ALBERTA
ENVIRONMENTAL APPEAL BOARD

Decision

Date of Preliminary Meeting – September 17, 2002
Date of Decision – October 11, 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 Notices of Appeal filed by Mr. David Doull, Mr. James Darwish, Ms. Verona Goodwin, Ms. Elena Napora, Mr. Don Stuike, Mr. Ron and Ms. Gail Maga and Mr. Ron Maga Jr., Mr. Cameron Wakefield, Mr. David J. Parker, Mr. A. Ted Krug, Mr. Bill Bocock, Mr. Michael B. Nelson, Mr. Stanley Kondratiuk, Mr. Greg Ostapowicz, Mr. Douglas Price, Ms. Holly MacDonald, Mr. Stuart Pederson, Ms. Linda Stratulat, Mr. Leonard Rud, Mr. Marcel Wichink, Dr. Roger G. Hodkinson, Ms. Lorraine Vetsch, Ms. Gwen Davies, Mr. Garry Marler, a group of Community Leagues from the City of Edmonton, Mr. Neil Hayes, Mr. Robert Wilde, the Edmonton Friends of the North Environmental Society, Ms. Bonnie Quinn, and Ms. Anna T. Krug, with respect to Amending Approval No. 10339-01-03 issued to Inland Cement Limited by the Director, Northern Region, Regional Services, Alberta Environment.

Cite as: Preliminary Issues: *Doull et al*. v. *Director, Northern Region, Regional Services, Alberta Environment* re: *Inland Cement Limited.* (11 October 2002), Appeal Nos. 02-018-041, 047, 060, 061, 073, and 074-ID1 (A.E.A.B.).

PRELIMINARY MEETING BEFORE: William A. Tilleman, Q.C., Chair.

PARTIES:

Appellants:	Mr. David Doull; Mr. James Darwish, Ms. Verona Goodwin, Ms. Elena Napora, Mr. Don Stuike, Mr. Ron and Ms. Gail Maga and Mr. Ron Maga Jr., Mr. Cameron Wakefield, Mr. David J. Parker, Mr. A. Ted Krug, Mr. Bill Bocock, Mr. Michael B. Nelson, Mr. Stanley Kondratiuk, Mr. Greg Ostapowicz, Mr. Douglas Price, Ms. Holly MacDonald, Mr. Stuart Pederson, Ms. Linda Stratulat, Mr. Leonard Rud, Mr. Marcel Wichink, Dr. Roger G. Hodkinson, Ms. Lorraine Vetsch, Ms. Gwen Davies, Mr. Garry Marler, Mr. Robert Wilde, and the Edmonton Friends of the North Environmental Society represented by Ms. Jennifer Klimek; and a group of Community Leagues from the City of Edmonton, Ms. Bonnie Quinn, and Ms. Anna T. Krug represented by Mr. Gavin Fitch and Ms. Laura-Marie Berg, Rooney Prentice.
Director:	Mr. Kem Singh, Director, Northern Region, Regional Services, Alberta Environment, represented by Mr. William McDonald and Mr. Darin Stepaniuk, Alberta Justice.
Approval Holder:	Inland Cement Inc. (Lehigh Inland Cement Inc.), represented by Mr. Dennis Thomas and Mr. Martin Ignasiak, Fraser Milner Casgrain LLP.
Not Attending:	Mr. Neil Hayes.

EXECUTIVE SUMMARY

Alberta Environment issued an Amending Approval under the *Environmental Protection and Enhancement Act* to Inland Cement Limited to allow the burning of coal instead of natural gas as a fuel source for its cement plant in Edmonton, Alberta. The Board received twenty-nine appeals.

The Board held a Preliminary Meeting to determine the standing of the parties who filed the appeals and to determine the issues to be considered at the subsequent hearing. The majority of the parties reached an agreement and presented a joint submission to the Board on these questions, which the Board has accepted in principle. In the Board's view, the agreement is consistent with the purposes of the Act and the public interest. As a result, the Board has decided to accept the standing of: Mr. Cameron Wakefield; Mr. A. Ted Krug; Mr. Stan Kondratiuk; Mr. Ron and Ms. Gail Maga and Mr. Ron Maga Jr.; Dr. Roger G. Hodkinson; Mr. Neil Hayes; and Ms. Anna T. Krug. The Board has also decided to make the Edmonton Federation of Community Leagues and the Edmonton Friends of the North Environmental Society parties to these appeals.

The Board has also determined that the issues that will be considered at the hearing of these appeals are:

1. emission limits for particulate matter, sulphur dioxide, nitrogen oxides, heavy metals and radioisotopes;
2. adequacy of existing baseline data;
3. emission monitoring, including the type, location and frequency of monitoring;
4. appropriateness and validity of modeling methods and results;
5. appropriateness of including certain requirements in the Approval as opposed to making them requirements of the application, specifically: a) ambient air monitoring plans, b) trial burn, c) fugitive emission reduction plan, d) use of landfill gas, and e) information regarding the type and source of coal;
6. use of best available demonstrated technology;
7. timeline for installation of a baghouse;
8. number of trips;
9. local residents trip notification system;
10. adequacy of health impact assessment;
11. appropriateness of health impact assessment update;
12. ongoing consultation with local residents and local residents liaison committee;
13. need for the conversion to coal as a fuel source;
14. control of greenhouse gas emissions; and
15. use of tires as kiln fuel, limited to Approval Clause 4.1.17.

TABLE OF CONTENTS

I. BACKGROUND 1

II. SUBMISSIONS 6

A. Mr. David Doull 6

B. Mr. Neil Hayes 7

C. Edmonton Friends of the North Environmental Society 8

D. Edmonton Federation of Community Leagues 10

E. Approval Holder 11

F. Director 11

III. DISCUSSION AND ANALYSIS 13

A. Standing - Mr. David Doull 15

1. The Statement of Concern 15
2. Directly Affected 20
3. Section 95(6) 20

B. Mr. Neil Hayes 21

C. Individuals 21

D. Groups 23

1. Directly Affected 23
2. Section 95(6) 25

E. Issues 27

F. Consolidation of Appeals 31

IV. CONCLUSION 31

I. BACKGROUND

[1] On May 24, 2002, the Director, Northern Region, Regional Services, Alberta Environment (the "Director") issued Amending Approval No. 10339-01-03 (the "Approval") to Inland Cement Limited ("Inland" or the "Approval Holder") under the *Environmental Protection and Enhancement Act,* R.S.A. 2000, c. E-12 ("EPEA" or the "Act") for the construction, operation, and reclamation of a cement manufacturing plant (the "Cement Plant") in Edmonton, Alberta. The Approval allows for the burning of coal instead of natural gas as a fuel source (the "Substitute Fuel Program") at the Cement Plant.

[2] Between June 14, 2002, and July 2, 2002, the Environmental Appeal Board (the "Board") received a total of twenty-nine appeals with respect to the Approval. Notices of Appeal were received from Mr. David Doull (02-018), Mr. James Darwish (02-019), Ms. Verona Goodwin (02-020), Ms. Elena P. Napora (02-021), Mr. Don Stuike (02-022), Mr. Ron and Ms. Gail Maga and Mr. Ron Maga Jr. (02-023), Mr. Cameron Wakefield (02-024), Mr. David J. Parker (02-025), Mr. A. Ted Krug (02-026), Mr. Bill Bocock (02-027), Mr. Michael Nelson (02-028), Mr. Stanley Kondratiuk (02-029), Mr. Greg Ostapowicz (02-030), Mr. Douglas Price (02-031), Ms. Holly MacDonald (02-032), Mr. Stuart Pederson (02-033), Ms. Linda Stratulat (02-034), Mr. Leonard Rud (02-035), Mr. Marcel Wichink (02-036), Dr. Roger G. Hodkinson (02-037), Ms. Lorraine Vetsch (02-038), Ms. Gwen Davies (02-039), Mr. Garry Marler (02-040), a group of Community Leagues from the City of Edmonton (02-041),[1] Mr. Neil Hayes (02-047), Mr. Robert Wilde (02-060), the Edmonton Friends of the North Environmental Society ("EFONES") (02-061),[2] Ms. Bonnie Quinn (02-073), and Ms. Anna T. Krug (02-074) (collectively the "Appellants").[3]

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[1] The group of Community Leagues from the City of Edmonton is composed of all of the Community Leagues in the City of Edmonton that are members of the Edmonton Federation of Community Leagues (the "EFCL"), "…and in particular the Community Leagues of Sherbrooke, Dovercourt, Inglewood, Wellington Park, Athlone, Woodcroft, Mayfield, High Park, McQueen and North Glenora…." The Notice of Appeal filed by the EFCL was on behalf of this group of Community Leagues and on behalf of two individuals, Ms. Bonnie Quinn (02-073) and Ms. Anna T. Krug (02-074). While these three parties filed only one Notice of Appeal, their standing differs, and as a result, the Board has assigned three appeal numbers to this one Notice of Appeal.

