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ALBERTA  
ENVIRONMENTAL APPEAL BOARD  
  
Decision

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Date of Preliminary Meeting - October 26, 1999

Date of Decision - November 24, 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** appeals filed by Mr. Andreas Dzurny on behalf of himself and as a representative of the Strathcona Land Owner Group and Mr. William Procyk with respect to Approval No. 236-01-00 issued to Dow Chemical Canada Inc. by the Director, Northeast Boreal Region, Alberta Environment.

Cite as: Dzurny *et al.* v. Director, Northeast Boreal Region, Alberta Environment

*re: Dow Chemical Canada Inc.*

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## **HEARING BEFORE**

Dr. Steve E. Hrudehy, Chair  
Dr. Curt Vos  
Mr. Ron V. Peiluck

## **APPEARANCES**

Appellant: Mr. John Prowse, Q.C., counsel, representing Mr. Andreas Dzurny and the Strathcona Land Owners Group; and Mr. William Procyk

Department: Mr. David Day and Ms. Heather Veale, counsel, Alberta Justice, representing Mr. Kem Singh, Alberta Environment

Approval Holder: Ms. Andrea Moen, counsel, Fraser Milner, representing Mr. Ken Tsang, Dow Chemical Canada Inc.

## **BACKGROUND**

[1] The Environmental Appeal Board (Board) received Appeals from Mr. Andreas Dzurny on behalf of himself and as a representative of the Strathcona Land Owner Group on June 30, 1999 and Mr. William Procyk on July 2, 1999 (Appellants) with respect to Approval 236-01-00 issued to Dow Chemical Canada Inc. (Dow) by Mr. Kem Singh, Director, Northeast Boreal Region, (Director) Alberta Environment (Department) for the construction, operation and reclamation of the Fort Saskatchewan Chemical Manufacturing Plant.

[2] The Board acknowledged receipt of each of the Appellants' Appeals and requested from the Department of Environment copies of all related correspondence, documents and materials. On July 2 and 8, 1999, the Board advised Dow Chemical Canada Inc. that Appeals had been filed and provided them with a copy of each of the Appeals.

[3] According to standard practice, the Board wrote to the Natural Resources Conservation Board (NRCB) and the Alberta Energy and Utilities Board (EUB) asking whether this matter had been the subject of a hearing or review under their respective Boards' legislation. Reply was subsequently received from the NRCB advising that they did not hold any hearings or reviews of this matter. On July 23, 1999, the EUB advised the Board, among other things:

“The Board has issued a number of industrial development permits to facilities on the Dow site in the past, and I am enclosing copies of the five (5) decision reports relating to those facility applications for which the EUB conducted hearings. You will see that Mr. Dzurny participated in the two most recent EUB hearings referred to, i.e. decisions 97-4 and 97-7. His concerns at those hearings related to flaring, noise, air emissions, spills and safety and access issues arising from operations at the Dow site. Mr. Procyk has never participated in an EUB hearing or review of the facilities on the Dow site.”

[4] On August 24, 1999, the Board wrote to the Appellants requesting details on how they were “directly affected” by the Director’s decision and details on their environmental concerns. The Board also asked Mr. Dzurny to clarify his interests, i.e. if he was representing the Strathcona Land Owners Group, himself or both. The Board also asked if the parties wished to proceed to a mediation meeting pursuant to the Environmental Appeal Board Regulation.<sup>1</sup> On this same date, the Board asked the Department and Dow if they wished to participate in a mediation meeting and also to comment on its letter to the Appellants.

[5] The Department provided a response to the Board’s letter on August 27, 1999 stating:

“...Mr. Andreas Dzurny did not file a Statement of Concern as required by sections 70 and 84(1)(a)(iv) of the *Environmental Protection and Enhancement Act*, S.A. 1992, c. E-13.3, with respect to his appeal, EAB 99-137. Please be advised that the Department of Environment will also be addressing the issue of whether Mr. Dzurny’s appeal should be dismissed, on this basis, in the written submission to be provided to the Environmental Appeal Board by September 6, 1999.”

