Appeal No. 01-062-ID4

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Decision

Date of Decision – July 23, 2002

IN THE MATTER OF sections 91, 92, and 95 of the *Environmental Protection and Enhancement Act,* R.S.A. 2000, c. E-12;

-and-

IN THE MATTER OF an appeal filed by Imperial Oil Limited and Devon Estates Limited with respect to Environmental Protection Order #EPO-2001-01 issued on June 25, 2001, by the Director, Enforcement and Monitoring, Bow Region, Regional Services, Alberta Environment.

Cite as: Intervenor Decision: *Imperial Oil Limited* v. *Director, Enforcement and Monitoring, Bow Region, Regional Services, Alberta Environment.*

BY WRITTEN SUBMISSIONS: William A. Tilleman, Q.C., Chair.

PARTIES:

Appellants: Imperial Oil Limited and Devon Estates Limited, represented by Mr. Ken Mills and Ms. Bernadette Alexander, Blake, Cassels & Graydon.

Director: Mr. Jay Litke, Director, Enforcement and Monitoring, Bow Region, Regional Services, Alberta Environment, represented by Mr. William McDonald and Mr. Grant Sprague, Alberta Justice.

Intervenors: The City of Calgary, represented by Mr. Ron Kruhlak, McLennan Ross.

Calhome Properties Ltd., represented by Mr. Ted Helgeson, Helgeson & Chibambo Law Office.

The Lynnview Ridge Residents Action Committee, represented by Mr. Gavin Fitch, Rooney Prentice.

The Calgary Health Region, represented by Dr. Brent Friesen.

Rio Verde Properties Ltd., represented by Ms. Debbie Laing.

EXECUTIVE SUMMARY

This is a decision on the intervenor requests filed with the Board regarding the appeal of Imperial Oil Limited and Devon Estates Limited (a wholly owned subsidiary of Imperial Oil) against an Environmental Protection Order (the EPO) issued to them by Alberta Environment with respect to the Lynnview Ridge residential subdivision in Calgary, Alberta.

The Board received intervenor requests from the Lynnview Ridge Residents Action Committee, Calhome Properties, the City of Calgary, the Calgary Health Region, and Rio Verde Properties Ltd.

After reviewing submissions from the parties to the appeal and those requesting intervenor status, the Board granted the City of Calgary, Calhome Properties, the Lynnview Ridge Residents Action Committee, and the Calgary Health Region full party status. The Board granted Rio Verde Properties Ltd. intervenor status and permitted Rio Verde to file a written submission only.

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I. BACKGROUND

[1] This is a decision on the intervenor requests filed with the Environmental Appeal Board (the "Board") in relation to an appeal by Imperial Oil Limited ("Imperial Oil" or "IOL") and Devon Estates Limited ("Devon Estates") under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (the "Act" or "EPEA").[1] Imperial Oil and Devon Estates (collectively the "Appellants") filed a Notice of Appeal respecting Environmental Protection Order #EPO-2001-01 (the "EPO") with the Board on July 3, 2001. The EPO was issued to the Appellants on June 25, 2001, by the Director, Enforcement and Monitoring, Bow Region, Regional Services, Alberta Environment (the "Director) with respect to the Lynnview Ridge residential subdivision (the "Subdivision") in Calgary, Alberta.

[2] The EPO stated that Imperial Oil ran an oil refinery on the lands that are now the Subdivision between 1923 and 1975. The majority of lands that are now the Subdivision were then transferred to Devon Estates, a wholly owned subsidiary of Imperial Oil, who developed them into residential properties in conjunction with another company. The EPO stated that in 1999 and 2000, the City of Calgary undertook a review of the "…numerous environmental assessments that had taken place at the Subdivision…." This review was prompted by previous complaints from residents of the Subdivision, and as a consequence, a monitoring program was implemented that resulted in "…sampling and monitoring for hydrocarbons and lead (the 'Substances')…."

[3] The EPO stated that, based on this information, the Director concluded that "…a release of the Substances has occurred, and that the release of the Substances has resulted in an adverse effect…." Further, the Director concluded that Imperial Oil and Devon Estates are "persons responsible" pursuant to section 1(ss)[2] (now section 1(tt)) of the Act.

