

ALBERTA
ENVIRONMENTAL APPEAL BOARD

DECISION

Date of Decision: October 6, 1999

IN THE MATTER OF Sections 84, 85 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 Mr. David Cameron with respect to Approval 10533-02 issued by the Director of Prairie Region, Alberta Environment to the Municipal District of Cardston No. 6, for the application of pesticides within 30 horizontal metres of water bodies within the Municipal District of Cardston.

Cite as: Cameron v. Director of Prairie Region, Alberta Environment, *re: Municipal District of Cardston No. 6.*

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BACKGROUND

[1] The Environmental Appeal Board (Board) received an appeal from Mr. David Cameron (Appellant) dated June 21, 1999. The Appellant objects to Approval No.10533-02, issued by Mr. Alan Pentney, Director of Prairie Region (Director), Alberta Environment, on May 21, 1999. The Approval authorizes the Municipal District of Cardston No. 6 to apply pesticides within 30 horizontal metres of open bodies of water within the Municipal District, except for those areas *within* the Town of Cardston, where the Appellant resides.¹

[2] The M.D. obtained the Approval in order to stop the spread of noxious weeds along the District's waterways. These weeds include Leafy Spurge, Spotted Knapweed, Blue Weed, Scentless Chamomile and Hounds' Tongue. The weeds threaten the ecological diversity of the area and the viability of ranches and farms adjacent to the infested waterways. Accordingly, the M.D.'s control of these noxious weeds is important to the local environment of the M.D.² Of course, pesticides pose their own environmental risks. Thus, the Approval represents an attempted, and difficult trade-off of risks in order to minimize the net environmental impact to the M.D.'s waterways. However, the Board expresses no opinion on whether the Approval adequately balances these risks, because it finds as a threshold matter that the Appellant lacks standing to file this appeal.

¹ At this point, the Board stresses the political and legal difference between the Town of Cardston (where the Applicant lives) and the *Municipal District* of Cardston, which is the Approval Holder.

² See the Board's recent decision in *Municipal District of Cardston No. 6 v. Director, Enforcement and Monitoring Division, Alberta Environmental Protection* (August 17, 1999), Appeal No. 99-011-D.

[3] Pursuant to section 84(1)(a)(iv) of the *Environmental Protection and Enhancement Act*³ (the Act), only the person to whom an approval is issued, or persons who are “directly affected” by an approval, may appeal the approval to this Board. An appellant in the latter of these two categories bears the burden of proving⁴, on a preponderance of the evidence, that he is ‘directly affected’ by the approval being appealed. Accordingly, the Appellant, Mr. Cameron, was obliged to submit evidence demonstrating how he would be affected by the Director’s Approval of the M.D.’s use of pesticides within 30 horizontal metres of waters in the M.D., but outside of the Town of Cardston where the Appellant resides. The Board gave the Appellant several chances to submit this evidence, as described below.

[4] In a letter dated July 21, 1999, the Board wrote to the Appellant requesting a written response explaining how he was “directly affected” by the Approval. In its letter, the Board also requested an explanation of the Appellant’s environmental concerns with the Director’s decision to issue the Approval. The Board’s letter specifically cautioned that the Board might dismiss the appeal if the Appellant did not provide all the information sought by the Board.

[5] The Appellant responded to the Board’s request, in a letter dated August 6, 1999. In that letter, he said:

Regarding the issue as to our being “directly affected” by the application of toxic chemical pesticides within the Municipal District of Cardston, our condition of environmental hypersensitivity guarantees an adverse reaction to the use of these

³ S.A. 1992, Ch. E-13.3.

⁴ *E.g., Bildson v. Acting Director of North Eastern Slopes Region, Alberta Environmental Protection, re: Smoky River Coal Ltd* (October 19, 1998) 98-230-D at 8; *Iwaskow v. Director of Air and Water Approvals Division, Alberta Environmental Protection, re: Talisman Energy Inc* (April 30, 1998), 98-001 at 10; *Ash and Munroe v. Director of Southern East Slopes and Prairie Regions, Environmental Regulatory Service, Alberta Environmental Protection* (November 13, 1997) Appeal Nos 97-031 and 97-032 at 11; *Ed Graham et al. v. Director of Chemicals Assessment and Management, Alberta Environmental Protection* [1996] 20 C.E.L.R. (N.S.) 287 at 295; *Dr. Martha Kostuch v. Director, Air and Water Approvals Division, Environmental Protection* [1995] 17 C.E.L.R. (N.S.) 246, 258-259.

substances, even at a distance. Further, when these hazardous materials are released into the environment to contaminate the air and water and ground, they are no respecter [sic] of civil boundaries, and all residents rely on the water for drinking, and the air for breathing.