[2] A total of three Notices of Appeal were filed on behalf of EFONES. On July 2, 2002, EFONES filed its third Notice of Appeal. Attached to this Notice of Appeal was a letter from EFONES indicating that the Notices of Appeal filed by Mr. James Darwish and Mr. Robert Wilde were intended to be filed on behalf of themselves and EFONES. The Board has taken copies of the Notices of Appeal filed by Mr. Darwish and Mr. Wilde and added

[3] The Board acknowledged receipt of these appeals and notified the Appellants, the Approval Holder, and the Director (collectively the "Parties") of these appeals. In the same letters, the Board also requested (1) that the Director provide the Board with a copy of the records (the "Record") relating to the Approval, and (2) available dates from the Parties for a preliminary meeting, a mediation meeting, or a hearing.

[4] According to standard practice, the Board wrote to the Natural Resources Conservation Board ("NRCB") and the Alberta Energy and Utilities Board ("AEUB") asking whether this matter had been the subject of a hearing or review under their respective legislation. The NRCB notified the Board that these appeals were not subject to review under its legislation. The AEUB stated that it had not held a public hearing or review into the subject matter of the Appeals. However, the AEUB did provide a copy of Industrial Development Permit No. IDP 00-1 and IDP IC 80-1, permitting "…Inland to use natural gas produced in Alberta as fuel in the production of cement in the Province…."[4]

[5] On June 24, 2002, the Board received a letter from the Approval Holder asking that all meetings regarding these appeals be put in abeyance until the deadline for filing had passed so that one organizational meeting could be held for all of the appeals. The Board granted this request.

[6] On July 11, 2002, the Board received a copy of the Record, which we forwarded to the Appellants and the Approval Holder on July 22, 2002. In the Director's cover letter, he stated that he would be pleased to participate in discussions with the other Parties to these appeals to reach a consensus as to the issues and parties that should be allowed at the hearing.

[7] On July 17, 2002, the Board received a letter from the Approval Holder in which it disputed that any of the Appellants had standing, but if some of the Appellants were

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them to the Notice of Appeal filed by EFONES alone.

[3] The majority of the Appellants have nominated either EFONES or the EFCL to represent them. EFONES represents: Mr. James Darwish, Ms. Verona Goodwin, Ms. Elena P. Napora, Mr. Don Stuike, Mr. Ron and Ms. Gail Maga and Mr. Ron Maga, Jr., Mr. Cameron Wakefield, Mr. David J. Parker, Mr. A. Ted Krug, Mr. Bill Bocock, Mr. Michael Nelson, Mr. Stanley Kondratiuk, Mr. Greg Ostapowicz, Mr. Douglas Price, Ms. Holly MacDonald, Mr. Stuart Pederson, Ms. Linda Stratulat, Mr. Leonard Rud, Mr. Marcel Wichink, Dr. Roger G. Hodkinson, Ms. Lorraine Vetsch, Ms. Gwen Davies, Mr. Garry Marler, and Mr. Robert Wilde. The EFCL represents: the group of Community Leagues from the City of Edmonton, Ms. Bonnie Quinn, and Ms. Anna T. Krug. Mr. David Doull and Mr. Neil Hayes are representing themselves.

[4] See: EUB's Letter, dated July 17, 2002.

determined to have standing, it was willing to work with the other Parties to work out an agreement on the issues to be heard.

[8] On August 2, 2002, the Board wrote to the Parties and indicated it would schedule a Preliminary Meeting to deal with various preliminary motions that had been identified by the Parties. The Board specified a deadline by which any other preliminary motions needed to be filed. No other preliminary motions were received.

[9] On August 27, 2002, the Board advised all Parties that a Preliminary Meeting would be held on September 17, 2002, in the Board's office with potential hearing dates in November 2002. The Board stated that the purpose of the Preliminary Meeting was to hear arguments on the following matters:

> "1. the standing of the Appellants, including their directly affected status and whether they filed valid statements of concern;
>
> 2. the standing of Mr. Doull, including whether the statement of concern filed by Mr. Doull is a valid statement of concern for the purposes of filing a Notice of Appeal and whether Mr. Doull is directly affected;
>
> 3. the issues to be dealt with at the hearing of these appeals; and
>
> 4. whether to consolidate the appeals."[5]

[10] The Board requested that written submissions in preparation for the Preliminary Meeting be provided by September 6, 2002. On September 5, 2002, the Board received Mr. Neil Hayes' written submission.

[11] On September 5, 2002, EFONES contacted the Board and advised that it, along with the Director, Approval Holder, and the EFCL were close to an agreement to recommend to the Board what issues should be considered at the hearing and who should be granted status as parties. EFONES requested an extension to the deadline for filing written submissions. Mr. David Doull also requested an extension to the deadline for filing his written submission. The

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[5] See: Board's Letter, dated August 27, 2002. The motion with respect to Mr. Doull was raised by the Director and is based on the view that Mr. Doull (and some of the other Appellants for that matter) filed a Statement of Concern in the environmental assessment process under Part 2, Division 1 of EPEA, entitled "Environmental Assessment Process," instead of under Part 2, Division 2 of EPEA, entitled "Approvals, Registrations and Certificates" as required by section 91(1)(a)(i) of EPEA.

Board granted this request and written submissions were subsequently received from the remaining Parties.[6]

[12] On September 16, 2002, Board staff received a telephone call from Mr. Neil Hayes. Mr. Hayes advised that due to a family emergency he would be unable to attend the Preliminary Meeting on September 17, 2002.

[13] On September 17, 2002, the Board convened the Preliminary Meeting and advised the Parties that Mr. Neil Hayes was unable to attend. The Board advised the Parties that it would like to proceed with the hearing, but would provide Mr. Hayes with an opportunity to provide a written rebuttal submission before making its final decision. None of the Parties expressed any concerns with this course of action and the Board proceeded with the Preliminary Meeting.

[14] On September 26, 2002, the Board provided Mr. Hayes with a copy of the audio recording of the Preliminary Meeting, and on September 30, 2002, Mr. Hayes provided his rebuttal submission to the Board.

[15] On October 2, 2002, the Board wrote to the Parties, advising of its decision:

> "The Board determines that the following Appellants have standing: Mr. Cam Wakefield (02-024); Mr. Ted Krug (02-026); Mr. Stan Kondratiuk (02-029); Mr. Ron Maga, Ms. Gail Maga and Ron Maga Jr. (02-023); Dr. Roger Hodkinson (02-037); … Mr. Neil Hayes (02-047)[; and Ms. Anna T. Krug (01-074)].
>
> Further, the Board accepts the Edmonton Friends of the North Environmental Society and the Edmonton Federation of Community Leagues as full parties to these appeals.
>
> The Board understands that the remaining Notices of Appeal will be withdrawn. …
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> The Board determines that Mr. Doull does not have standing to bring an appeal, and his appeal is therefore dismissed (02-018). …

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[6] In granting this extension, the Board was concerned about potential prejudice to Mr. Hayes. As a result, Board staff contacted the Director and Inland, who advised that they were not going to object to Mr. Hayes' standing. As a result of these representations, Mr. Hayes did not object to the extension. See: Board's letter, dated September 5, 2002.