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[1] As of January 1, 2002, the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 replaced the *Environmental Protection and Enhancement Act*, S.A. 1992, c. E-13.3.

[2] Section 1(ss) (now section 1(tt)) of the Act provides:

> "In this Act … (ss) 'person responsible', when used with reference to a substance or a thing containing a substance, means
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> (i) the owner and a previous owner of the substance or thing,
>
> (ii) every person who has or has had charge, management or control of the substance or thing, including, without limitation, the manufacture, treatment,

[4] In the Notice of Appeal, the Appellants objected to the EPO in its entirety, and in particular that the Director failed to "…name other persons known to him as persons responsible…."

[5] More specifically, the Appellants identified seven grounds of appeal. Among these grounds of appeal were:

1. The Director exercised his discretion unfairly by failing to name the City of Calgary, Calhome Properties Ltd. ("Calhome"), Nu-West Development Corporation Ltd. ("Nu-West"), Curtis Engineering & Testing Ltd. ("Curtis"), Entek Engineering Limited ("Entek"), Kidco Holdings Limited ("Kidco"), and others as "persons responsible".
2. The Director exercised his discretion unfairly by failing to take into account a number of facts when he issued the EPO. These facts included:
   (a) ownership of the Subdivision lands by other parties at various times;
   (b) participation in the development process by the City of Calgary in a capacity other than a regulator;
   (c) development, review and approval of remedial measures by other parties prior to development of the Subdivision;
   (d) disposal of the contaminated soil;
   (e) approval by the City of Calgary of zoning changes subject to approval of the remediation;
   (f) timing and extent of business relationships between the Appellants and other parties;
   (g) discussions between the City of Calgary and Alberta Environment and subsequent further development of the Subdivision in accordance with remedial measures;
   (h) conflicting and additional data regarding contamination and the adverse impact; and
   (i) changes in environmental guidelines.

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sale, handling, use, storage, disposal, transportation, display or method of application of the substance or thing,

(iii) any successor, assignee, executor, administrator, receiver, receiver-manager or trustee of a person referred to in subclause (i) or (ii), and

(iv) a person who acts as the principal or agent of a person referred to in subclause (i), (ii) or (iii)…."

3. The Director improperly exercised his discretion in issuing the EPO pursuant to section 102 (now section 113) rather than section 114 (now section 129) of the Act.[3]

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[3] Section 114 (now section 129) of the Act provides:

"114(1) Where the Director designates a contaminated site, the Director may issue an environmental protection order to a person responsible for the contaminated site.

(2) In deciding whether to issue an environmental protection order under subsection (1) to a particular person responsible for the contaminated site, the Director shall give consideration to the following, where the information is available:

(a) when the substance became present in, on or under the site;

(b) in the case of an owner or previous owner of the site,

(i) whether the substance was present in, on or under the site at the time that person became an owner;

(ii) whether the person knew or ought reasonably to have known that the substance was present in, on or under the site at the time that person became an owner;

(iii) whether the presence of the substance in, on or under the site ought to have been discovered by the owner had the owner exercised due diligence in ascertaining the presence of the substance before he became an owner, and whether the owner exercised such due diligence;

(iv) whether the presence of the substance in, on or under the site was caused solely by the act or omission of another person, other than an employee, agent or person with whom the owner or previous owner has or had a contractual relationship;

(v) the price the owner paid for the site and the relationship between that price and the fair market value of the site had the substance not been present in, on or under it;

(c) in the case of a previous owner, whether that owner disposed of his interest in the site without disclosing the presence of the substance in, on or under the site to the person who acquired the interest;

(d) whether the person took all reasonable care to prevent the presence of the substance in, on or under the site;

(e) whether a person dealing with the substance followed accepted industry standards and practice in effect at the time or complied with the requirements of applicable enactments in effect at the time;

(f) whether the person contributed to further accumulation or the continued release of the substance on becoming aware of the presence of the substance in, on or under the site;

(g) what steps the person took to deal with the site on becoming aware of the presence of the substance in, on or under the site;

(h) any other criteria the Director considers to be relevant.

(3) In issuing an environmental protection order under subsection (1) the Director shall give consideration to whether the Government has assumed responsibility for part of the costs of restoring and securing the contaminated site and the environment affected by the contaminated site pursuant to a program or other measure under section 109.

