

ALBERTA ENVIRONMENTAL APPEAL BOARD

Cost Decision

Date of Hearing: March 15, May 11, 12, 17, 1999

Final Replies: June 14, 1999

Report and Recommendations: July 13, 1999

Ministerial Approval: August 25, 1999

Date of Cost Decision: November 29, 1999

IN THE MATTER OF Sections 84 and 88 of the Environmental Protection and Enhancement Act (S.A. 1992, c. E-13.3 as amended);

-and-

IN THE MATTER OF applications for costs related to appeals filed by Ms. Gertie Mizera and Mr. Rudy Mizera *et al.* with respect to Approval No. 20754-00-01/Amending Approval No. W1075 issued to Beaver Regional Waste Management Services Commission by Mr. Wayne Inkpen, Director, Northeast Boreal and Parkland Regions, Alberta Environmental Protection.

Cite as: Cost Decision *re: Mizeras, Glombick, Fenske, et al.*

PANEL MEMBERSHIP

Dr. M. Anne Naeth, Chair
Dr. Curt Vos
Mr. Ron V. Peiluck

APPEARANCES

Appellants: Mr. Mitch Bronaugh representing Mr. Rudy and Ms. Gertie Mizera; Mr. Adelhardt Glombick representing Glombick Farms; Ms. Karin Buss, counsel, Ackroyd, Piasta, Roth & Day, representing Ms. Marilynn Fenske.

Department: Mr. Grant Sprague, counsel, Alberta Justice, representing the Director of Alberta Environmental Protection, Mr. John Shaw, Mr. Gene Leskiw, Mr. Wayne Inkpen and Mr. David Lloyd.

Approval Holder: Mr. Michael Welsh, counsel, Welsh and Company, representing Mr. Francis Hugo, Mr. Forrest Wright, Mr. Brian Adeney, Mr. Elston Solberg, Mr. Paul Ruffell and Beaver Regional Waste Management Services Commission.

Other Parties: Mr. Robert Wilde, representing Mr. Mark and Ms. Faye Garstad; Ms. Cindy and Mr. Doyle Booth.

Other Participants: Mr. John Deagle and Ms. Rhonda Rudnitski, Canadian Waste; Mr. Charles Moell, C.E., Moell & Associates; Mr. Richard Stein, Alberta Geologic Society; Ms. J. Biggin; Ms. Sally Ulfsted; Mr. Lee Fenske; Dr. Jim Argo as witnesses; Mr. Dennis Fenske.

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I. BACKGROUND

[1] The Environmental Appeal Board (the Board) issued a Report and Recommendations for Appeals 98-231, 232 and 233 which received Ministerial approval on August 25, 1999. At the end of the hearing for those appeals on May 17, 1999, the Board asked for cost submissions with final replies due June 14, 1999. The Board received final cost replies from Mr. Rudy and Ms. Gertie Mizera, Mr. Adelhardt Glombick, Ms. Marilyn Fenske, Mr. Mark and Ms. Faye Garstad and Ms. Cindy and Mr. Doyle Booth on June 14, 15 and 18, 1999, respectively.

II. CLAIMS FOR COSTS

[2] The final cost applications are:

Mr. Rudy and Ms. Gertie Mizera	\$14,705.74
Mr. Adelhardt Glombick	\$2000.00
Ms. Marilyn Fenske	\$14,697.42
Mr. Mark and Ms. Faye Garstad	\$654.00
Ms. Cindy and Mr. Doyal Booth	<u>\$2,419.00</u>

Total Applications:	\$34,476.16
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III. SUMMARY OF ARGUMENTS

[³] Each of the Parties stated they believed they made a substantial contribution to the hearing. Alberta Environmental Protection Department (the Department) submitted the Board should not award costs due to lengthy, inappropriate presentations with no Party raising issues in the public interest that had not been raised by other Parties. They stated that if the Board elects to award costs, the Board or the Beaver Regional Waste Management Services Commission (the Commission) should be responsible for them. The Commission submitted that no new issues were raised before the Board.