The Board determines that the following issues will be included in the hearing of these appeals:

1. emission limits for particulate matter, sulphur dioxide, nitrogen oxides, heavy metals and radioisotopes;
2. adequacy of existing baseline data;
3. emission monitoring, including the type, location and frequency of monitoring – see Approval Clauses 2.3.1, 3.2.5, 3.2.6, 3.2.10 to 3.2.12, 4.1.20 to 4.1.22, 4.126 to 4.1.29, 4.1.38 to 4.1.44, and 4.1.47 to 4.1.49;
4. appropriateness and validity of modeling methods and results;
5. appropriateness of including certain requirements in the Approval as opposed to making them requirements of the application, specifically:
   a. ambient air monitoring plans – see Approval Clauses 3.2.7 to 3.2.12,
   b. trial burn – see Approval Clauses 3.2.14 to 3.2.19,
   c. fugitive emission reduction plan – see Approval Clauses 3.2.20 to 3.2.25,
   d. use of landfill gas – see Approval Clauses 3.2.26 to 3.2.28, and
   e. information regarding the type and source of coal;
6. use of best available demonstrated technology – see Approval Clauses 4.1.4 to 4.1.8;
7. timeline for installation of a baghouse – see Approval Clauses 4.1.34 to 4.1.37;
8. number of trips – see Approval Clauses 4.1.31to 4.1.33;
9. local residents trip notification system;
10. adequacy of health impact assessment – see Approval Clauses 4.1.51 to 4.1.54;
11. appropriateness of health impact assessment update – see Approval Clauses 4.1.51 to 4.1.54;
12. ongoing consultation with local residents and local residents liaison committee;
13. need for the conversion to coal as a fuel source;
14. control of greenhouse gas emissions; and
15. use of tires as kiln fuel limited to Approval Clause 4.1.17."[7]

The letter indicated that the Board would not accept representations on other issues and that its reasons for these decisions would follow. These are those reasons.

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[7] On October 10, 2002, the Board wrote to the parties and advised that the Board's letter of October 2, 2002 contained an error and should have read:

> "The Board determines that the following Appellants have standing: Mr. Cam Wakefield (02-024); Mr. Ted Krug (02-026); Mr. Stan Kondratiuk (02-029); Mr. Ron Maga, Ms. Gail Maga and Ron Maga Jr. (02-023); Dr. Roger Hodkinson (02-037); Mr. Neil Hayes (02-047); and Ms. Anna T. Krug (02-074)."

II. SUBMISSIONS

A. Mr. David Doull

[16] In his submission, Mr. Doull did not comment on the issue of standing of the other Appellants, other than "…they are surely working for a common goal."[8] However, with respect to his own standing, Mr. Doull argued that the e-mail he sent to the Director was to be treated as a Statement of Concern and that "…it is not my problem if Alberta Environment does not send or file documents with the right people."[9] Mr. Doull stated that his family owns commercial and residential property in the immediate area of the Cement Plant, and therefore, they are directly affected.[10]

[17] Mr. Doull identified three issues that should be dealt with at the hearing. The first was air quality and the effectiveness of computer modeling to determine air quality problems. The second issue was water quality. Mr. Doull was concerned that emissions from the Cement Plant would enter the City of Edmonton's water system, as the Rossdale Water Treatment Plant is located downwind. The third issue identified by Mr. Doull was health impacts. He questioned using computer modeling as the basis for determining that no significant health impacts are expected.

[18] Mr. Doull concluded by stating "…there is no way my family could support this project when the approval is being requested purely for financial reasons with very little regard for the 'Health Concerns of the Citizens of Edmonton.'"[11]

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8 See: Mr. David Doull's Submission, dated September 11, 2002.

9 See: Mr. David Doull's Submission, dated September 11, 2002. As is discussed below in more detail, on November 29, 2000, Mr. David Doull sent an e-mail to Mr. Kem Singh – the Director – entitled "Inland Cement Fuel Substitution Project – Edmonton, Alberta."

10 In his Notice of Appeal, Mr. Doull identifies that his family owns two properties located approximately 10 to 20 blocks from the Cement Plant. Mr. Doull resides approximately 80 blocks or 12 kilometers from the Cement Plant.

11 See: Mr. David Doull's Submission, dated September 11, 2002.

B. Mr. Neil Hayes

[19] In his submission, Mr. Hayes identified five areas of concern. First, he wanted the Approval changed to ensure continuous air monitoring on the site, as well as in five adjacent neighbourhoods and at the nearby bread factory.

[20] Second, Mr. Hayes wanted conditions included requiring the Approval Holder to implement best available technology, including the installation of bag filters on all stacks, upgrading to the best available technology annually, and using the cleanest coal or coke. He also wanted the Approval Holder to have to revert back to gas if gas prices drop and coal prices rise to a point where the economic advantage of using coal no longer exists.

[21] Mr. Hayes' third concern was that the Approval was granted without a complete, independent environmental impact assessment to demonstrate that long-term exposure to the increased amounts of particulates and heavy metals would not create health concerns for the residents in the area. He further stated that the Cement Plant could be made safer and should be proactive not reactive to environmental health issues.

[22] Fourth, Mr. Hayes expressed concern regarding the burning of tires in the Cement Plant. He considered the burning of tires "…introduces too many additional chemicals to [an] already toxic situation."[12]

[23] The final issue stated by Mr. Hayes was that allowable emission levels at the Cement Plant should be the same or less than those produced using natural gas as a fuel source.

[24] In the conclusion of his submission, Mr. Hayes stated: "…my motivation is to protect my children and the community's long-term health impacts. We should not be persuaded that financial interests of a factory that produces cement should be more important than the health of hundreds of thousands of citizens."[13]

[25] As discussed above, Mr. Hayes was unable to attend the Preliminary Meeting because of a family emergency. As a result, the Board requested the Parties comment on his submissions at the Preliminary Meeting, and the Board provided Mr. Hayes with a copy of the

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12 See: Mr. Hayes' Submission, dated September 5, 2002.

13 See: Mr. Hayes' Submission, dated September 5, 2002.

audio recording of the proceeding and asked him to respond, via written submissions, to the comments made during the hearing.

[26] In his written submission, dated September 30, 2002, Mr. Hayes reiterated that the Approval Holder should be required to use the best available technology. Mr. Hayes submitted that the Approval Holder should be proactive and become the "…cleanest, most modern and efficient cement plant in Canada." He further argued that:

> "If we allow Inland to go ahead with this conversion with out (*sic*) being forced to replace its ineffective and often non-working precipitator or install bag house filters, we could be faced with serious health issues that could cost the government hundreds of millions of dollars. In hindsight the $10 million per year worth of savings will seem like a very poor business decision."[14]

[27] Mr. Hayes suggested the Approval Holder install backup participators and bag house filters to protect the environment and the health of the citizens of Alberta and Edmonton. He concluded by stating that everyone involved should "…work together to find ways to make this plant the cleanest and most environmentally friendly in Canada!"[15]

C. Edmonton Friends of the North Environmental Society

[28] EFONES provided documentation to support an agreement reached between it and the EFCL, Director, and Approval Holder. It did not comment on the matter of standing of Mr. David Doull or Mr. Neil Hayes other than to state that if these two individuals did not agree with the terms of the agreement, their issues would have to be dealt with separately.

[29] EFONES, the EFCL, the Director, and the Approval Holder reached a consensus as to the proper parties and the issues that should be heard by the Board (the "Agreement"). They submitted that the following should have standing:

1. "Mr. Fitch's clients (the 'EFCL' group)";[16]
2. Mr. Cameron Wakefield;
3. Mr. Ted Krug;

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[14] See: Mr. Hayes' Submission, dated September 30, 2002.

[15] See: Mr. Hayes' Submission, dated September 30, 2002.

[16] The Board understands Mr. Fitch's clients to be a group of Community Leagues from the City of Edmonton, Ms. Bonnie Quinn, and Ms. Anna T. Krug.

4. Mr. Stan Kondratiuk;
5. Mr. Ron and Ms. Gail Maga and Mr. Ron Maga Jr.;
6. Dr. Roger G. Hodkinson; and
7. EFONES.

[30] EFONES indicated that if the Parties agreed these would be the individuals and organizations that would be heard at the hearing, the remaining appellants represented by EFONES would withdraw their appeals.