(4) An environmental protection order made under subsection (1) may

4. The Director improperly exercised his discretion by applying section 102 (now section 113) of the Act retrospectively.[4]

5. In the event that the Director was entitled to issue the EPO under section 102 (now section 113) of the Act, the Director improperly exercised his discretion by naming the Appellants as "persons responsible" under the Act because there has not been a release, and in the event there has been a release, the release will not cause an adverse effect.

[6] The Board acknowledged the appeal on July 3, 2001, and requested that the Director provide the records (the "Records") related to this appeal. The Board received the

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(a) require the person to whom the order is directed to take any measures that the Director considers are necessary to restore or secure the contaminated site and the environment affected by the contaminated site, including, but not limited to, any or all of the measures specified in section 102,

(b) contain provisions providing for the apportionment of the cost of doing any of the work or carrying out any of the measures referred to in clause (a), and

(c) in accordance with the regulations, regulate or prohibit the use of the contaminated site or the use of any product that comes from the contaminated site."

[4] Section 102 (now section 113) of the Act provides:

"102(1) Subject to subsection (2), where the Director is of the opinion that

(a) a release of a substance into the environment may occur, is occurring or has occurred, and

(b) the release may cause, is causing or has caused an adverse effect,

the Director may issue an environmental protection order to the person responsible for the substance.

(2) Where the release of the substance into the environment is or was expressly authorized by and is or was in compliance with an approval or registration or the regulations, the Director may not issue an environmental protection order under subsection (1) unless in the Director's opinion the adverse effect was not reasonably foreseeable at the time the approval or registration was issued or the regulations were made, as the case may be.

(3) An environmental protection order may order the person to whom it is directed to take any measures that the Director considers necessary, including, but not limited to, any or all of the following:

(a) investigate the situation;

(b) take any action specified by the Director to prevent the release;

(c) measure the rate of release or the ambient concentration, or both, of the substance;

(d) minimize or remedy the effects of the substance on the environment;

(e) restore the area affected by the release to a condition satisfactory to the Director;

(f) monitor, measure, contain, remove, store, destroy or otherwise dispose of the substance, or lessen or prevent further releases of or control the rate of release of the substance into the environment;

(g) install, replace or alter any equipment or thing in order to control or eliminate on an immediate and temporary basis the release of the substance into the environment;

(h) construct, improve, extend or enlarge the plant, structure or thing if that is necessary to control or eliminate on an immediate and temporary basis the release of the substance into the environment;

(i) report on any matter ordered to be done in accordance with directions set out in the order."

Records on July 5, 13, and 23, 2001, and subsequently provided copies to the Appellants and other Parties to this appeal.

[7] According to standard practice, the Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board asking whether this matter had been the subject of a hearing or review under their respective legislation. Both boards responded in the negative.

[8] In its letter of July 3, 2001, the Board requested that the Director and the Appellants identify any other persons that may have an interest in this appeal. The other parties that were identified were the City of Calgary, Calhome, Nu-West, Curtis, Entek, Kidco, and the Lynnview Ridge Residents Action Committee (the "Residents Committee").[5]

[9] In the letter dated July 6, 2001, the Appellants stated that the City of Calgary would have an interest in the appeal as the:

> "…City has taken and continues to take an active role in the testing and monitoring in Lynnview Ridge. As well, for approximately 35 years, between 1922 and 1959, the City was the owner of the majority of lands located in Lynnview Ridge Phase IV. The City is also a party to a development agreement with Nu-West Development Corporation Ltd. dated March 17, 1980 which, together with the City's development approval required removal of contaminated soil to the satisfaction of the City Engineer. The City reviewed and endorsed the Curtis Engineering & Testing Ltd. reports on soil remediation at the time of the development. The City also approved the subdivision plan for Lynnview Ridge and rezoned the land from heavy industrial to residential. At the time of the development of Lynnview Ridge Phase IV, the City through its wholly-owned housing division, Calhome Properties Ltd., acquired two of the multi-family lots located in Lynnview Ridge…."[6]

[10] With respect to Calhome, the Appellants stated:

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[5] See: Letter from Appellants, dated July 6, 2001, which named the City of Calgary, Calhome, Nu-West, Curtis, Entek, and Kidco, and the individual residents of the Subdivision, many of whom are represented by the Residents Committee, as possibly having an interest in the appeal. In his letter, dated July 5, 2001, the Director identified the Residents Committee.