IV. CONSIDERATIONS OF THE BOARD

A. Statutory Matters

[4] In considering whether to award costs, the purposes of the *Environmental Protection and Enhancement Act*¹ (Act) that provides the Board with its jurisdiction must be considered.² One of the key purposes of the Act is to ensure that the integrity of ecosystems and human health are protected. The mechanism with which to do so, at least at the appeal level, is found in section 84 which provides Parties with procedural details of the appeal process.³

¹ S.A. 1992, c. E-13.3 (as amended).

² Section 2 states:

2 The purpose of this Act is to support and promote the protection, enhancement and wise use of the environment while recognizing the following:

- (a) the protection of the environment is essential to the integrity of ecosystems and human health and to the well-being of society;
- (b) the need for Alberta's economic growth and prosperity in an environmentally responsible manner and the need to integrate environmental protection and economic decisions in the earliest stages of planning; ...
- (d) the importance of preventing and mitigating the environmental impact of development and of government policies, programs and decisions; ...
[and]
- (g) the opportunities made available through this Act for citizens to provide advice on decisions affecting the environment; ...

³ The portions of section 84 relevant to the facts of this cost decision are:

84 (1) A notice of appeal may be submitted to the Board by the following persons in the following circumstances:

- (a) where the Director
 - (i) issues an approval, ...

a notice of appeal may be submitted

[5] Provisions are included in the Act to address issues of awarding and distributing costs.⁴ The Act clearly states the Board may award costs for proceedings before it on a final or interim basis and may direct by whom and to whom costs will be paid. The Environmental Appeal Board Regulation⁵ more specifically addresses the awarding of costs for matters pertaining to the notice of appeal and for preparation and presentation of party submissions.⁶ Section 19 applies to interim costs and since the Board has decided against the awarding of interim costs in this appeal it need not be considered here. Section 20 provides for the matters to be considered by the Board when awarding final costs.⁷ Section 20(2)(h) is particularly relevant to cases where participants are

(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,

⁴ Section 88 of the Act provides:

88 The Board may award costs of and incidental to any proceedings before it on a final or interim basis and may, in accordance with the regulations, direct by whom and to whom any costs are to be paid.

⁵ AR 114/93.

⁶ Section 18 provides that:

- 18 (1) Any party to a proceeding before the Board may make an application to the Board for an award of costs on an interim or final basis.
- (2) A party may make an application for all costs that are reasonable and that are directly and primarily related to
- (a) the matters contained in the notice of objection, and
- (b) the preparation and presentation of the party's submission.

⁷ The relevant portions of section 20 read:

20 (1) Where an application for an award of final costs is made by a party, it shall be made at the conclusion of the hearing of the appeal at a time determined by the Board.

(2) In deciding whether to grant an application for an award of final costs in whole or in part, the Board may consider the following:...

vindicating elements of policy that the legislators have deemed important enough to protect.

Anand and Scott have stated:

Where a board is given a broad residual authority to do what it considers necessary to carry into effect the intent of the legislature, it can be argued that it should ensure that there is a balanced representation of views at its public hearings by funding groups which could not otherwise participate in an effective manner.⁸

[6] The legislature has left it to the discretion of the Board to weigh the above factors.

Not all of the criteria need to be met for a successful claim for costs.

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- (d) whether the application for costs was filed with the appropriate information;
 - (e) whether the party applying for costs required financial resources to make an adequate submission;
 - (f) whether the submission of the party made a substantial contribution to the appeal;
 - (g) whether the costs were directly related to the matters contained in the notice of objection and the preparation and presentation of the party's submission;
 - (h) any further criteria the Board considers appropriate.
- (3) In an award of final costs the Board may order the costs to be paid in whole or in part by either or both of
- (a) any other party to the appeal that the Board may direct;
 - (b) the Board....