[31] The Agreement also included a list of proposed issues:

> "1. Did the Director set appropriate emission limits for the project in the Approval, in particular, the emission limits for particulate matter, sulphur dioxide, nitrogen oxides, heavy metals and radioisotopes?
>
> 2. Did the Director err in determining that the existing baseline information was adequate for the purposes of granting the Approval?
>
> 3. Did the Director impose appropriate conditions with respect to the monitoring of emissions and, in particular, are the type, location and frequency of monitoring appropriate?
>
> 4. Are the modeling methods and results set out in the application materials appropriate and are they a valid basis on which to grant the Approval?
>
> 5. Did the Director err in not requiring that certain information be provided as part of the Application rather than a condition of the Approval? In that regard, we refer to the following:
>
> i) the ambient air monitoring plans;
>
> ii) trial burn;
>
> iii) fugitive emission reduction plan;
>
> iv) the use of land fill gas; and
>
> v) information on the type and source of coal.
>
> 6. Did the Director require Inland to use the best available demonstrated technology?
>
> 7. Did the Director impose an appropriate time line for the installation of a bag house, should one be required?
>
> 8. Did the Director err in allowing Inland a specified number of trips and, if so, is the number excessive?
>
> 9. Did the Director err in not requiring Inland to establish a residents' notification system to notify the residents in the area of the occurrence of a trip?

10. Was the health assessment done as part of the application adequate for the granting of an approval or should a full health assessment have been done prior to the granting of the Approval?

11. Is the updated health assessment required in the Approval appropriate?

12. Did the Director err in omitting a provision requiring ongoing consultation with the local residents and the establishment of a community liaison committee?

13. Did the Director err in failing to consider the issue of the need for the conversion to coal as fuel? and

14. Did the Director err in not imposing conditions with respect to the control of green house gas emissions?"[17]

D. Edmonton Federation of Community Leagues

[32] The EFCL submitted a Notice of Appeal and provided submissions on behalf of all of the Community Leagues in Edmonton that are members of the EFCL, and in particular the Community Leagues adjacent to the Cement Plant. The Community Leagues adjacent to the Cement Plant were identified as Sherbrook, Dovercourt, Inglewood, Wellington Park, Athlone, Woodcroft, Mayfield, High Park, McQueen, and North Glenora. The EFCL was also acting on behalf of two individuals, Ms. Bonnie Quinn and Ms. Anna T. Krug, members of the Sherbrook and Dovercourt Community Leagues, respectively. The EFCL submitted that, if the Board were not prepared to accept the EFCL as having status, then it should grant party status to Ms. Krug, Ms. Quinn, and the Inglewood Community League.

[33] The EFCL also submitted that the Community Leagues are comprised of individuals in the respective neighbourhoods, and therefore, the appeal is on behalf of the residents of the City of Edmonton that are members of Community Leagues.

[34] The EFCL concluded by providing a number of letters of support in these appeals. It continued:

> "The increased emissions that will result from the approval is clearly a matter of great concern for ordinary residents in the City of Edmonton. This is reflected in the motion which resulted in the EFCL being authorized to carry this appeal on behalf of its member leagues. … In our submission, the delegation by its member leagues to the EFCL of the authority to prosecute this appeal, on behalf of the

[17] See: EFONES' Submission, dated September 11, 2002.

> leagues and their individual members, will result in real and significant benefits to the Board and its process in terms of efficiency, elimination of duplicative and overlapping appeals, etc. The concerns of directly affected residents will be put forward to the Board in a single efficient appeal."[18]

[35] The EFCL was one of the parties participating in the Agreement with the Director, Approval Holder, and EFONES. As part of the agreement, the Director and Approval Holder agreed that they would not challenge the directly affected status of the "EFCL group."

E. Approval Holder

[36] The Approval Holder provided a brief submission. It argued that Mr. David Doull's "purported appeal" cannot be allowed, and the appeal should be dismissed. It also submitted that Mr. Neil Hayes' concerns regarding tire burning and the environmental impact assessment should not be included as issues. It based these comments on the arguments as presented by the Director. The Approval Holder did not challenge Mr. Hayes' standing.

[37] The Approval Holder also confirmed it was prepared to accept the terms of the Agreement reached between it, EFONES, the EFCL, and the Director.

F. Director

[38] In his submission, the Director stated that he did not have any further comments with respect to the standing of the EFCL and EFONES. (The Director was a signatory to the Agreement with the EFCL, EFONES, and the Approval Holder.)

[39] With respect to Mr. Doull's standing, the Director argued that Mr. Doull filed a Statement of Concern pursuant to section 44(6) of EPEA, which is part of the environmental assessment process.[19] Further, the Director argued that because Mr. Doull failed to submit a

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[18] See: EFCL's Submission, dated September 11, 2002.

[19] Section 44(6) of EPEA provides:

> "Any person who is directly affected by a proposed activity that is the subject of a decision of the Director under subsection (1)(b)(i) may, within 30 days after the last notice under subsection (5) or within any longer period allowed by the Director in the notice, submit a written statement of concern to the Director setting out the person's concerns with respect to the proposed activity."

Section 44(1)(b)(i) of EPEA provides:

> "Where a proponent or a proposed activity is referred to the Director under section 41, where the Director gives a notice under section 43 or where a proponent on the proponent's own initiative

Statement of Concern to the Director in accordance with section 73 of EPEA, which is part of the *approvals* process, as contemplated in section 91(1)(a)(i) of EPEA, he is prevented from filing a valid Notice of Appeal.[20]

[40] In his discussion of the issues, the Director had no further comments regarding the issues as proposed in the Agreement with the EFCL and EFONES. However, he did have concerns regarding the issues raised by Mr. Neil Hayes. The Director argued that the Board does not have jurisdiction to review the decision that no environmental impact assessment was required. Also, the Director submitted that because the issue of burning tires was not included in the application to amend the approval filed by the Approval Holder, the Director did not make a decision regarding tire burning, and therefore, the Board does not have jurisdiction as it was not a decision made by the Director. According to the Director, the amendment did not include any new provisions with respect to using tires as a fuel source, but only repeated the existing provisions.

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consults with the Director in respect of the application of this Division to a proposed activity, the Director shall … (b) if the proposed activity is not a mandatory activity, (i) make a decision that the potential environmental impacts of the proposed activity warrant further consideration under the environmental assessment process and require that further assessment of the proposed activity be undertaken."

[20] Section 91(1)(a)(i) of EPEA provides:

"A notice of appeal may be submitted to the Board by the following persons in the following circumstances: (a) where the Director issues an approval, makes an amendment, addition or deletion pursuant to an application under section 70(1)(a) … a notice of appeal may be submitted (i) by the approval holder or by any person who previously submitted a statement of concern in accordance with section 73 and is directly affected by the Director's decision, in a case where notice of the application or proposed change was provided under section 72(1) or (2)…."

Section 73 of EPEA provides:

"(1) Where notice is provided under section 72(1) or (2), any person who is directly affected by the application or the proposed amendment, addition, deletion or change, including the approval holder in a case referred to in section 72(2), may submit to the Director a written statement of concern setting out that person's concerns with respect to the application or the proposed amendment, addition, deletion or change.

(2) A statement of concern must be submitted within 30 days after the last providing of the notice or within any longer period specified by the Director in the notice."

III. DISCUSSION AND ANALYSIS

[41] Two of the preliminary matters that the Board must decide prior to considering the substantive merits of the appeals are the standing of the parties that have appealed and the issues that will be considered in the substantive hearing.

[42] Under the legislation, the Board is required to determine if an appellant is jurisdictionally entitled to file a Notice of Appeal. Section 91(1)(a)(i) of the Act, the provision that is applicable in this circumstance, provides that:

> "A notice of appeal may be submitted to the Board by the following persons in the following circumstances: (a) where the Director issues an approval, makes an amendment, addition or deletion pursuant to an application under section 70(1)(a) … a notice of appeal may be submitted (i) by the approval holder or *by any person who previously submitted a statement of concern in accordance with section 73 and is directly affected by the Director's decision*, in a case where notice of the application or proposed change was provided under section 72(1) or (2)…." (Emphasis added.)