Notice of the appeals was sent to the last available address for Nu-West, Curtis, Entek, and Kidko as provided by the Appellants. The notices sent to Curtis, Entek, and Curtis were returned to the Board as undeliverable. See: Letter from the Board, dated September 6, 2001. Glenayre Technologies Inc. ("Glenayre"), who is said by the Appellants to be the successor to Nu-West, responded to the Board's letter. See: Letter from the Board, dated September [7], 2001. Glenayre advised that it would not be appearing at the hearing, "…does not carry on business in Alberta, does not have any assets in the jurisdiction, and has no involvement with the subject matter of this appeal." See: Letter to the Board, dated September 11, 2001.

> "Calhome is the City of Calgary's wholly owned housing division. In 1981, Calhome purchased two of the multi-family lots located in Lynnview Ridge…. These lots are still owned by Calhome…."[7]

[11] With respect to Nu-west, the Appellants stated that: "…Nu-West developed the Lynnview Ridge Phase IV lands…." The Board notes that Nu-west is the company that developed the Subdivision in conjunction with Devon Estates.

[12] With respect to Curtis, the Appellants stated:

> "Curtis was retained by Nu-West in 1976 to perform geotechnical and environmental investigations to assess the stability of the Ridge and the extent of hydrocarbons in the soil for the Lynnview Ridge Phase IV Subdivision. As a result of its testing, Curtis recommended future developments in Lynnview Ridge include, among other things, modified weeping tile, vapour barriers, and the removal of contaminated soil. These recommendations were reviewed and endorsed by the City's Engineering Department…."[8]

[13] The Appellants suggested Entek would have an interest in the appeals because:

> "Entek was retained by Nu-West during the development of Lynnview Ridge Phase IV as the project engineer. Entek was responsible for the introduction of large amounts of fill brought onto the lands and the distribution of large amounts of fill brought onto the lands…."[9]

[14] Kidco was also included in the list of potentially interested parties provided by the Appellants as "…Kidco was retained by Nu-West during the development of Lynnview Ridge Phase IV to perform rough grading of the lands."[10]

[15] On July 11, 2001, the Board received a request from Calhome to allow it to participate in the hearing. Calhome stated:

> "The Appellants now seek, *inter alia*, to have certain parties, including our client [(Calhome)], named in the Environmental Protection Order as 'persons responsible'. We note that the Appellants have failed to explain in their Notice of Appeal why Calhome Properties Ltd. should be any more responsible than the other two hundred or so property owners in the affected area.

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6 See: Letter from Appellants, dated July 6, 2001.

7 See: Letter from Appellants, dated July 6, 2001.

8 See: Letter from Appellants, dated July 6, 2001.

9 See: Letter from Appellants, dated July 6, 2001.

10 See: Letter from Appellants, dated July 6, 2001.

> Calhome is unquestionably an interested party, and as such wishes to appear and make submissions at the hearing of the appeal…."

[16] On July 10, 2001, the Board received a "Notice of Intention to Attend and Make Representations" from the Residents Committee. The Residents Committee "…consists of 220 individuals who are current and former residents and owners of Lynnview Ridge. Put shortly, our clients [(the Residents Committee)] are the majority of the unfortunate individuals who are living on the contaminated lands which are the subject matter of EPO-2001-01…."[11]

[17] In response to the public notice regarding the September hearing,[12] Rio Verde Properties Ltd. requested that it:

> "…be permitted to make a representation before the Appeal Board…. As a significant land owner in the area, we have been economically affected, to a significant degree by this issue and only further testing and analysis will determine whether we have been affected by the contamination in terms of health and safety…."[13]

[18] On July 16, 2001, the Board received a letter from the City of Calgary stating:

> "We understand that the Board will be providing notice in the normal course, inviting interested parties to make submissions to the Board. As the City takes exception to the Appellant's suggestion of adding the City to the Environmental Protection Order, it may be necessary for the City to request standing to participate in this appeal."