[6] On September 17, 1999, the Board advised all the parties (and invited the EUB) that it would be conducting a preliminary meeting on October 26, 1999, for the purposes of addressing the following:

**“1. Should there be a Dismissal on Grounds of Directly Affected?”**

At the meeting, the Board will hear arguments on, and decide whether to grant, Ms. Veale’s request that the appeal be dismissed on standing grounds. Before reaching its decision, the Board will expect Mr. Dzurney [sic] and Mr. Procyk to swear under oath that the facts contained in their letters with respect to their standing (i.e. whether they are “directly affected” by the Approvals) are true. The Board will also provide Mr. Dzurney [sic] and Mr. Procyk the chance to give any additional sworn testimony regarding their standing, and will enable the other parties to cross-examine Mr. Dzurney [sic]

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<sup>1</sup> A.R. 114/93.

and Mr. Procyk on the standing issue, if they so desire.

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If, in their arguments on standing, any of the parties intend to rely on documentary evidence that is not already before the Board, the parties shall file their evidence with the Board and provide copies to the other parties by September 30, 1999.

## **II. Should there be a Dismissal Due To Procedural Grounds?**

At the meeting, the Board will also hear any additional argument which the parties may desire to make with respect to Ms. Veale's request for a dismissal on the ground that Mr. Dzurney [sic] failed to file a statement of concern.

## **III. Should there be a Dismissal Due To Previous EUB Review?**

The Board will also deal with Ms. Veale's request for dismissal under section 87(5)(b)(i) on the *Environmental Protection and Enhancement Act*, Chap. E-13.3 (as amended). On this point, the EUB will be given an opportunity to participate, if it chooses to do so."

[7] The EUB advised in a letter of September 28, 1999 that it would not be participating. Mr. Dzurny provided the Board with further information on September 30 and October 4, 1999. In letters of October 1, 4 and 6, 1999, the Department provided their submission and further information that it would be relying on at the preliminary meeting and Dow also provided information on October 6, 1999 and dated September 29, 1999. The Board provided, in a letter of October 15, 1999, documentation received directly from the EUB.

[8] On October 14, 1999, the Board provided the parties with the procedures for the preliminary meeting and requested comments. These same procedures were confirmed on October 21, 1999 in a letter to the parties.

## THE PRELIMINARY MEETING

[9] The Board held a preliminary meeting on October 26, 1999, in Edmonton pursuant to section 87 of the *Environmental Protection and Enhancement Act* (the Act).<sup>2</sup> The purpose of the preliminary meeting was to decide (1) should there be a dismissal on grounds of directly affected, (2) should there be a dismissal due to procedural grounds, and (3) should there be a dismissal due to previous EUB review.

[10] Before dealing with these matters, Mr. Prowse requested an adjournment because he had been unsuccessful in obtaining some medical records pertaining to Mr. Dzurny. The Board advised Mr. Dzurny that the Board would not need to delve into details of the degree to which Mr. Dzurny believed that he was directly affected at the preliminary meeting. Rather the Board wished to establish whether his circumstances were such that he could reasonably make a case in a hearing that he was directly affected by the Approval in question. The Department took no position on the adjournment while Ms. Moen opposed the adjournment stating that the only issue the Board needed to establish was that Mr. Dzurny had failed to file a statement of concern with the Director. Mr. Prowse explained that he needed the medical records to make a case as to why Mr. Dzurny was not able to file a statement of concern with the Director, but that he had in all other respects taken part in dealings with the Department about his and Mr. Procyk's concerns.

[11] The Board ruled that there was no issue concerning whether Mr. Procyk had filed a statement of concern with the Director in accordance with the requirements of section 84(1)(a)(iv) and that the preliminary meeting could still address the other two issues of whether Mr. Procyk was directly affected and whether Mr. Procyk had an opportunity to participate in the previous EUB

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<sup>2</sup> S.A. 1992, ch. E-13.3.



review and whether it had adequately dealt the concerns he raised in his appeal. These latter two issues could also be addressed with regard to Mr. Dzurny. Only if the Board found in favour of Mr. Dzurny on both of these points would the matter of his filing a statement of concern be relevant in

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determining jurisdiction of the Board to proceed to a hearing on his appeal. On this basis the preliminary meeting proceeded.