According to this section, a person may only file a Notice of Appeal if he "…previously submitted a statement of concern … and is directly affected by the Director's decision…." The Director's decision in this case was to issue the Approval. The Statement of Concern must be filed pursuant to section 73 which provides:

> "Where notice is provided under section 72(1) or (2), any person who is directly affected by the application … may submit to the Director a written statement of concern setting out that person's concerns with respect to the application…."

[43] The Board also has the jurisdiction to add other parties to appeals. Section 95(6) of the Act states:

> "Subject to subsections (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."

Section 1(f) of the *Environmental Appeal Board Regulation*, A.R. 114/93, provides: "In this Regulation, … (f) 'party' means … (iii) any other person the Board decides should be a party to the appeal."

[44] Further, under the legislation, the Board also has the authority to determine the issues that will be heard at a hearing. Sections 95(2), (3), and (4) of EPEA states:

> "(2) Prior to conducting a hearing of an appeal, the Board may, in accordance with the regulations, determine which matters included in notices of appeal properly before it will be included in the hearing of an appeal….
>
> (3) Prior to making a decision under subsection (2), the Board may, in accordance with the regulations, give to a person who has submitted a notice of appeal and to any other person the Board considers appropriate, an opportunity to make representations to the Board with respect to which matters should be included in the hearing of the appeal.
>
> (4) Where the Board determines that a matter will not be included in the hearing of an appeal, no representations may be made on that matter at the hearing."

[45] The Board commends EFONES, the EFCL, the Approval Holder, and the Director for taking the initiative to come to an Agreement as to which Appellants should be granted standing and what should be included as issues. The Board agrees with the statements made by these Parties that by combining resources, the Board's and the Parties' time will be better used. The Agreement states that the EFCL and EFONES will each provide "…one submission, one set of evidence and one argument."[21] Assuming that the cooperating Parties have "covered all the bases," which for the most part it appears that they did, the Board's goal of administrative efficiency is to that extent already met.

[46] Although joint submissions are in the public's interest as it streamlines the Board's process, the Board is not obligated to accept such submissions. The Board will not defer its decision-making obligation to another party, but this joint submission was quite persuasive. In a situation as we have here, the Director, Approval Holder, and two of the Appellants, represent a large number of individuals and issues. Therefore, in general, having reviewed the proposals included in the Agreement, the Board is of the view that these proposals are consistent with the purposes enunciated in section 2 of the Act and thus will be heard.[22]

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21 See: EFONES' Submission, dated September 11, 2002.

22 Section 2 of EPEA provides:

> "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;

A. Standing - Mr. David Doull

[47] The challenge that has been brought by the Director and the Approval Holder to the standing of Mr. Doull is two fold. They first argue that Mr. Doull did not file "… a statement of concern in accordance with section 73 …" of EPEA, and second, they argue that he is not directly affected. Both of these are prerequisites to filing a valid Notice of Appeal pursuant to section 91(1)(a)(i) of the Act.

1. The Statement of Concern

[48] The Director has provided the Board with a copy of an e-mail sent by Mr. Doull to the Director, a response e-mail from Ms. Patti Humphrey to Mr. Doull, and a letter from Ms. Jillian Flett (the "EIA Director") to Mr. Doull.[23]

[49] The e-mail sent from Mr. Doull to the Director is dated November 29, 2000, and provides:

> "I attended a workshop yesterday afternoon at Inland Cements Edmonton Office regarding the above project. They made a good presentation and gave those who wanted a tour of the plant a tour and then they had a work session establishing concerns and potential solutions. When Inland officials were asked some basic questions such as where will you [*sic*] coal source coming [*sic*] from and how will it be transported, they were very reluctant to comment. I am pretty sure they have a source picked out by now and how they will haul it. I would also think that

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(c) the principle of sustainable development, which ensures that the use of resources and the environment today does not impair prospects for their use by future generations;

(d) the importance of preventing and mitigating the environmental impact of development and of government policies, programs and decisions;

(e) the need for Government leadership in areas of environmental research, technology and protection standards;

(f) the shared responsibility of all Alberta citizens for ensuring the protection, enhancement and wise use of the environment through individual actions;

(g) the opportunities made available through this Act for citizens to provide advice on decisions affecting the environment; …

(j) the important role of comprehensive and responsive action in administering this Act."

The Board believes that this agreement supports all of these purposes.

[23] Ms. Patti Humphrey is the Supervisor of the Register of the Environmental Assessment Information at Alberta Environment and Ms. Jillian Flett is the Director of the Environmental Assessment and Compliance Division at Alberta Environment. Based on a review of the Alberta Environment Organization Chart, the Board understands that Ms. Humphrey reports to Ms. Flett. The e-mail from Ms. Humphrey to Mr. Doull was dated November 30, 2000, and the letter from Ms. Flett to Mr. Doull was dated March 26, 2001.

> AENV [(Alberta Environment)] is well aware of this by now and it should also be shared with the public. I have some other concerns that Inland Cement is not going far enough in mailouts etc. on notifying the public about the pending fuel change. The facilitator at the meeting said they are only notifying people within 1.5 kilometers of the plant. The emission from their stacks travel further than 1.5 kilometers. I would like to be kept informed on the progress of this application and I would assure that and [*sic*] EIA would be required. If for some reason government decides an EIA is not required for the only coal fired facility in this city, I would like a complete explanation for the decision. Inlands Director for the project mentioned that they would have to conform to current regulations for a coa [*sic*] fired facility if the project is built. Can you explain why Inland has conform to current regulations for this project and TransAlta Utilities has 10 years to bring their Wabamun Plant up to regulation."

It should be noted that while Mr. Doull's e-mail lists a number of concerns about the public consultation process that was being conducted by the Approval Holder, it is not specifically identified as a Statement of Concern; it asked to be kept advised of the process of the application, and it expressed a view on the need for an environmental impact assessment.

[50] According to the testimony of the Director at the Preliminary Meeting, he recalls receiving this e-mail from Mr. Doull, but as he had not yet received an application from the Approval Holder to amend the Approval, he decided to forward it, either himself or through one of his staff, to Ms. Patti Humphrey, the Supervisor of the Register of Environmental Assessment Information so that it would be brought to the attention of the EIA Director. The Board notes that the Director received the application for the amendment to the Approval in September of 2001; some 10 months after Mr. Doull sent his e-mail to the Director.[24]

[51] When she received the e-mail, Ms. Humphrey responded on November 30, 2000, to Mr. Doull, stating:

> "On behalf of the Director of Environmental Assessment and Compliance Division, I would like to thank you for your e-mailed comments that were sent to Kem Singh [(the Director)] regarding the above project. All public comments are filed on the Register of Environmental Assessment Information and are accessible to the public and your e-mail will be placed in the Register, further to our discussion. This proposal is being screened in order to determine the need for an Environmental Impact Assessment (EIA) report and your concerns will be taken into consideration".

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[24] Director's Record, Tab 2.

Ms. Humphrey's e-mail refers to a telephone conversation in which, according to Mr. Doull, she asked whether he wanted the e-mail to be considered a Statement of Concern. Mr. Doull advised that in response to this question he responded yes. It does not appear that Mr. Doull made any distinction between a Statement of Concern for the process of the environmental assessment process and a Statement of Concern for the approval process.

[52] The EIA Director subsequently responded to Mr. Doull on March 26, 2001, to advise that she had decided that an environmental assessment was not necessary. Significantly, her letter also went on to indicate that: "The approval amendment review provides a public process to address issues relating to the emissions from the facility."

[53] Based on this evidence, the Director argued that Mr. Doull did not submit a Statement of Concern in accordance with section 73 of the Act – which is part of the approval process. Rather, the Director argued, Mr. Doull submitted a Statement of Concern in accordance with section 44(6) of the Act. Section 44(6) of the Act provides:

> "Any person who is directly affected by a proposed activity that is the subject of a decision of the Director under subsection (1)(b)(i) [(whether an environmental assessment is required)] may, within 30 days after the last notice under subsection (5) or within any longer period allowed by the Director in the notice, submit a written statement of concern to the Director setting out the person's concerns with respect to the proposed activity."