[19] The City of Calgary submitted an application to intervene on August 9, 2001. The grounds were:

> "The City is an interested party as one of the alternate grounds for relief sought by the Appellants in the above-noted appeal, is to have the EPO amended to include the City, among others, as a person responsible. The City would clearly oppose this relief and would propose to participate in the appeal. In addition, the City is the owner of the roads, reserves and right-of-ways in Lynnview Ridge and accordingly, has a significant interest in ensuring the EPO is maintained."

[20] On August 10, 2001, the Board received a request from the Calgary Health Region (the "CHR") for intervenor status. In its request, the Calgary Health Region stated:

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[11] See: Submission of the Residents Committee, dated July 10, 2001.

[12] Notice of the hearing was published in the Calgary Herald and Calgary Sun on July 31 and August 1, 2001.

[13] See: Letter from Rio Verde Properties Ltd. ("Rio Verde"), dated August 3, 2001. Rio Verde owns a "…residential rental complex consisting of 262 apartment units which is located at 135 Lynnview Road, S.E., Calgary."

> "The aspect of the Appeal in which we are particularly interested is Imperial Oil Limited's challenge as to whether there are actual or potential adverse health effects from the lead and hydrocarbon contamination.
>
> Calgary Health Region is concerned that if Imperial Oil Limited does not carry out the Environmental Protection Order with regard to the contaminated soil in Lynnview Ridge then residents in the area will be at increased risk of ill health. Calgary Health Region has evidence from studies that we have conducted that lead contamination is entering some of the homes in the Lynnview Ridge area with the most likely explanation being the contaminated soil in the community.
>
> Calgary Health Region also has concerns with the hydrocarbon contamination that exists within the community. There is the potential for residents to be exposed to increased levels of hydrocarbon vapours that could have a significant adverse effect on their health.
>
> In addition to its statutory responsibilities under the Regional Health Authorities Act to promote and protect the health of the population within its region, Calgary Health Region is also a potentially affected party by having to provide health services to those residents of the community whose mental and physical health is negatively affected by the soil contamination in their community."

[21] The Board notified the Parties that all intervenor requests would be dealt with at the same time, and no decision would be made until after the period to submit intervenor requests had passed.[14] Comments from the Director and the Appellants regarding the intervenor requests were submitted to the Board on August 14, 2001.

[22] On August 22, 2001, the Board notified the Director, the Appellants, and the applicants that the City of Calgary, Calhome, the Residents Committee, and the Calgary Health Region were granted party status. The Board granted Rio Verde intervenor status, but was permitted to file a written submission only and would not be permitted to make an oral presentation. Even though the hearing has concluded, the Board indicated that reasons for the intervenor decision would be provided. Those reasons follow.

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[14] See: Board's letter, dated August 9, 2001.

II. SUBMISSIONS

A. Appellant

[23] In response to the intervenor requests, the Appellants did not object to the City of Calgary and Calhome being granted intervenor status as "…both have a tangible interest in the subject matter of the appeal."[15] However, it submitted that as Calhome is a wholly-owned subsidiary of the City of Calgary, submissions could be made through "common counsel."

[24] The Appellant opposed intervenor status being granted to the Calgary Health Region and Rio Verde. The Appellants submitted that:

> "…permitting CHR to intervene will unnecessarily delay the appeal…. The only issue where CHR could argue that they have some interest in making submissions is with respect to the matter of the contamination causing an adverse effect. It should be noted that this is not a principle issue or ground in the Notice of Appeal, but is limited … to an alternative argument which would only be considered after other arguments involving primary grounds of appeal have been heard. Given the limited time available it is unlikely that alternative arguments concerning adverse effects will be considered. Such arguments may be deferred for subsequent consideration. As a result the request of CHR for intervenor status should also be deferred or limited to written submissions on this alternative ground of appeal.
>
> IOL further submits that the evidence which CHR wishes to present to the Board regarding soil contamination is likely to be duplicative or redundant in respect of evidence that other parties are expected to present. CHR is not likely to add any unique or additional evidence to the proceedings having regard to expert evidence that will be submitted by the other parties. This is especially so if the Board grants intervenor status to LRRAC [the Residents Committee]."[16]

[25] Regarding Rio Verde's application for intervenor status, the Appellants stated:

> "Rio Verde has not demonstrated that it has a tangible interest in the subject matter of the appeal. Rio Verde owns property that is well outside of the Subdivision Lands as defined in the EPO and as such cannot offer any argument or evidence directly relevant to the appeal or that will assist the Board with any matter directly related to the appeal. Any participation by Rio Verde will only unnecessarily delay the appeal."[17]

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15 See: Appellants' Submission, dated August 14, 2001.