### **SUMMARY OF THE PARTIES' STATEMENTS ON ISSUES AND DIRECTLY AFFECTED STATUS**

[12] Mr. Prowse noted that Mr. Dzurny purchased his current property in 1963 and he entered a county map<sup>3</sup> showing Mr. Dzurny's residence in relation to Dow, a 1972 aerial photo<sup>4</sup> showing the area surrounding Mr. Dzurny's residence before the Dow plant was constructed and a 1996 aerial photo<sup>5</sup> showing the Dow plant and its proximity to Mr. Dzurny's and Mr. Procyk's residence. Mr. Dzurny recounted how he believed that the stress of living near the Dow plant had caused him to lose his job and had interfered with his ability to continue in continuing education classes. These stresses had arisen mainly since 1995. Mr. Dzurny attributed most of these problems to flaring, primarily the noise and light emitted from flaring, particularly at night. Mr. Dzurny acknowledged that these issues were raised when he participated in a hearing before the EUB in 1996 and that the flaring had reduced somewhat. However, Mr. Dzurny felt that flaring was still a problem citing problems the previous week. With regard to the EUB hearing he felt that they had dealt with the average quantity of sound in decibels but that they had not adequately dealt with the quality of sound, with the latter being a primary source of the irritation he experienced. He was also concerned with the release of toxic emissions at Dow and the adequacy of the monitoring provided along the northeastern boundary of their property.

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<sup>3</sup> Exhibit 1 - Map of County of Strathcona showing ownership of land.

<sup>4</sup> Exhibit 2 - 1972 Photograph identifying Mr. Dzurny's property.

<sup>5</sup> Exhibit 3 - 1996 Photograph identifying the locations of Shell, Mr. Dzurny's land, Mr. Procyk's land and Dow Chemical.

[13] The Board asked Mr. Dzurny how his concerns before this Board differed from his concerns expressed in two previous appearances before the EUB concerning Dow. Mr. Dzurny indicated that the EUB was only concerned with the quantity of noise rather than his concern with the quality of noise, particularly from flaring.

[14] Mr. Procyk noted that his statement of concern to the Director<sup>6</sup> included five concerns:

- “1. Numerous chlorine leaks affect the health and safety of those residing and working on my property.
2. As owner of said property, I have the right to live/work in an environment free of air, noise and light pollution.
3. I have grave concerns about the reliability, accuracy, and absence of information provided to me by Dow Chemical & its Associates.
4. Dow Chemical does not have a buffer zone between my property boundaries to their north & east. I do not feel it is justifiable for a multinational company to rely on me, a single land owner, to provide this.
5. I plan to commence working, for several months, on my south & west boundaries. I want to be guaranteed compensation for my workers & myself due to down time from noise, light, and odors caused by operations on the Dow Chemical Site.”

[15] Mr. Procyk's Notice of Appeal stated that the grounds for his appeal were: "Dow Chemical has equipment only a stones throw away from my property. Their operations adversely impacts on our enjoyment and use of our land through sight, sound and smell pollution. They have also interfered with our plans to develop our farm by sending a spokes person to speak against same. City official states at hearings it is unsafe to live on our property."

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<sup>6</sup> Documents Subject of the Appeal, Statements of Concern, Tab 1, Letter of May 19, 1998 from Mr. Bill Procyk to the Director of Air and Water Approvals, Alberta Environmental Protection.