8 R. Anand & I.G. Scott, Q.C. "Financing Public Participation in Environmental Decision Making" (1982) 60 Can. Bar. Rev. 81 at 104, cited from Regulated Industries Program, Consumers' Association of Canada, Costs Awards in Regulatory Proceedings: A Manual for Public Participants (1979) at 20.

B. Judicial v. Quasi-Judicial Forum

[7] When considering whether to award final costs, it is important to clarify the distinction between the awarding of costs in civil litigation fora as opposed to quasi-judicial hearings. This distinction has been addressed by R. Macaulay, Q.C., who states that:

The public interest is an unseen but vital party in virtually all agency deliberations. The public interest may be explicitly set out in the mandating legislation or alternatively implied by it. Elsewhere [in his book, he attempts to] express the fundamental differences between administrative agencies and courts. Nowhere, however, is the difference more fundamental than in relation to the public interest. To serve the public interest is the sole goal of nearly every agency in the country. The public interest, at best, is incidental in a court where a court finds for a winner and against a loser. In that sense, a court is an arbitrator, an adjudicator. Administrative agencies for the most part do not find winners or losers. Agencies, in finding what best serves the public interest, may rule against every party represented before it⁹

[8] Conversely, according to Macaulay, Boards can rule in favour of all parties if the public interest in a particular case supports such a determination. When considering whether this Board should grant costs the hearing outcome should be relevant, but only in part. Administrative and judicial proceedings are different. Environmental hearings are technically complex and value based. They require, for example, technical experts to speak of biophysical issues, legal counsel to advise on procedural matters and private citizens to speak of values. A request for costs may conceivably address all three areas.

[9] Section 88 of the Act, and section 20 of the Regulation, give the Board the ability to award costs in a variety of situations that may exceed the common law restrictions imposed by the courts. Since hearings before the Board do not produce judicial winners and losers, the Board is not

⁹ R. Macaulay Q.C., *Practice and Procedure Before Administrative Tribunals* (Scarborough: Carswell, 1988) at 8-1.

bound by the general principle that the loser pays, as outlined in *Reese*.¹⁰ The Board stresses that deciding who won is far less important than assessing and balancing the contributions of the Parties so the evidence and arguments presented to the Board are not skewed and are as complete as possible. The Board prefers articulate, succinct presentations from expert and lay spokespersons to advance the public interest for both environmental protection and economic growth in reference to the decision appealed.

[10] The focus in most administrative hearings is the public interest, more than a *lis* between parties. According to Professor Evans, "the nature of regulatory proceedings is not compatible with the general rule applied in civil litigation that costs follow the event...".¹¹ As Justice Urie of the Federal Court of Appeal stated in *Bell Canada v. C.R.T.C.*¹² :

The principle issue in this appeal is whether the meaning to be ascribed to the word [costs] as it appears in the Act should be the meaning given it in ordinary judicial proceedings in which, in general terms, costs are awarded to indemnify or compensate a party for the actual expenses to which he has been put by the litigation in which he has been involved and in which he has been adjudged to have been a successful party. In my opinion, this is not the interpretation of the word which must necessarily be given in proceedings before regulatory tribunals.

[11] The Board's statutory authority gives it jurisdiction over a variety of matters. In some appeals the public interest component is very high. In other appeals the subject matter is closer to

¹⁰ *Reese v. Alberta (Ministry of Forestry, Lands and Wildlife)* (1992), 5 Alta. L.R. (3d) 40; [1993] 1 W.W.R. 450 (Alta. Q.B.).

¹¹ J.M. Evans, "Developments in Administrative Law: The 1985-86 Term" (1987) 9 Sup. Ct. L.R. 1 at 45.