16 See: Appellants' Submission, dated August 14, 2001.

17 See: Appellants' Submission, dated August 14, 2001.

B. Director

[26] In response to the Board's request for comments on the potential intervention of Calhome and the Residents Committee, the Director stated that he "…is of the view that the [Residents Committee and Calhome] are potentially affected by the appeal and that they should be recognized as intervenors in this matter."[18]

[27] The Director reiterated in his August 14, 2001 submission that he does not object to any of the applicants being granted intervenor status. In his submission he stated:

> "Based upon the information received by the Director, the Director acknowledges that each of these persons has an interest in the issue and the Director does not have any comments as to the nature and extent of the role that each of these persons is to play in the process. It would be helpful if the Board specifies the nature and extent of each participants [*sic*] role in the hearing."

III. ANALYSIS

A. Legislation

[28] Under section 85 (now section 95) of the Act, the Board can determine who can make representations before it. Section 85(6) states:

> "Subject to subsection (4) and (5), the Board shall, consistent with the principles of natural justice, give the opportunity to make representations on the matter before the Board to any persons who the Board considers should be allowed to make representations."

[29] Pursuant to sections 7 and 9 of the *Environmental Appeal Board Regulation*, A.R. 114/93 (the "Regulation"), the Board must determine whether a person submitting a request to make submissions should be allowed to do so at the hearing. Section 7 of the Regulation states:

> "7(2) A published notice referred to in subsection (1)(a)(ii) or (b)(ii) must contain the following:
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> (a) the date, time and place of the hearing, in a case where an oral hearing is to be held;
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> (b) a summary of the subject matter of the notice of appeal;

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[18] See: Director's letter, dated July 13, 2001.

(c) a statement that any person who is not a party to the appeal and wishes to make representations on the subject matter of the notice of appeal must submit a request in writing to the Board;

(d) the deadline for submitting a request in writing under clause (c);

(e) the mailing address of the Board;

(f) the location and time at which filed material with the Board will be available for examination by interested persons."

[30] Section 9 of the Regulation states:

"(1) A request in writing referred to in section 7(2)(c) shall

(a) contain the name, address and telephone number of the person submitting the request,

(b) indicate whether the person submitting the request intends to be represented by a lawyer or other agent and, if so the name of the lawyer or other agent,

(c) contain a summary of the nature of the person's interest in the subject matter of the notice of appeal, and

(d) be signed by the person submitting the request.

(2) Where the Board receives a request in writing in accordance with section 7(2)(c) and subsection (1), the Board shall determine whether the person submitting the request should be allowed to make representations in respect of the subject of the notice of appeal and shall give the person written notice of that decision.

(3) In a notice under subsection (2) the Board shall specify whether the person submitting the request may make the representations orally or by means of a written submission."

[31] In the Regulation, it also states that the Board can determine who will be a party to an appeal. Section 1(f)(iii) of the Regulation states:

"In this Regulation…

'party' means any other person the Board decides should be a party to the appeal."

[32] The test for determining intervenor status is stated in the Board's Rules of Practice. Rule 14 states:

"As a general rule, those persons or groups wishing to intervene must meet the following tests:

- their participation will materially assist the Board in deciding the appeal by providing testimony, cross-examining witnesses, or offering argument or other

> evidence directly relevant to the appeal; the intervenor has a tangible interest in the subject matter of the appeal; the intervention will not unnecessarily delay the appeal;
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> - the intervenor in the appeal is substantially supporting or opposing the appeal so that the Board may know the designation of the intervenor as a proposed appellant or respondent;
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> - the intervention will not repeat or duplicate evidence presented by other parties…."

B. City of Calgary and Calhome

[33] Neither the Director nor the Appellant had concerns with the City of Calgary or Calhome being granted intervenor status. The Board agrees.