[16] Mr. Procyk, with assistance from Mr. Dzurny, reiterated a number of the same concerns about noise and light raised by Mr. Dzurny. Neither Mr. Procyk nor Mr. Dzurny elaborated any specific concerns to the Board about odour, other than as it might relate to chlorine emissions and their associated safety concerns. However, a key additional concern raised by Mr. Procyk was the absence of an adequate buffer zone between the Dow site and his adjacent property. Mr. Procyk mentioned that Dow has made only a "token" offer to buy his property, but that when he attempted to secure development approval to build a new house on his property, he was denied approval and Council voted on July 13, 1998 to rezone his land for industrial use. The news story<sup>7</sup> attached to his Notice of Appeal stated that Corporate Communications Manager Gordon Harris told council "Existing homes are allowed to remain in the area, but cannot be replaced or repaired except for minor maintenance." Mr. Procyk also brought the Board's attention to the newspaper story attributing the following commentary (without the use of quotations) to David Hales, manager of planning and development: "But the area is not safe to live in.....Local industrial plants are too close and there is too much danger of a toxic chemical leak drifting on to Procyk's land". Mr. Procyk noted that Mr. Hales is a Professional Engineer and accordingly, Mr. Procyk attached credibility to Mr. Hales' comments.

[17] Mr. Procyk indicated that he had not participated in the EUB hearings in 1996 and 1997 because he was farming on his land near Andrew at that time and was not aware that these hearings were being held.

[18] Mr. Day, speaking for the Department, noted that the main issue underlying these Appeals is the unresolved land use conflict. He noted that it is not within the powers of the Director to resolve the land use conflict in dealing with an approval application. The land use conflict was addressed very explicitly in both recent EUB decisions.<sup>8</sup> Ms. Veale provided a detailed review of

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<sup>7</sup> The Sturgeon Creek Post Fort Saskatchewan, Vol. 3, Number 27, July 15, 1998, pages 1 and 2.

<sup>8</sup> Alberta Energy and Utilities Board Decision 97-4, 11 March 1997 regarding Dow Chemical Canada Inc.

these two decisions and argued that the EUB also dealt with all of the other issues raised both by Mr. Dzurny and Mr. Procyk.

[19] The Department did not dispute that the Appellants were directly affected in their concerns with the Dow operation, but the Department maintains that all of the matters being raised by both Appellants were before the EUB in previous hearings in which Mr. Dzurny participated directly and that these issues were adequately dealt with by the EUB.

[20] Ms. Moen adopted all of the Department's arguments with regard to whether the issues raised by Mr. Dzurny and Mr. Procyk had been adequately dealt with by the EUB. Mr. Ken Tsang was called as a witness to address the question of monitoring emissions on the plant site and at the plant boundaries. He noted that Mr. Procyk's concerns with chlorine emissions should be tempered by the fact that the chlorine process units are on the opposite side of the Dow property from Mr. Procyk and that any chlorine release would have to travel across their main plant site before it would reach the northeastern boundary adjacent to Mr. Procyk's property. This was cited as the rationale for not locating chlorine monitors along this boundary because there was monitoring on the intervening plant property that any chlorine release would encounter before reaching Mr. Procyk's property.

## **DELIBERATIONS OF THE BOARD**

[21] This preliminary meeting was set to decide three issues: (1) should there be a dismissal on grounds of directly affected, (2) should there be a dismissal due to procedural grounds, and (3) should there be a dismissal due to previous EUB review. Following on the motion of Mr.

Prowse for adjournment to allow him the opportunity to obtain medical records for Mr. Dzurny, the Board decided to defer the second issue of procedural grounds as it related to the failure of Mr.

Dzurny to file a statement of concern with the Director. Accordingly, the deliberations of the Board will only address issues 1 and 3.

[22] The Department acknowledged during the preliminary meeting that the Appellants are directly affected. The documentation provided by all the parties for this meeting and the evidence presented to the Board were sufficient to satisfy the Board that both Mr. Dzurny and Mr. Procyk are in a position to be directly affected by the issuance of Approval 236-01-00 to Dow Chemical Canada Inc. No case was made for dismissing the Appeals on the grounds of the Appellants not being directly affected.

[23] The remaining issue before the Board was whether the appeals should be dismissed in accordance with section 87(5)(b)(i) of the Act.<sup>9</sup> This section requires the Board to make two significant findings: whether the Appellant either "received notice of" or "participated in" or had the "opportunity to participate in" an EUB review of the project at issue; and if so (2) whether the EUB's review "adequately dealt with" all of the matters raised in the Notices of Appeals before this Board.