As we have indicated from the very beginning, our concern has never been solely for ourselves, but for all those who are ill affected by these toxins, and most particularly those who are more at risk, especially children who are at a vulnerable stage for the development of asthma and auto-immune disease, as well as the disabled and the elderly. This activity will also adversely impact on the ability of anyone, including ourselves, to travel or visit or move to the Municipal District.

[6] Upon review of the Appellant's written response, the Board wrote to the Appellant on August 16, 1999, for a second time requesting further explanation, including specific examples, of how the Appellant was "directly affected" by the Director's Approval. In particular, the Board wanted to know the Appellant's exact residential and recreational locations or uses in relation to the areas where pesticides would be used pursuant to the Approval. In addition, the Board requested an explanation, supported by medical or other evidence, of the Appellant family's hypersensitivity to pesticides.

[7] The Appellant responded in a letter dated August 23, 1999, with the following comments:

Our family, and many others, are directly affected by the volatility, designed persistence, contamination and peripheral sundry environmental effects (eg to the watershed and precipitation) by the application of the proposed chemical pesticides.

We, and many others, rely on the water, air, and land, which the M.D. proposes to treat with toxic, suspected mutagens and carcinogens. Those living, or visiting, within the area with Environmental Hypersensitivities, allergies, chemical sensitivities, asthma, auto-immune diseases, as well as children and the elderly, or infirm, with their maturing, or comprised, immune systems, would be particularly adversely effected by adding to the load of their immune systems and the environment, which they rely for their well-being, in general, by the unnecessary addition of these toxic chemical compounds.

Further, the health and well-being of anyone wishing to travel, or live, within the

M.D., possibly for recreation, would be compromised by the application of these hazardous chemicals, if it were allowed to proceed. In the case of someone with health concerns this could precipitate a potentially life-threatening reaction, for which they would have had no prior warning. This is an unwarranted assault on personal mobility, enjoyment and health, and for our family, and others.

[8] In addition to his own response, the Appellant provided a letter dated July 8, 1997, addressed ‘TO WHOM IT MAY CONCERN,’ from Dr. MacLennan of Dundas, Ontario, regarding the condition of the Appellant’s brother, Mr. Tom Cameron.

ANALYSIS

[9] The Alberta Court of Queen’s Bench has previously considered the “directly affected” test as a threshold standing requirement. In *Kostuch v. Director, Air and Water Approvals Division, Alberta Environmental Protection*, the Court stated:

[T]he 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.⁵

[10] More recently, in *Bildson v. Acting Director of North Eastern Slopes Region, Alberta Environmental Protection, re: Smoky River Coal Limited*, the Board explained that, in order to meet its burden of proving that it is “directly affected,” an appellant:

⁵ (1995), 17 C. E. L. R. (NS) 246 at p.257.

“... must show that the approved project will harm a natural resource (e.g. air, water, wildlife) which the appellant uses, or that the project will harm the appellant’s use of the natural resource. The greater proximity between the location of the appellant’s use of a natural resource at issue and the approved project, the more likely the appellant will be able to make the requisite factual showing.”⁶

[11] The Board believes that the Appellant has failed to show a “discernible effect” that is causally linked to the out-of-town spraying authorized by the Approval or, in other words, that the approved spraying will harm a natural resource which is sufficiently proximate to the Appellant.

[12] The Appellant cited his family’s hypersensitivity as one reason why he is directly affected by the Director’s Approval. However, the Appellant failed to adequately respond to the Board’s queries regarding the nature of this medical condition and how that condition would be affected by the spot spraying of pesticides *outside* the Town of Cardston. To illustrate, in his letter dated August 6, 1999, the Appellant stated:

... when these hazardous materials are released into the environment to contaminate the air and water and ground, they are no respecter [sic] of civil boundaries, and all residents rely on the water for drinking, and the air for breathing.