¹² 34 C.P.C. 121, 147 D.L.R. (3d) 37, 72 C.P.R. (2d) 162, [1984] 1 F.C. 79, 48 N.R. 197 (Fed. C.A. affirmed (*sub nom. Bell Canada v. Consumers' Assn. of Can.*), [1986] 1 S.C.R. 190, 17 Admin.L.R. 205, 9 C.P.R. (3d) 145, 65 N.R. 1, 26 D.L.R. (4th) 57 at 147 D.L.R. pp. 39 [hereinafter *Bell Canada*]. We note that the Supreme Court of Canada's decision regarding the interpretation of the word "costs" in *Bell Canada* has been heavily criticized. See Evans, *ibid* at 42. For other cases which have recognized the potential for unfairness in the traditional cost rule, see Anand & Scott, *supra* note 8 at text accompanying footnotes 79-81 and 84-85.

a *lis* between two parties with the public interest still involved, but to a lesser degree.

[12] Through the wording of section 88, the Alberta legislature granted the Board cost awarding powers for any "proceedings". "Proceeding" is defined by Black's Law Dictionary as:

... the form and manner of conducting juridical business before a court or judicial officer. Regular and orderly progress in form of law, including all possible steps in an action from its commencement to the execution of judgment. [The term] also refers to administrative proceedings before agencies, tribunals, bureaus, or the like.¹³

C. Nature of the Evidence

[13] A recurring issue in recent appeals before this Board, and for other environmental decision-makers that implement environmental law,¹⁴ is scientific and technological uncertainty. It was necessary, in this case, for the Board to hear scientific evidence through the Parties to assist it in understanding this appeal and coming to its decision.¹⁵

[14] Professor Jeffery commented on the care with which waste treatment facilities must be approached and assessed:

The problems associated with waste disposal are perhaps the ones that are readily recognized by the public and regulatory authorities as requiring the most serious and careful attention, primarily as a result of the potentially devastating impacts upon mankind's most important non-renewable environmental resources: air, land and water. The methods used for waste disposal are varied and include, for example, landfilling, incineration, recycling and the landfarming of biodegradable wastes. In each case the particular method of waste treatment or disposal undertaken requires

¹³ H.C. Black et al., *Black's Law Dictionary*, 6th ed. (St. Paul: West Publishing Co., 1990) at 1204.

¹⁴ F.P. Grad, *Treatise on Environmental Law*, vol. 1 (New York: Matthew Bender, 1973) (1992 Supplement) at 1-25.

¹⁵ The role of scientific expertise in the form of expert evidence at quasi-judicial decision settings is increasing. See R. Smith & B. Wynne (eds.), *Expert Evidence: Interpreting Science in the Law* (London: Routledge, 1989) at 1.

an understanding of complex scientific and technological principles, which are themselves in the developmental stage.¹⁶

D. Relevancy, Materiality and Purposes of the Act

[15] Fiscal constraints on all parties require that appeals be resolved in an efficient and effective manner,¹⁷ and one that is fair. For awarding costs, the Board intends to exercise restraint and caution, while at the same time to give effect to the statutory provisions (section 88) for costs so that this provision is not an empty gesture to parties that otherwise meet the requirements for financial assistance.

[16] To arrive at a reasonable assessment of costs, the Board must first ask whether the Parties presented valuable evidence and contributory arguments, and presented suitable witnesses and skilled experts. In this regard, the Board must assess whether each Party through their advisors and witnesses presented relevant evidence that:

- (a) substantially contributed to the hearing;
- (b) directly related to the matters contained in the notice of appeal; and
- (c) made a significant and noteworthy contribution to the goals of the Act.

If a Party meets these criteria, the Board may award costs for reasonable and relevant expenses such as out-of-pocket expenses, expert reports and testimony or time lost from work. A costs award may also include amounts for retaining legal counsel or other advisors to prepare for and make presentations at the Board's hearing.