[24] Mr. Dzurny's participation in two hearings before the EUB on December 5, 1996 and on May 26, 1997 is a matter of record. Mr. Procyk did not participate in either hearing. According to his testimony Mr. Procyk did not see the published notices of these hearings because he was residing on his farm at Andrew. However, the record is clear that notices were published in advance of these hearings and that Mr. Procyk certainly had an opportunity to become aware and to participate if he had been resident on the property where he believes that he has been directly

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<sup>9</sup> The Act states in section 87(5)(b)(i):

- 87(5) The Board  
 (b) shall dismiss a notice of appeal if in the Board's opinion  
 (i) the person submitting the notice of appeal received notice of or participated in or had the opportunity to participate in one or more hearings or reviews under the *Natural Resources Conservation Board Act* or any Act administered by the Energy Resources Conservation Board at which all of the matters included in the notice of appeal were adequately dealt with.

affected by the operations of Dow. The transcript<sup>10</sup> of the December 1996 EUB hearing includes reference by another resident, Mr. Norman Demeule, to concerns among all residents in the area and to negotiations about buying out all of the properties taking place with BioClean, another proposed industrial development. These discussions apparently involved 18 landowners "that would include all the residents along 220, on the east side of 220..." This reference is unclear about whether it included Mr. Procyk who is resident on the west side of 220, but it does suggest that most residents were certainly actively aware of industrial land development issues in the area at the time of the EUB hearings. Regardless of whether Mr. Procyk was aware specifically of either of the EUB public hearings there is currently no obligation on either the EUB nor Dow to notify individually all potentially interested parties to a public hearing.

[25] The second issue concerning section 87(5)(b)(i) of the Act, is whether the EUB "adequately dealt with" all of the matters raised in the Notice of Appeal. In the case of Mr. Dzurny, the grounds stated in the Notice of Appeal were: "Dow Chemicals off-site impacts to [sic] excessive for there [sic] facilities close proximity to residents. Impacts include - sight, sound + smell". In the case of Mr. Procyk, the grounds stated in the Notice of Appeal were: "Dow Chemical has equipment only a stones throw away from my property. Their operations adversely impacts on our enjoyment and use of our land through sight, sound and smell pollution. They have also interfered with our plans to develop our farm by sending a spokes person to speak against same. City official states at hearing it is unsafe to live on our property."

[26] In their testimony before the Board, Mr. Dzurny and Mr. Procyk elaborated on these general statements to indicate specific concerns with the disruptive noise, light and timing of flaring and generalized concerns with the possibility of toxic gas (particularly chlorine) releases and what the Appellants regarded as inadequate monitoring of any such releases. Overall, the Appellants are

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<sup>10</sup> Exhibit 6 - Transcript of AEUB Hearing December 5, 1996, to consider Application No. 960461 made by Dow Chemical Inc.

aggrieved by the change in the quality of their lives brought on by the continuing expansion of



industrial activity in close proximity to their property. Mr. Procyk in particular has found development plans for his property have been precluded by the decision of Fort Saskatchewan City Council to zone his land for industrial development. The statements attributed by the media to City planning personnel as to their safety concerns with allowing any new residential development on Mr. Procyk's property can only reinforce Mr. Procyk's concerns about the safety of anyone residing on his property.

[27] The transcript<sup>11</sup> of the EUB hearing held on the ethylene plant expansion leading to Decision 97-4. The Board has reviewed. There is considerable discussion by the EUB on the issues of flaring, noise, accidental chemical release and emergency response and land use conflict. The quality and quantity of noise were both dealt with at this previous hearing. The foregoing issues were raised not only by Mr. Dzurny and Mr. Demeule (another resident) but also by EUB staff and EUB presiding members. For example, EUB Decision 97-4 stated (at page 4) that:

"The Board has reviewed the social, economic, and environmental effects of the application and believes the following issues to be of major concern:

- noise,
- flaring,
- rail traffic,
- public safety, and
- land use."

