Those living in Edmonton.

The appellants can also be categorized on the basis of the nature of their concerns. Those concerns include:

1. Concerns for their personal health,
2. Concerns for their economic livelihood, and
3. Concerns for the environment.

Two appellants lived in Edmonton but had a concern for the environment in general and a specific concern for the Beaverhill wildlife habitat. These appellants included Clandfield (who visited the Beaverhill Lake site three times this year and once last year) and Davis (who visited the site four times this year and brings visitors from around the world to the site).

Price represented many appellants living in Ryley who had specific health concerns about dust from the facility and subsequent declining air quality (Meadley, Foth, Karenko, Chesterman, Thomas, Barnhard) and concerns with water quality (Chesterman). Many appellants were concerned how these environmental problems would affect their gardens and thus the food they consumed. Appellants living in Ryley and represented by Fenske had similar general health concerns (Lutz, Pawluk, Webb) as did Knudslien.

Meadleys (bed and breakfast owners), Ryley residents represented by Price, were concerned about decreasing real estate values and loss of tourist interests. Appellants represented by Fenske (Pawluk, Lutz, Hunka), Knudslien and Basaraba had similar concerns.

A few Ryley residents had specific concerns. Webb (represented by Fenske) was traumatized over having to explain environmental issues and decisions to his students. Basaraba was concerned with smells, spillage of toxic waste, runoff water from the storage cells, tornados potentially removing the waste from the facility and encounters with poorly driven Laidlaw trucks. Kozdrowski lived adjacent to the facility and expressed concerns about water quality, noise that awakened her even though she had a sleeping disorder, horrible smells, truck traffic to and from the facility and toxic spills.

Several appellants lived outside Ryley but were concerned with water and air quality. Some like Garstad lived directly adjacent the facility and were downstream and downwind while others lived several miles away but along a stream or stream tributary that passed the Laidlaw facility (Mahlum, Price). Mahlum cited direct health concerns related to the facility, concerns over toxic spills and noise from the traffic going into the facility. Similar concerns over water and air quality were expressed by Hunka, as represented by Fenske. Wood, as represented by Marilyn Fenske, was concerned with high chlorides in her dugout alleging the effect the facility was having on groundwater and how this water might contaminate the vegetation cattle could consume.

Hielesen, represented by Price, said she did not want to be further involved in the appeal process.

McDonald reiterated that to be considered directly affected, the appellants must demonstrate their concerns are of an environmental nature and must be viewed as those of a personal nature that transcend those of the general public.

Kruhlak agreed with McDonald and further stated his concerns about the number of invisible appellants who were not present to discuss their cases. He believed all appellants gave statements similar to the concerns of the general public and not those of a specific personal nature with direct

cause and effect linkages to the Laidlaw facility. He indicated no new information was presented to strengthen any of the cases for directly affected to remove them from the realms of the general public concerns and that the close proximity to other facilities such as the sewage lagoons further complicated the ability to show direct cause and effect linkages with the Laidlaw facility.

DECISION ON PARTIES TO THE PROCEDURES OF THE PRELIMINARY MEETING

At the preliminary meeting, and following submissions from all parties, the Board dismissed the appeals of all appellants who did not comply with the Act by filing a statement of concern. The Board agreed to let appellants who had not responded to the Board's request for written submissions continue as parties to the preliminary meeting since there was some confusion as to how they should proceed if they had no new information to add to that in the statement of concern. Hielsen's appeal was considered withdrawn.

DECISION ON DIRECTLY AFFECTED STATUS OF THE APPELLANTS

After careful consideration, the Board does not believe the *nonresidents* of Ryley are directly affected by Approval 10348-01-00. None of these appellants convinced the Board their concerns were different than those of the general public and that they were directly affected by the Approval.

The Board is not prepared to say anyone residing in Ryley is not directly affected. Further the Board is prepared to say that anyone residing in Ryley has more direct concerns regarding the Approval than the general public. However, the burden of proof of being directly affected was not discharged by most of the appellants. There must be a reasonable attempt by each appellant to convince the Board of being directly affected by the Approval. This is true, notwithstanding the Board's willingness to lower the standard of proof as mentioned at page 10 of this decision.

Only one appellant, Mrs. Kozdrowski, convinced the Board that she was directly affected. Mrs. Kozdrowski lives adjacent the Laidlaw facility buffer zone and owns land in the buffer zone. She

spoke on her own behalf and presented specific examples of why she was personally directly affected.

No appellant other than Mrs. Kozdrowski convinced the Board they were directly affected. Thus all appeals other than that of Mrs. Kozdrowski are dismissed. The Board allows Mrs. Kozdrowski's appeal and will proceed to a hearing.

ORDER

A hearing of this appeal on the matters raised in the notice of appeal by Mrs. Kozdrowski will be held on or before January 24, 1997. The Appellant in this appeal is Mrs. Bernice Kozdrowski.

The Director, of course, is a party to this appeal, and any other person may apply to the Board for party status,[23] including Laidlaw Environmental Services (Ryley) Ltd., all appellants who appeared at the preliminary meeting and others who respond to the Board's forthcoming advertisement.

Dated on October 28, 1996, at Edmonton, Alberta.

William A. Tilleman, Chair

M. Anne Naeth

John P. Ogilvie

[23] See s.87(6) of the Act, and Environmental Appeal Board Regulation, Alta Reg. 114/93, as amended.