[17] In court proceedings, it is only in exceptional circumstances that the courts award costs on a solicitor and client basis. Rather, the norm is for the courts to base costs, in so far as they relate to the costs of advocacy, upon a scale related to the size and nature of the dispute and the

¹⁶ M. Jeffery, Q.C., *Environmental Approvals in Canada* (Toronto: Butterworths, 1989) at 5.28.

¹⁷ See J.M. Evans et al., *Administrative Law: Cases, Text, and Materials* (Toronto: Emond Montgomery Publications Ltd., 1995) at 18-19.

amount of trial and preparatory time customarily involved in matters of that type. In Alberta, this approach is embodied in the Schedules to the Rules of Court. Such amounts are, at all times, subject to the overriding discretion of the court. They are not intended to compensate for the full costs of advocacy, even in the court system where a "loser pays" approach is the norm.

[18] In exercising its costs jurisdiction, this Board believes it is not appropriate (except perhaps in exceptional cases) to base its awards on a solicitor and client costs approach. It is up to each party to decide for themselves the level and the nature of representation they wish to engage. Similarly, it is up to each party to decide to what extent they wish their advocates to be involved in their pre-hearing preparation. The Board does not intend, through the exercise of its costs jurisdiction, to become involved in such decisions, yet this would be inevitable if, in deciding costs, the starting point was the actual account charged by the lawyer or advisor in question. Rather, the Board intends to follow the court's approach of basing any costs awards on a reasonable allowance for hearing and preparation time, suitably modified to reflect the administrative and regulatory environment and the other criteria that apply before the Board.

[19] The Board also wishes to avoid costs applications deteriorating into an overly personal or acrimonious critique of the quality of the other party's representation. A feature of a regulatory environment is that parties and their advocates often appear in many proceedings. It would be detrimental to good working relations if each proceeding ended with the parties examining and then engaging in detailed criticism of each other's expenditures. As ability to pay is one criteria (s. 18(2)(e)), it may also be that this burden would fall particularly on those opposing projects on public interest grounds, since they are the ones who, more frequently seek costs.

[20] An award of costs, while made up of several components, will be just one award of the costs, ultimately payable to the party concerned by the Board or by one or more of the other parties to the appeal, depending upon the Board's decision under Section 20(3) of the Regulation (114/93). It remains the responsibility of each party to attend to paying for its advisors and disbursements; these are not sums the Board will order paid directly. A Board decision *not* to award

costs, or the full costs, of any particular advisor, advocate or disbursement should not be taken as any indication that the sum involved was unreasonable or inappropriate. The Board has to consider a variety of factors in awarding costs, any one of which may affect the exercise of the Board's overall discretion. This is particularly true because a factor in the Board's discretion will often be that various parties made similar submissions.

[21] Awards for preparation and presentation time will reflect the Board's view that presentations must be focused on relevant issues that are useful to the Board and that are directly and primarily related to the matters contained in the appeal. This requires that parties come prepared so they can deliver a succinct, time conscious presentation and may require parties of similar interests to merge resources and time to best cover the issues without undue repetition. The Board will usually not award costs for relevant information that was presented by more than one similar interest Party unless it covers that evidence from a different, relevant perspective, or adds significantly to the original evidence.

V. ANALYSIS

[22] In this appeal, the Board's statutory authority to award costs in the administrative sense, rather than in a civil litigation context, is clear and unambiguous. The public interest component is high. Litter and waste spillage, noise, odour, surface and ground water quality, health and quality of life and buffer zone were placed in issue by the Board at a Preliminary Hearing. The Commission presented evidence which was challenged directly by the Parties through their agents and experts. The Parties affected by the Approval spent substantial time and money to understand, and help the Board understand, whether the Commission waste facility would be sufficient to protect the environment as it must pursuant to section 2(a) of the Act. The Commission and Department experts were necessary to advance their position taken at the hearing; it was also critical for the Parties to elicit some expert assistance and place it before the Board.