[28] And the EUB concluded in Decision 97-4 (at page 11):

"The Board believes that land use conflicts represent a mounting concern with further industrial growth in this area. While the Board is satisfied that Dow's expansion can be built and operated within provincial regulatory guidelines and without undue risks, it also believes Dow and other projects will be handicapped in time as the cumulative effects of growing industrial activity on the area are felt. Given the current land use classification, it appears the land use for the area is ultimately destined for industrial purposes. Growing public concerns due to cumulative environmental effect and deterioration of lifestyles should be expected during this transition.

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<sup>11</sup> *Ibid.*

The Board is satisfied that the existing and expanded Dow operations will not represent a safety concern to the public since no compelling technical or environmental reasons exists to deny the Dow expansion. Notwithstanding that view, the Board does support the suggestion from the community that some priority be given by the various levels of government and affected industry to develop a process which would address the land uses in the area. The absence of such a resolution could lead to ongoing regulatory delays and public conflict as pressures to add new projects in the area are considered. The Board intends to bring the concerns of the community to the attention of the government for its further consideration."

[29] In a previous Board decision<sup>12</sup> addressing the meaning of "adequately dealt with" in section 87(5)(b)(i) the word "adequat[e]" was interpreted as requiring this Board to give "a reasonable amount of deference to the EUB's judgments on the issues raised in an Appellant's Notice of Appeal to this Board." In that previous decision the EUB's decision on the environmental matters in question was strongly influenced by input from the Department, thereby requiring this Board to consider how the Director dealt with those concerns in providing input to the EUB. In the case currently before this Board there is much less evidence of input from the Department in the deliberations of the EUB. But the Board finds the main environmental issues in question in this case, particularly, noise, flaring, air emissions, public safety and land use, were adequately dealt with by EUB staff and presiding board members during the hearing. To illustrate, here are some of the EUB comments:

#### Noise

"The Board recognizes the importance of controlling noise levels from industrial facilities to ensure that residents living near these facilities are not overly affected by them. . . . The Board continues to believe the guidelines are a reasonable reference point to control undue noise impacts. The Board accepts that industrial noise from the Dow plant will be clearly heard at the nearby residences under certain ambient conditions, but the levels, as predicted by Dow, will be below the permissible sound levels established using ID 94-4."<sup>13</sup>

<sup>12</sup> *Bildson v. Acting Director of North Eastern Slopes Region #2, Alberta Environmental Protection, re: Smoky River Coal Limited* (December 8, 1998), Appeal No. 98-230-D2, at 14.

<sup>13</sup> Alberta Energy and Utilities Board 97-4, 11 March 1997 regarding Dow Chemical Canada Inc. Application for an Ethylene Plant Expansion, Fort Saskatchewan, at 6.

Flaring

“While the Board believes excessive flaring is unacceptable, it recognizes that some amount of flaring cannot be avoided at facilities such as Dow’s to protect the integrity of the plant, workers, and the public. . . The Board believes this problem is being addressed to the point where the frequency of significant flare events is declining and the average volume of flaring for Dow’s ethylene plant is also declining. . . The Board is satisfied this commitment will result in the continued reduction of flaring events.”<sup>14</sup>

Rail Traffic

“The Board notes the various concerns raised by interveners concerning rail traffic and encourages Dow to work with the interveners and to approach CN to address rail traffic issues. However, the Board has no jurisdiction to influence the activity of a federally regulated railway.”<sup>15</sup>

Public Safety

“The Board recognizes the safety concerns of local residents regarding the plant expansion. . . The Board also notes Dow’s commitment to sample the white powder described by Mr. Dzurny the next time an occurrence is reported and provide these results to the affected residents. . . The Board does not believe that with proper operation of the plant, there will be a material safety risk to the adjacent community.”<sup>16</sup>

Project Impacts

“Dow asserted that it fully intended to comply with the commitments in its application and with all of the Alberta Environmental Protection’s requirements.”<sup>17</sup>

“The Board notes that both Dow and Mr. Anez appear to agree on the need for companies to voluntarily work to reduce emissions at facilities, over and above what may be required by regulators. The disagreement appears to be over how and where

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<sup>14</sup> *Ibid.* at 8.

<sup>15</sup> *Ibid.* at 8.