[34] As the Appellants named the City of Calgary and Calhome as potential "persons responsible," it would be against the principles of natural justice to prevent these parties from participating in the appeal. The principles of natural justice require that the City of Calgary and Calhome be permitted to "defend" themselves against the arguments of the Appellants that they should be added to the EPO as persons responsible. It is clear that the City of Calgary and Calhome have information that only they can bring forward that will be relevant to the Board's decision. Their submissions will, therefore, not be duplicative of any other party to this appeal.

[35] The history of the site and the development covers a number of decades, and the information that will be obtained from the City of Calgary will assist the Board in making its decision. The City of Calgary has done testing on the site, and this data could be valuable to the Board. The City of Calgary has a further interest in the appeal as it owns the infrastructure in the Subdivision lands. As conditions included in the EPO may require removal or alteration of the infrastructure, the City of Calgary is also directly affected. The City of Calgary is permitted to participate as a full party.

[36] Calhome questioned why it, as owner of two multi-family lots, would be liable under the EPO but other residents in the area would not. This concern is directly relevant to the issues raised in the appeal, and the information Calhome presents with respect to these concerns and its position on the matter are relevant to the Board's considerations. Further, Calhome is an affected landowner and is included as a full party to the appeal.

C. Residents Committee

[37] Neither the Director nor the Appellant had concerns with the Residents Committee being granted intervenor status. Again, the Board agrees. It is clear that the Residents Committee has information that only it can bring forward that is relevant to the Board's considerations. Their submissions will, therefore, not be duplicative of any other party to this appeal.

[38] The Residents Committee is a group of people who either lived or are living at the Subdivision. The Board dealt with the issue of granting standing to a group or organization in previous decisions. While such cases are not determinative with respect to a request for intervenor status, they are of assistance in considering such a request. In *Hazeldean,*[19] a group of local residents filed an appeal with the Board in relation to a plywood manufacturing plant located immediately adjacent to their community. In *Hazeldean*, the Board was provided with a list of the individual members of the group, and evidence was presented regarding a survey taken in the area that showed the majority of the residents in the area were concerned about air quality in the neighbourhood. The Board, in determining the Hazeldean residents would be granted standing, stated:

> "The Board notes that the residents of the Community live immediately across the street and in the vicinity of the Zeidler plant. The Community distributed a survey to all of the residents of the Hazeldean area and asked them to respond to certain questions concerning the Zeidler plant and its emissions. The results of the survey were submitted to the Board with the Community's representations. Seventy-five of 105 people who completed this survey indicated that they were very concerned about air quality in the neighbourhood. Over 50% of the residents who responded found the odour to be an unpleasant annoyance at least one-half of the time. The Community stated that its close proximity to the Zeidler plant gave rise to these odour complaints because of the prevailing westerly or south westerly winds which cause the emissions to blanket the community. It also stated that there was a great concern regarding the possibility of other compounds within the emissions that may raise health concerns. Their survey found that 55 of 105 completed responses indicated that the residents were concerned with health effects of the Zeidler emissions. Their concern is that the Approval will directly result in increased emissions to the atmosphere, where they will remain at a sufficiently low elevation that the plume distribution will undoubtedly affect the

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[19] *Hazeldean Community League et al.* v. *Director of Air and Water Approvals, Alberta Environmental Protection* (May 11, 1995), E.A.B. Appeal No. 95-002 ("*Hazeldean*").

> neighbours of the facility who have no choice but to breathe the air outside. Unlike the quality of water, which leaves the ultimate choice (to drink or not) to the user, there is no real option to breathing the ambient air. If the people of the Hazeldean district are not directly affected, no one will ever be.
>
> Herein lies the crux of the directly affected dilemma: how does an appellant discharge the onus of proving that he or she is directly affected when the nature of air emissions is such that all residents within the emission area may be directly affected to the same degree? One might be led to the conclusion that no person would have standing to appeal because of his inability to differentiate the affect upon him as opposed to his neighbour. This is unreasonable and it is not in keeping with the intent of the Act to involve the public in the making of environmental decisions which may affect them."[20]

[39] The Residents Committee provided the Board with a complete list of the residents in the area, and who was and was not a member of the Residents Committee.[21] This provided a strong basis on which the Board could determine the directly affected status of the members of the Residents Committee. The members of the Residents Committee live, or have lived, in the area that is contaminated. It is their health, more than any one else in the province, that could potentially be affected by the contamination on the site.