[23] In this case, almost all presenters made a contribution, some more significant than others. Each of the Parties submitting claims for costs assisted the Board in making its decision through their presentation of evidence. As required under section 20(2)(e) of the Regulation, each of these Parties also established to the satisfaction of the Board that they required financial assistance to make an adequate submission. These Parties asserted in good faith an appeal that placed public health, a key legislative priority, directly into issue. Each of these Parties assessed the public interest, allowing the Board to reach a fully informed decision and present sound recommendations to the Minister. As Professor Valiante has commented on this issue:

Often, in administrative proceedings, members of the public challenge the proposal of a public sector agency, or a large private sector business that has substantial financial and human resources to professionally present a case. Individuals and members of public interest groups generally have fewer resources to contribute... Accordingly, for participation to be effective in a proceeding where there is such an imbalance of resources, an attempt to redress that imbalance is required. In this depiction, financial assistance, provided directly or indirectly to intervenors, and provided by the government, the tribunal, or the proponent, is vital for redressing the imbalance.¹⁸

[24] The success of a claim for costs will also depend on the extent to which the Party raises significant issues in the public interest that no one else raises and that are tied to goals promoted in section 2 of the Act. It is possible that the Department's witnesses represent the public and public interest in any given case. In this case they may have assessed, but not in all of its complexity, certain elements of the public's environmental interest which were at risk. In the words of Valiante and Bogart:

Regulatory decisions always affect some segment of the public. Sometimes individuals are financially affected, each to a small degree, as with telephone or utility rates. Sometimes individuals' health and well-being are affected, as with environmental or food and drug regulation. In principle, if people are affected by decisions, they have the right to be heard.

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M. Valiante & W.A. Bogart, "Helping 'Concerned Volunteers Working out of Their Kitchens': Funding Citizen Participation in Administrative Decision Making" (1993) 31 Osgoode Hall L.J. 687 at 692. See also Jeffery, *supra* note 16 at 4.1 and 4.2.

Where regulatory decisions affect the public and are required to be made in the "public interest", the quality of those decisions is improved when representatives of the affected interests participate. They can apprise an agency or tribunal of facts that might not otherwise come to its attention and they can assert different perspectives on and opinions about the consequences of a decision which challenge those of the regulated industry. In this way, the agency or tribunal gains a fuller understanding of the range of dimensions that comprise the "public interest" it is charged with serving. It is also argued that better decisions are the result.¹⁹

[25] The Parties claiming costs clearly dealt with matters associated with issues before the Board in this appeal. The presentations by Mr. and Ms. Mizera, Ms. Garstad and particularly Mr. Glombick were succinct and focused. The photographs submitted by the Mizeras, Ms. Fenske and Ms. Booth assisted in their cases. While there was some overlap of issues, each Party requesting costs focused on similar issues but from a *different* perspective. The Parties each focused specifically on issues of most direct concern to them. Mr. Garstad and Ms. Booth also dealt with issues of a historical nature not before the Board. Mr. Wright stated in his presentation of evidence that he was giving a lot of history of the site and the Commission to demonstrate that chronologically they tried to resolve the problems of adjacent landowners. The Parties provided information to the contrary, that historically the problems of adjacent landowners have not been resolved.

[26] In assessing costs for legal counsel and expert witnesses, the Board reiterates the importance of current specific data/information in their hearings, concise and organized cases and for Parties to have access to informed, experienced assistance in preparing their cases. The presentation of evidence and cross examination of witnesses by all Parties to this appeal would have been more useful to the Board had it been more focused and concise. Redundancy and lack of preparation increased the time and the cost of this appeal hearing. The Board emphasizes the importance of Parties to substantiate their out-of-pocket expenses with receipts and, as in this case, with letters from employers indicating they took time off from work without pay. In this appeal, despite the above comments, many aspects of the presentations by Parties claiming costs added value to the Board's overall process. The Board's costs awards are based on this added value.

¹⁹ Valiante & Bogart, *supra* note 18 at 691.