The Director concluded that filing a Statement of Concern pursuant to section 44(6) does not meet the prerequisites identified in section 91(1)(a)(i) for filing a valid Notice of Appeal, and as a result, Mr. Doull's Notice of Appeal must be dismissed. The Approval Holder concurred with this position.

[54] In his submissions, Mr. Doull argued that he was unaware of the process of filing Statements of Concern in relation to the environmental impact assessment. He stated that it was his understanding, based on his conversation with Ms. Humphrey, that he had filed a Statement of Concern for the whole process.

[55] The process as described by the Director is a correct statement of the law – there are two Statement of Concern processes, one in the environmental impact assessment process (section 44(6)) and one in the approval process (section 73). However, the Board is of the view that the Director could have avoided some of the confusion that was present here through better

communication. In the Board's view, the Director should have notified Mr. Doull that his e-mail was being forwarded to the EIA Director, that it was not being accepted as a Statement of Concern with respect to the approval process, and that if he wanted to file a Statement of Concern with respect to the approval process he should do so after an application was received and in response to the newspaper advertisement that would likely be placed. This approach would *not* be an onerous task and would alert innocent parties to the fact that two different people are involved in the process.

[56] Further clarification could also have been included in the letter from the EIA Director to Mr. Doull. While it appears that this was attempted in the letter where it stated the "…approval amendment review process provides a public process…", it could have perhaps been more clearly stated. For example, the letter could have included a simple sentence explaining that if Mr. Doull wanted to express concerns about the terms and conditions of any approval that may be issued, another Statement of Concern would have to be filed with the Director within a specified timeframe.

[57] While such improved communication would have been helpful, the Board does not believe that it was reasonable for Mr. Doull to conclude that another Statement of Concern – a Statement of Concern under section 73 - would not be necessary. Mr. Doull has appeared in front of this Board on a number of previous appeals.[25] He has gone through the Board process before, including presenting arguments on the question of who is and is not directly affected.[26] As part of these decision-making processes, the Board has looked at whether Statements of Concern had been filed, and if they had not been filed, the Director has generally been diligent in bringing this fact to the Board's attention. Mr. Doull knows the process and the standing

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[25] See: *Nick Zon et al.* v. *Director of Air and Water Approvals Division, Alberta Environmental Protection* (29 September 1997) Appeal Nos. 97-005-97-016) (A.E.A.B.); *Bailey et al*. v. *Director, Northern East Slopes Region, Environmental Service, Alberta Environment*, re: *TransAlta Utilities Corporation* (13 March 2001) (17 April 2001) (18 May 2001) Appeal Nos. 00-074, 077, 078, and 01-005 (A.E.A.B.); *Paron et al.* v. *Director, Environmental Service, Northern East Slopes Region, Alberta Environment*, re: *Parkland County* (1 August 2001) Appeal Nos. 01-045, 046 and 047-D (A.E.A.B.); and *Carmichael et al.* v. *Directors, Northern East Slopes Region and Central Region, Regional Services, Alberta Environment*, re: *TransAlta Utilities Corporation* (30 May 2002) (25 June 2002) Appeal Nos. 01-080, 01-082, 01-084, 01-085, 01-134, 02-002, and 02-003 (A.E.A.B.).

[26] In *Bailey et al*. v. *Director, Northern East Slopes Region, Environmental Service, Alberta Environment*, re: *TransAlta Utilities Corporation* (13 March 2001) Appeal Nos. 00-074, 077, 078, and 01-005 (A.E.A.B.), Mr. Doull argued that another appellant – Enmax Energy Corporation ("Enmax") – should not be granted status based on among other reasons that Enmax had not filed a Statement of Concern. Enmax's Notice of Appeal was dismissed, for, among other reasons, failing to file a Statement of Concern.

requirements of this Board. It is a well-known axiom that not knowing the law is not an excuse. (In Mr. Doull's cases, it is also not factual either.)

[58] In the Preliminary Meeting, Mr. Doull was asked specifically to explain the gap in correspondence between the time the EIA Director informed him that an environmental impact assessment was not necessary and his filing of this appeal. The EIA Director stated that if an approval was issued, there would be a review process. If Mr. Doull was unclear as to the distinction between the two processes, he did not tell us why he did not make further inquiries.

[59] Mr. Doull also did not provide a plausible explanation for his failure to submit a subsequent Statement of Concern in response to the newspaper advertisement with respect to the approval process. Although he stated that he had missed the advertisement in the paper, the Board notes that it is an individual's responsibility to be aware of these notices. Mr. Doull was aware that an application was proceeding and that an approval could be issued in the near future. It would seem reasonable that, if he were concerned with the Substituted Fuel Program proceeding, he would be even *more* diligent in checking the newspapers for notice of an application for the Approval.

[60] The time period in which to file a Statement of Concern regarding the Approval was extended from the required 30-day period to a 45-day period. This provided Mr. Doull, and other potential appellants, an additional 15 days in which to discover and respond to the advertisement. The Board notes that Mr. Doull has a keen interest in events occurring within his community and actively takes the initiative to keep abreast of the current industrial activities in the area. He is in constant contact with the Board staff on several matters. And, the advertisement was placed in two newspapers with general circulation.[27] The advertisement was not overly small or inconspicuous. Given all of this, along with the extra appeal period provided by the Director, the Board cannot justify allowing Mr. Doull's appeal to proceed on the grounds of failing to be aware of the advertisement.

[61] In the previous appeals in which Mr. Doull participated, he provided submissions regarding the directly affected status of himself and other appellants. He understood the limitations of the legislation circumscribing standing and making "directly affected" a

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[27] See: Director's Record, Tab 3. Advertisements were placed in the Edmonton Journal and the Edmonton

prerequisite for citizen appellants, which is the situation now facing Mr. Doull. The Board concludes that Mr. Doull did not file a Statement of Concern pursuant to section 73 of the Act. As a result, Mr. Doull's Notice of Appeal does not meet the prerequisites of section 91(1)(a)(i), the Board cannot accept his Notice of Appeal, and without any offsetting equities, it must be dismissed.[28]

2. Directly Affected

[62] Given that Mr. Doull has not met the requirement to file a Statement of Concern, the Board need not consider whether Mr. Doull is directly affected.

3. Section 95(6)

[63] Section 95(6) of the Act permits the Board to allow a party who has not filed a Notice of Appeal, or not filed a valid Notice of Appeal, to participate in an appeal in any event. In this case, again taking into account all of the equities involved, the Board is not prepared to permit Mr. Doull to participate. In order for these equities to prevail, or to add Mr. Doull as a party, the Board needs to be convinced that Mr. Doull will bring something new, unique, or not otherwise caught in the Notices of Appeal that have been accepted, or that it would otherwise be in the public interest for Mr. Doull to participate.

[64] In reviewing Mr. Doull's Notice of Appeal, the only matter that is potentially validly before the Board that is not included in the Notices of Appeal that have been accepted, is

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Sun on or about September 5, 2001.

