

ALBERTA
ENVIRONMENTAL APPEAL BOARD
DECISION

Date of Decision - November 20, 1997

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 Mr. Bill Lucey,
Confederation of Regions Political Party (Federal) with respect to
Approval No. 46949-00-00 issued to PanCanadian Petroleum Limited
by Mr. Dennis Bratton, Acting Director, Land Reclamation Division,
Alberta Environmental Protection on August 29, 1997.

Cite as: Lucey #2 v. Acting Director of Land Reclamation, Alberta Environmental
Protection.

BACKGROUND

Mr. Bill Lucey, leader of the Confederation of Regions Political Party (CORE), filed a Notice of Appeal with the Environmental Appeal Board (Board) on September 23, 1997. Mr. Lucey objected to Approval No. 46949-00-00 issued to PanCanadian Petroleum Limited (PanCanadian) by Mr. Dennis Bratton, Acting Director, Land Reclamation, Alberta Environmental Protection (Department) on August 29, 1997. The appeal was filed within the 30 day time limit prescribed by section 84(4)(c) of the *Environmental Protection and Enhancement Act* (Act).

The Approval issued to PanCanadian was for the construction and reclamation of the Cassils South Gas Gathering Pipeline Project.

On September 23, 1997, the Board informed PanCanadian that an appeal had been filed by Mr. Lucey and provided them with a copy of Mr. Lucey's appeal.

After receiving Mr. Lucey's written appeal, the Board, in a letter dated October 15, 1997, asked Mr. Lucey to respond to the following questions:

1. Explain how you are "directly affected" by the decision issued by the Director [regarding Approval No. 46949-00-00].
2. Explain in more detail the environmental concerns you have with the decision issued by the Director [regarding Approval No. 46949-00-00].

A portion of this letter stressed the need to provide further information and to be as thorough as possible.¹

¹ For example, the Board stated:

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

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

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

According to standard practice, on October 14, 1997, the Board also wrote to the Alberta Energy and Utilities Board (AEUB) and the Natural Resources Conservation Board (NRCB) requesting that both advise whether the matter was the subject of a public hearing or a review under either of their legislation. In a letter dated October 19, 1997, the NRCB advised that the appeal did not deal with a matter that had been the subject of a review under their Board. As of the date of this Decision, no response has been received from the AEUB.

On October 29, 1997, the Department and PanCanadian responded to the Board's request for representations. In addition the Board offered Mr. Lucey an opportunity to further reply to the issue of directly affected. His answers, faxed on November 6, 1997 are later in this decision.

ISSUES

The Board identifies the primary issue in this appeal to be whether Mr. Lucey or CORE is directly affected by the Acting Director's decision. A secondary issue is whether or not he responded adequately to the Board's written request for additional information.

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

THE BOARD'S CONSIDERATIONS

Is Mr. Lucey or CORE directly affected and therefore properly before the Board?

The Board received information from Mr. Lucey in two instalments: (1) his written objection and (2) supplementary material provided to the Board on October 30 , 1997 (the "second submission").

As noted above, the Board asked Mr. Lucey to respond to a number of questions that affect the Board's jurisdiction to hear appeals. These questions were, along with his reply:

EAB Q1. Explain how you are "directly affected" by the decision issued by the Director [regarding Approval No. 46949-00-00].

Reply: "A-1: I as, an [sic] Native Albertan, very concerned about this "mad rush", to tear Alberta apart from top to bottom, in this "mad" rush to develop Alberta's oil-gas wealth."

EAB Q2. Explain in more detail the environmental concerns you have with the decision issued by the Director [regarding Approval No. 46949-00-00].

Reply: "A2: 1. oil-gas companys [sic] have been raiding the staff of "E.U.B," which is very unfair.
2. Dr. David Suzuki, says that Alberta cannot stand the impact of these projects. The "E.U.B," will not listen.
3. want to see results of climate change conference in Dec. 97 in Japan.
4. wait till [sic] Alta. Energy Minister, moves control of "E.UB" back to Govt. of Alta."

EAB Q3. In the event that the Board decides to proceed with this appeal, do you wish to have a mediation meeting under section 11 of the Environmental Appeal Board Regulation? What would you contemplate to be the agenda for that meeting?

Reply: "B1 -YES, meeting to start early Jan. 98."

EAB Q4. In your opinion, are there any other persons who have an interest in this matter?

Reply: "B2 -YES,- (pollution is a world problem)"

As noted above, the Board offered Mr. Lucey a further opportunity to reply to the issue of directly affected (“the second submission”). Mr. Lucey responded:

“Some of the main reasons of this appeal are;

- (1) From Nov. 5/97 to Nov. 11/97, (govt holiday) is too short of a time “frame”, for us to seek legal counsel (1 MONTH MIN.)
- (2) The fox (PanCanadian), has been guarding the chicken coop (E.U.B), for too long and hopefully Alta Minister Steve West, will deliver the “E.U.B”, back into the hands of Albertans through there elected government real soon.
- (3) in a democracy everyone is entitled to legal counsel.
- (4) have “PanCanadian”, install electric motors on all natural gas compressors (greenhouse emmissions), [sic] before any new applications are approved by ‘E.U.B.’”

Considering Mr. Lucey’s replies, which are all very general, the Board does not see how he or CORE are directly affected. On March 28, 1996, the Honourable Mr. Justice Marceau discussed the Board’s test on directly affected:

“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.”²

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

Mr. Lucey does not meet the first part of the test referred to by the court.

DECISION OF THE BOARD

Mr. Lucey's Notice of Appeal does not meet any of the criteria related to standing necessary for the Board to continue its jurisdiction. Mr. Lucey has not, to the Board's satisfaction, raised specific environmental matters related to PanCanadian's Approval. He has not shown that either he or the Confederation of Regions Political Party (Federal) or any of its members are plausibly directly affected by the Acting Director's decision in the Cassils South Gas Gathering Pipeline Project.

CONCLUSION

This appeal is dismissed pursuant to s.87(5)(i.1) of the Act.

Dated on November 20, 1997 at Edmonton, Alberta.



Dr. William A. Tilleman