[27] Mr. and Ms. Mizera were represented by Mr. Bronaugh. They provided some components of presentation of evidence and cross examination that were focused and useful to the Board. They retained Dr. Argo as an expert witness whose specific evidence on the effects of landfills and appropriate buffer zones was also useful to the Board. The Board awards the following amounts as costs on account of these contributions: Mr. Bronaugh's preparation and representation \$4,600.00 plus \$1,647.00 for expenses and Dr. Argo's testimony \$750.00 plus his out-of-pocket expenses of \$631.74.

[28] Mr. Glombick asked only for costs to cover the revenue he lost directly as a result of attending the four days of hearing, but not for any of his preparation time. Given Mr. Glombick's exemplary, focused presentation of evidence, and valuable cross examination, the Board finds this reasonable in the circumstances and awards \$2,000.00 costs.

[29] The Board awards Ms. Fenske's out-of-pocket expenses of \$540.84, \$6,000.00 on account of Ms. Buss' representation plus her disbursement costs of \$450.24, for a total of \$6991.08.

[30] Ms. Garstad provided important, focused evidence regarding health and quality of life. She sought only out-of-pocket expenses and lost wages for herself and her husband. The Board agrees this is reasonable and awards costs of \$809.00.

[31] The Board awards Ms. Booth \$405.00 costs on account of her travel, \$112.20 on account of photos, photocopying and faxes and \$240.00 on account of her preparation time.

VI. CONCLUSION

[32] Section 88 of the Act, read carefully, allows for an award of costs without regard for success on the merits. The Board believes that a paramount consideration in ordering costs is whether a Party has served the public interest by furthering the goals of the Act and assisting the

Board in the interpretation of the Act and Regulation. The Parties requesting costs did contribute to the goals found in section 2(a) of the Act by addressing important, complex issues involving waste and public health and by rendering non-duplicative assistance to the Board.

[33] The Commission and the Department argue that they should not be responsible for costs. There is a significant difference between their respective roles. The Commission is the project's proponent, responsible for incorporating the principles of environmental protection set out in the Act into its project. This includes accommodating, in a reasonable way, the types of interests advanced by the parties, in this case now seeking costs. The role of Alberta Environment is both supervisory and statutory, but it is not primary in the same way as the duty upon the project's proponent. Thus, these costs are more properly fixed upon the body proposing the project, filing the application, using the natural resources, and responsible for the project's financing, than upon the public at large as would be the case if they were to be assessed against the Department.

[34] The legislation protects the departmental officials from claims of damages for all acts done by them in good faith in carrying out their statutory duties. While a claim for costs is not the same as a claim of damages, this provision emphasizes how the legislation views the role of the Department differently than the role of those proposing projects. Where, on the facts of this case, the Department has carried out its mandate, but has been found on appeal to be in error, then in the absence of special circumstances, this should not attract an award of costs. Thus we have decided that for the purposes of this case, it is the Commission as project proponent that must carry the burden of costs.

VII. SUMMARY OF COSTS ALLOWED

[35] The total costs requested of the Board were \$34,476.16. The Board allows costs of \$18,186.02, to be paid by Beaver Regional Waste Management Services Commission. The costs allocated to the Parties for their preparation for the appeals are as follows:

- 15 -

Mr. and Ms. Mizera	\$7,628.74
Mr. Adelhardt Glombick	\$2,000.00
Ms. Marilyn Fenske	\$6,991.08
Ms. Faye Garstad	\$809.00
Ms. Cindy Booth	<u>\$757.20</u>
 TOTAL	 \$18,186.02

The Board orders costs to be paid within 60 days of issuance of this decision.

[36] So ordered.

Dated on November 29, 1999, at Edmonton, Alberta.

“original signed by”
Dr. M. Anne Naeth

“original signed by”
Dr. Curt Vos

“original signed by”
Mr. Ron V. Peiluck