[28] See: *Warner et al*. v. *Director, Central Region, Regional Services, Alberta Environment* re: *AAA Cattle Company Ltd.* (15 June 2002), Appeal Nos. 01-113 and 01-115-D (A.E.A.B.); *Bailey et al.* v. *Director, Northern East Slopes Region, Environmental Service, Alberta Environment*, re: *TransAlta Utilities Corporation* (13 March 2001), Appeal Nos. 00-074, 075, 077, 01-001-005 and 011-ID (A.E.A.B.); D*eneschuk Homes Ltd.* v. *Director, Approvals, Parkland Region, Regional Services, Alberta Environment,* re: *own of Sylvan Lake* (6 September 2001) Appeal No. 01-060-D (A.E.A.B.); *St. Michael Trade and Water Supply Ltd*. v. *Director, Environmental Service, Parkland Region, Alberta Environment*, re: *Cam-A-Lot Holdings* (17 July 2001) Appeal No. 01-055 (A.E.A.B.); *Grant and Yule* v. *Director, Bow Region, Natural Resources Service, Alberta Environment*, re: *Village of Standard* (15 May 2001) Appeal Nos. 01-015 and 016-D (A.E.A.B.); *Municipal District of Rocky View No. 44* v. *Director, Southern Region, Regional Services, Alberta Environment* re: *Apple Creek Golf and Country Club* (25 June 2002) Appeal No. 02-006-D (A.E.A.B.); *Parry et al*. v. *Regional Director, Northern East Slopes Region, Alberta Environmental Protection* re: *Cardinal River Coals Ltd*. (18 January 1999) Appeal Nos. 98-246 and 98-248-D (A.E.A.B.); and *O'Neill* v. *Regional Director, Parkland Region, Alberta Environmental Protection*, re: *Town of Olds* (12 March 1999) Appeal o. 98-250-D (A.E.A.B.).

water quality. Mr. Doull has expressed the concern that particulate emissions from the Cement Plant may end up in the City of Edmonton's water supply.

[65] The Board is of the view that any such concerns can already be addressed under the "health assessment." As a result, the Board does not need to add a party to bring this forward.

B. Mr. Neil Hayes

[66] The Director and the Approval Holder have accepted that Mr. Hayes is directly affected, and the Board agrees. As a result, the Board grants Mr. Hayes standing to participate in these appeals.

[67] Mr. Neil Hayes advised that he "… lives directly in the path of the smoke from the cement plant…." Based on the Board's review of his address, the Board understands that Mr. Hayes lives approximately 24 blocks from the Cement Plant. Mr. Hayes indicated that he has concerns about potential health impacts on himself and his family. The Board notes that Mr. Hayes filed a Statement of Concern and thus meets the other requirements of standing.

C. Individuals

[68] EFONES, EFCL, the Director, and the Approval Holder have made a joint recommendation to the Board to grant the following individuals standing: Mr. Cameron Wakefield; Mr. A. Ted Krug; Mr. Stan Kondratiuk; Mr. Ron and Ms. Gail Maga and Mr. Ron Maga Jr.; and Dr. Roger G. Hodkinson.

[69] The Board notes that these individuals filed Statements of Concern.[29] Further, the Board notes that each of the individuals identified either lives or works in proximity of the Cement Plant.[30] On this basis, the Board is prepared to grant them standing.

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[29] The Board notes that the Statement of Concern filed by the Magas' only lists Mr. Ron and Ms. Gail Maga. The Board is prepared to accept that Mr. Ron and Gail Maga filed the Statement of Concern on behalf of themselves and on behalf of their son in a representative capacity.

[30] Mr. Cameron Wakefield lives approximately 30 blocks south of the Cement Plant, works approximately 24 blocks northeast of the Cement Plant, and bicycles to work past the Cement Plant nearly very day. Mr. Ted Krug lives 20 blocks east of the Cement Plant. Mr. Stan Kondratiuk lives 37 blocks west of the Cement Plant. The Magas live 26 blocks northeast of the Cement Plant. Dr. Roger Hodkinson lives in Spruce Grove, but his office is

[70] EFONES, EFCL, the Director, and the Approval Holder have made a joint recommendation to the Board to grant "…Mr. Fitch's clients (the 'EFCL' group)…" standing. The Board understands that the EFCL group to include two individuals – Ms. Bonnie Quinn and Ms. Anna T. Krug. The Board notes that Ms. Quinn and Ms. Krug live in proximity of the Cement Plant.[31] The Board also notes Ms. Krug filed a Statement of Concern. However, it appears to the Board that Ms. Quinn did not file a Statement of Concern.[32]

[71] On this basis, the Board is prepared to grant Krug standing. However, with respect to Ms. Quinn, the filing of a Statement of Concern is, as the Board has previously determined, a statutory prerequisite to filing a valid Notice of Appeal.[33] As a result, the legislation requires that Ms. Quinn's Notice of Appeal be dismissed.[34]

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located 36 blocks southwest of the Cement Plant. Each of these people expressed a number of concerns with respect to the Approval, including health concerns.

[31] Ms. Quinn lives 30 blocks north of the Cement Plant and Ms. Krug lives 30 blocks south of the Cement Plant. Both have expressed a number of concerns, including health concerns.

[32] The Board notes that Ms. Quinn's husband, Mr. William Quinn filed two Statements of Concern (both dated October 11, 2001), but there is no indication that it was also filed on behalf of Ms. Quinn. The Board also notes that Mr. Quinn's Statements of Concern makes reference to petitions. It may well be that Ms. Quinn is a signatory to these either of these petitions, however, the Board was not provided with copies of these petitions.

[33] See: *Warner et al*. v. *Director, Central Region, Regional Services, Alberta Environment* re: *AAA Cattle Company Ltd.* (15 June 2002), Appeal Nos. 01-113 and 01-115-D (A.E.A.B.); *Bailey et al*. v. *Director, Northern East Slopes Region, Environmental Service, Alberta Environment*, re: *TransAlta Utilities Corporation* (13 March 2001), Appeal Nos. 00-074, 075, 077, 01-001-005 and 011-ID (A.E.A.B.); D*eneschuk Homes Ltd.* v. *Director, Approvals, Parkland Region, Regional Services, Alberta Environment,* re: *own of Sylvan Lake* (6 September 2001) Appeal No. 01-060-D (A.E.A.B.); *St. Michael Trade and Water Supply Ltd*. v. *Director, Environmental Service, Parkland Region, Alberta Environment*, re: *Cam-A-Lot Holdings* (17 July 2001) Appeal No. 01-055 (A.E.A.B.); *Grant and Yule* v. *Director, Bow Region, Natural Resources Service, Alberta Environment*, re: *Village of Standard* (15 May 2001) Appeal Nos. 01-015 and 016-D (A.E.A.B.); *Municipal District of Rocky View No. 44* v. *Director, Southern Region, Regional Services, Alberta Environment* re: *Apple Creek Golf and Country Club* (25 June 2002) Appeal No. 02-006-D (A.E.A.B.); *Parry et al*. v. *Regional Director, Northern East Slopes Region, Alberta Environmental Protection* re: *Cardinal River Coals Ltd*. (18 January 1999) Appeal Nos. 98-246 and 98-248-D (A.E.A.B.); and *O'Neill* v. *Regional Director, Parkland Region, Alberta Environmental Protection*, re: *Town of Olds* (12 March 1999) Appeal o. 98-250-D (A.E.A.B.).

[34] Section 91(1)(a)(i) of EPEA provides:

> "A notice of appeal may be submitted to the Board by the following persons in the following circumstances: (a) where the Director issues an approval, makes an amendment, addition or deletion pursuant to an application under section 70(1)(a) … a notice of appeal may be submitted (i) by the approval holder or by any person who previously submitted a statement of concern in accordance with section 73 and is directly affected by the Director's decision, in a case where notice of the application or proposed change was provided under section 72(1) or (2)…."

D. Groups

[72] In the appeals before the Board, there are a number of organizations that are requesting status. There is the Edmonton Friends of the North Environmental Society or EFONES. There is also the Edmonton Federation of Community Leagues or the EFCL, who is acting as agent "…on behalf of its member Community Leagues in the City of Edmonton …" (there appear to be at least 30), and in particular the Community Leagues adjacent to the Cement Plant that are identified as Sherbrook, Dovercourt, Inglewood, Wellington Park, Athlone, Woodcroft, Mayfield, High Park, McQueen, and North Glenora. The EFCL pointed out that the Inglewood Community League filed its own Notice of Appeal. The EFCL argued that its Notice of Appeal is also filed "…on behalf of residents of the City of Edmonton, who are members of community leagues, which are in turn members of the EFCL." While the Board believes that it is important that these groups, who represent a large number of individuals who are very likely directly affected, be given an opportunity to participate in the hearing of these appeals, as is discussed below, the Board has not been presented with sufficient information upon which to accept these Notices of Appeal in their own right. The Board will instead ensure that the concerns of these groups and these individuals are fully represented at the hearing by granting EFONES and the EFCL full party status to participate in the other appeals that are before the Board.