[13] These allegations do not suggest that the Appellant will actually frequent the out-of-town areas where pesticides will be sprayed. The areas which may be treated are probably 2-5 km away from the Appellant’s residence, but in most cases many kilometres farther. What is missing then is proof by the Appellant of an actual link between himself and the areas in the M.D. that will be spot-treated.

⁶

Appeal No. 98-230-D (October 19, 1998) at 15.

[14] The Appellant has also failed to reasonably demonstrate that he will be exposed to significant concentrations of those pesticides through his use of water and air from his residence within the Town of Cardston. Notably, the Director’s Approval expressly prohibits spraying inside the Town.⁷ The Approval also prohibits both the direct application of pesticides to water and any application within 250 m upstream of the Town’s waterworks.⁸ The Approval requires the M.D. to give the Town two week’s written notice, at a minimum, of any application within 1500 m of its water intake.⁹ This notice must include an outline of the precautions to be taken by the M.D. to “ensure that pesticide does not contaminate water.”¹⁰ The Appellant’s burden of proving that he will be exposed to pesticides sprayed outside of the Town’s borders must be viewed in light of the above Approval provisions, and others, which are intended to prevent pesticides from migrating, through the air or water, away from the precise areas in which they are applied. In the Board’s view, the Appellant has failed to satisfy this burden.

[15] The Board stresses that its conclusion is based, more on the Appellant’s failure to

⁷ Section 3.2.1 of Approval No. 10533-02 states:

Application of pesticides shall be limited to land areas within 30 horizontal metres of the following water bodies located within the Municipal District of Cardston. *The Municipal District of Cardston does not include lands located within the Town of Cardston.* [Emphasis added.]

⁸ Approval No.10533-02 provides:

3.1.3 Pesticides shall not be deposited on or in any surface water.
3.1.7 The approval holder shall not conduct application of pesticides prescribed in TABLE 3.2-1 within 250 metres upstream of the water intake for the Town of Cardston’s waterworks system on Lee Creek.

⁹ See section 3.1.8 of Approval No. 10533-02.

¹⁰ See Section 3.1.9 of Approval No. 10533-02.

adequately respond to the Board's request for information, than on any general conclusions regarding the toxicity of pesticides and the likelihood of the Appellant's exposure to those pesticides. In particular, the Board does not intend this Decision to suggest that Appellants must convincingly prove the merits of their appeals in order to show that they are "directly affected" by the decisions being appealed. Nor does the Board intend to preclude the possibility that people may be directly affected by exposure to pollution or intentional releases of toxic substances "down-stream" of locations where the substances are in fact released or pollution emitted. Having said that, the Board also recognizes the inherent scientific difficulties of proving "down-stream" exposure and impacts or, more generally, of proving health and other environmental effects due to myriad, complex intra- or inter-ecosystem linkages. However, these factors do not negate the need for some proof of exposure and harm from that exposure. The Appellant has provided only bare and incomplete allegations, despite the Board's request for additional information. The Legislature did not, in the Board's opinion, intend the Board to grant standing based on these scant responses.

[16] Finally, the Board notes that there has been a history of dispute between the Appellant and the Town of Cardston regarding the Town's use of pesticides. In particular, the Appellant was successful in obtaining an injunction preventing the Town from spraying pesticides in the park neighbouring his property. The Board is also informed of alleged events where the Town violated an earlier agreement to notify the Appellant of any spraying in the park. The Board is sympathetic to the Appellant's concerns about spraying in the park adjacent to his residence. But these concerns are insufficient to show that the Appellant is likely to be "directly affected"—*i.e.* exposed to and harmed by—the M.D.'s use of pesticides outside of the Town's borders.

CONCLUSION

[17] According to the Act, the Appellant must prove that he was 'directly affected' in order to be granted a right of appeal. The Appellant has failed to satisfy this burden, despite the Board's

two requests for additional proof, pursuant to section 85 of the Act. Although the Board is sympathetic to the Appellant, and to his concern for the health of the public generally, the Board is limited by the wording of the Act. Pursuant to sections 85 and 87(5)(i.1), the appeal is dismissed.

Dated on October 6, 1999, at Edmonton, Alberta.

Dr. William A. Tilleman