<sup>16</sup> *Ibid.* at 10.

<sup>17</sup> Alberta Energy and Utilities Board Decision 97-7, 12 June 1997 regarding Dow Chemical Canada Inc. Application for Polyethylene Plant Expansion, Fort Saskatchewan, at 4.

to obtain these reductions.”<sup>18</sup>

“Since these are “voluntary” reductions, the Board believes that it is best left to the individual company to determine how best to invest its money to achieve these additional emission reductions. The Board commends Dow on the steps it has taken and is planning to take to achieve additional emission reductions at its Fort Saskatchewan site.”<sup>19</sup>

“The Board believes and expects the proposed expansion will meet all relevant provincial standards. The Board has considered all the evidence presented and is satisfied that the impacts associated with the addition of the third polyethylene train are minimal and acceptable. With respect to the other, more general concerns raised by the interveners such as emergency response planning, impact of rail cars, access, and safety, the Board notes that no new information was raised that had not been discussed previously at the ethylene plant expansion hearing. The Board is satisfied that the existing and expanded Dow polyethylene operations will not represent a safety concern to the public.”<sup>20</sup>

#### Land-Use Conflict

“Given the location and nature of this expansion, the Board does not believe the proposed expansion represents a significant increase to the existing land-use conflict in the area. . . . The Board remains convinced that the ultimate and most timely solution to the residents’ concerns must involve a collaborative process with all affected parties...”<sup>21</sup>

Therefore, in the Board's opinion, deference to the EUB judgments on these issues, for the circumstances of this case, is appropriate. These are all issues that are well within the expertise and experience of the EUB in their mandate of managing Alberta's energy resources in the public interest.

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18 *Ibid.* at 5.

19 *Ibid.* at 6.

20 *Ibid.* at 6.

21 *Ibid.* at 7.

[30] Having heard the submissions of Mr. Dzurny and Mr. Procyk, the Board believes that the main resolution that was being sought by these Appellants, and that is likely necessary to achieve any meaningful resolution of this situation, is a fair and equitable resolution of the land use conflict. Notwithstanding the considerable sympathy the Board holds for the Appellants under their circumstances, the powers provided to this Board by the Act do not provide the scope to resolve this land use zoning conflict because that ability does not fall within the powers of the Director.

[31] Despite our lack of jurisdiction to resolve this matter, the Board is compelled to note that a land use conflict situation that was described by the EUB as leading to a "deterioration of lifestyles"<sup>22</sup> for affected residents remains unresolved more than two and half years later. Long term residents who have experienced increasing encroachment of major industrial developments upon their rural lifestyle now face the reality that their land has been re-zoned for industrial development, thereby restricting their freedom to upgrade their own residential property. On the face of it, this situation appears unfair and inequitable. The Board believes that the industrial developers, local government and the provincial government (on behalf of Albertans), all of whom are major beneficiaries of these industrial developments must find the means to achieve fair and equitable treatment for the affected rural landowners. The industrial developers, as the initiators of these projects, should be showing some leadership in moving this process forward and ensuring that it reaches an expeditious conclusion.

## **DECISION OF THE BOARD**

[32] The Board concludes that Mr. Procyk's and Mr. Dzurny's Appeals must be dismissed under section 87(5)(b)(i) of the *Environmental Protection and Enhancement Act*.

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<sup>22</sup> Alberta Energy and Utilities Board Decision 97-4, 11 March 1997 regarding Dow Chemical Canada Inc. Application for an Ethylene Plant Expansion, Fort Saskatchewan, page 11.

[33] Given the foregoing decision, there is no need to reconvene the preliminary meeting, as requested by Mr. Prowse, to allow for securing the medical records of Mr. Dzurny to address the procedural issue of whether Mr. Dzurny filed a statement of concern with Director.

Dated November 24, 1999, at Edmonton, Alberta.

“original signed by” \_\_\_\_\_

Dr. Steve E. Hrudehy

“original signed by” \_\_\_\_\_

Dr. Curt Vos

“original signed by” \_\_\_\_\_

Mr. Ron V. Peiluck