[40] The Board was also persuaded by the fact that the Residents Committee was established for the purpose of dealing with the contamination on the site. As stated in the previous case, *Bailey*, this is valid reason to grant the Residents Committee party status even without individual members filing an intervenor request.[22] The residents of the Subdivision are the ones directly affected by the decision of the Director and, ultimately, this Board.

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[20] *Hazeldean Community League et al.* v. *Director of Air and Water Approvals, Alberta Environmental Protection* (May 11, 1995), E.A.B. Appeal No. 95-002 at pages 4 to 5.

[21] See: Submission of the Residents Committee, dated July 10, 2001.

[22] *Bailey et al*. v. *Director, Northern East Slopes Region, Environmental Service, Alberta Environment*, re: *TransAlta Utilities Corporation* (March 13, 2001), E.A.B. Nos. 00-074, 075, 077, 078, 01-005, and 01-011-ID ("*Bailey*"). In this decision, the Board stated at paragraph 56:

> "…LWEPA was created for the express purpose of engaging in the regulatory approval process, now appealed to the Board. LWEPA is the means by which the many [*sic*] of the local residents have chosen to carry out their obligations to participate in the TransAlta Approval process. As a result, even if the Board did not have the Notices of Appeal from Mr. Doull and Mr. Paron before it, the Board believes that LWEPA is a proper party to these proceedings."

D. Calgary Health Region

[41] The Appellants argued that the Calgary Health Regions should not be permitted to intervene. The Board disagrees.

[42] The Calgary Health Region stated that it had evidence from studies that may be relevant to the appeal. The Board wants and needs this information in order to make an informed decision. The Calgary Health Region's mandate is to protect the health of its citizens. A large number of its citizens may be affected by the decision of this appeal, and it is the Board's understanding that the regional health authorities work in conjunction with Alberta Environment to ensure a healthy environment for all citizens. By allowing the Calgary Health Region to participate as a Party, the Board has the opportunity to more thoroughly understand the health effects that may occur at the Subdivision.

[43] The Board recognizes the concurrent jurisdiction regarding human health between the Director and the Calgary Health Region. Section 2(a) of the Act states:

> "The purpose of this Act is to support and promote the protection, enhancement and wise use of the environment while recognizing …the protection of the environment is essential to the integrity of ecosystems and *human health* and to the well-being of society." [Emphasis added.]

[44] Section 11 of the Act refers to the cooperative approach that must be taken between environment and health. It states:

> "The Minister shall, in recognition of the integral relationship between human health and the environment, co-operate with and assist the Minister of Health and Wellness in promoting human health through environmental protection."

[45] The Board notes the Calgary Health Region and the Director have been in consultation with each other with respect to the matters in this appeal. This cooperative approach can only benefit all of the citizens of Alberta.

[46] Because of this cooperative approach, and the valuable evidence the Calgary Health Region can provide, the Board grants the Calgary Health Region full party status. The Board believes the evidence the Calgary Health Region provides will materially assist the Board, and the evidence should not duplicate the other Parties' evidence. The Calgary Health Region has a keen interest in the matter of this appeal, as the issue is the health of its residents. Its

purpose in appearing before the Board is to provide information to the Board to assist in protecting human health.

E. Rio Verde

[47] Rio Verde is located adjacent to the Subdivision Lands. The Board notes that Rio Verde has a valid interest in the appeal, as there are potential of health and safety issues with respect to adjoining properties, and residents, such as those at Rio Verde, have a right to be informed of these effects. Although it appeared much of Rio Verde's concern is economic, the Board believes that its concerns should be heard. However, as the issues expressed by Rio Verde are already included in the lists of concerns of the other applicants, the Board grants Rio Verde intervenor status, and permits Rio Verde to file a written submission only and is not permitted to make an oral presentation.

IV. CONCLUSION

[48] Pursuant to section 85(6) (now section 95(6)) of the Act, the Board grants the City of Calgary, Calhome Properties, the Lynnview Ridge Residents Action Committee, and the Calgary Health Region full party status. The Board grants Rio Verde Properties Ltd. intervenor status and permits it to make a written submission only.

Dated on July 23, 2002, at Edmonton, Alberta.

___"original signed by"_____

William A. Tilleman, Q.C.
Chair