1. Directly Affected

[73] The Board has previously considered Notices of Appeal filed by groups. In *Ouellette Packers*, the Board held:

> "The Board has previously held that whether an organization is directly affected is not dispositive in determining standing. In other words, what is relevant is whether the *individuals that make up the group* are directly affected."[35]

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[35] *Ouimet et al.* v. *Director, Regional Support, Northeast Boreal Region, Regional Services, Alberta Environment* re: *Ouellette (20002) Packers Ltd.* (28 January 2001), E.A.B. Appeal No. 01-076-D (A.E.A.B.) at paragraph 19. In *Graham et al.* v. *Alberta (Director of Chemicals Assessment and Management, Environmental Protection)* (1996), 20 C.E.L.R. (N.S.) 287 (A.E.A.B.) at paragraph 21, the Board dismissed a Notice of Appeal filed by the Lesser Slave Lake Indian Regional Council, stating:

> "The Alberta Court of Appeal held in *Friends of the Athabasca Environmental Assn.* v. *Alberta (Public Health Advisory and Appeal Board)*, [(1996), 34 Admin.L.R. (2d) 167 at paragraph 12]

[74] In *Kostuch* the Board held:

> "The determination of whether a person is directly affected is a multi-step process. First, the person must demonstrate a personal interest in the action taken by the Director. Assuming the interest is specific and detailed, a related question to be asked is *whether that interest is a personal (or private) interest, advanced by one individual or similar interests shared by the community at large*. In those cases where it is the latter, *the group will still have to prove that some of its members will have their own standing*."[36] (Emphasis added.)

[75] In *Bailey*, following a review of a number of cases involving groups filing an appeal, the Board stated:

> "The cornerstone of all of the cases is the factual impact of the proposed project on individuals. It is important to understand that it is acceptable for an organization to file an appeal, but in order to demonstrate the personal impact required by section 84 [(now section 91)] of the Act [(EPEA)], individual members of the organization should also file - either jointly with the organization or separately. There will be cases, such as *Hazeldean*, where an organization can proceed with an appeal on its own. However, in these cases, the *Board will need to be clearly convinced that the majority of the individual members of the organization are individually and personally impacted by the project*."[37] (Emphasis added.)

[76] With respect to all of the groups identified, the Board is of the view that it does not have sufficient evidence before it to demonstrate that any of these groups are directly affected and are therefore entitled to standing in their own right. With respect to EFONES, the Board has little information about their membership, but understands that they are a broadly based environmental group with members throughout Northern Alberta. Based on this information, the Board concluded that while it is possible that some of their members may

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> that for the purpose of establishing a direct effect, it is not enough for a corporate body to merely represent the interests of those who may be directly affected."

This case was judicially reviewed and then taken to the Court of Appeal. See: *Graham et al.* v. *Alberta (Director, Chemicals Assessment and Management, Environmental Protection)* (1997), 22 C.E.L.R. (N.S.) 141 (Alta. Q.B.) and (1997), 23 C.E.L.R. (N.S.) 165 (Alta. C.A.).

[36] *Kostuch* v. *Alberta (Director, Air and Water Approvals Division, Environmental Protection)* (1995), 17 C.E.L.R. (N.S.) 246 (A.E.A.B.) at paragraph 38, E.A.B. Appeal No. 94-017 ("*Kostuch"*).

[37] Re: *TransAlta Utilities Corp.* (2001), 38 C.E.L.R. (N.S.) 68 (A.E.A.B.) at paragraph 53, (sub nom. *Bailey et al.* v. *Director, Northern East Slopes Region, Environmental Service, Alberta Environment,* re: *TransAlta Utilities Corporation*) E.A.B. Appeals No. 00-074, 075, 077, 078, 01-001-005 and 011-ID ("*Bailey*"). *Hazeldean Community League et al*. v. *Director of Air and Water Approvals, Alberta Environment* (May 11, 1995), E.A.B. Appeal No. 95-002 ("*Hazeldean*"). See also: Re: *AEC Pipelines Ltd*. (2001), 38 C.E.L.R. (N.S.) 14 (A.E.A.B.) at paragraphs 59 to 69, (sub nom. *Metis Nation of Alberta Zone II Regional Council* v. *Director, Bow Region, Environmental Service, Alberta Environmen*t re: *AEC Pipelines Ltd*.) E.A.B. Appeal No. 00-73.

possibly be directly affected – and we do not know exactly who these members are – it appears unlikely that "…*the majority of the individual members of the organization are individually and personally impacted by the project*…" as is required by *Hazeldean.*

[77] With respect to the EFCL, the Board understands that this is an organization comprised of approximately 30 Community Leagues and represents the residents of the City of Edmonton who are members of Community Leagues. Looking at this from the perspective of the individual members of all of the Community Leagues in the City of Edmonton, it also appears unlikely that "…*the majority of the individual members of the organization are individually and personally impacted by the project*…" as is required by *Hazeldean.* Even if we look at the membership of the EFLC as being its constituent Community Leagues, and for arguments sake accept that the Community Leagues that are specifically identified are directly affected, this represents 10 out of the 30 and is not the majority as required by *Hazeldean*.

[78] If we consider the 10 individual Community Leagues that were identified by the EFLC as being concerned with the Approval, it is clear that there are a large number of people concerned with the Approval; however, we do not know for sure how many or what portion of the membership of each Community League this represents.[38] The type of evidence required for the Board to find any of these Community Leagues directly affected within the terms of *Hazeldean* has simply not been provided to the Board.

2. Section 95(6)

[79] Under section 95(6) of EPEA, the Board, if it determines that a person should be allowed to participate in the hearing, can add that person as a party. Under this section, the Board does not have to assess the directly affected status of the party. This does not mean that any person who wants can appear before the Board. A person requesting party status must still show the Board that they have a valid interest in the appeal, and that there is a public interest to adding such a person.

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[38] The Board notes that the EFCL has provided us with a copy of a resolution passed by its membership to file an appeal. While this clearly indicates that the membership of the EFCL, whether the member Community Leagues or their individual members, are *concerned* about the Substitute Fuel Project, it is not evidence that anyone is directly affected.

[80] In these appeals, two organizations have come forward to represent a large number of Appellants and other individuals. Both EFCL and EFONES have provided Notices of Appeal on their own behalf and on behalf of individual residents in the area. Notwithstanding the Board's concern about their lack of proven directly affected status, the Board will accept both of these organizations as parties to these appeals. We believe that the public's interest is broadly represented by the membership of both associations and that allowing them to be parties to the appeals is in keeping with the purposes of the Act.[39] By allowing these organizations in as Parties, the Board is gathering more information that will assist in preparing its eventual Report and Recommendations to the Ministers.

[81] The Board is prepared to accept the EFCL as a party to these appeals as it represents a large group of individuals, many of whom would likely be considered individually directly affected. Quite clearly, if *anyone* would be directly affected, it would be the individuals surrounding the Cement Plant, many of whom are represented by the EFCL.

[82] Similarly, with respect to EFONES, a number of the Appellants have named EFONES as their agent to represent them in these appeals. The Board accepts EFONES as a party for similar reasons.

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[39] See section 2 of EPEA, which provides:

"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;

(c) the principle of sustainable development, which ensures that the use of resources and the environment today does not impair prospects for their use by future generations;

(d) the importance of preventing and mitigating the environmental impact of development and of government policies, programs and decisions; …

(f) the shared responsibility of all Alberta citizens for ensuring the protection, enhancement and wise use of the environment through individual actions;

(g) the opportunities made available through this Act for citizens to provide advice on decisions affecting the environment; …

(j) the important role of comprehensive and responsive action in administering this Act."

[83] Finally, these organizations have proven to the Board the relevancy of their participation in these appeals. The breadth of the issues listed in the Agreement demonstrates this is in keeping with the purposes of the Act and the public interest.

E. Issues

[84] As stated, EFONES, the EFLC, the Approval Holder, and the Director reached an Agreement to make a joint recommendation to the Board as to the issues that need to be considered in these appeals. Although the Agreement is well presented, the Board is still restricted in what can be included as issues in a hearing of these appeals, and as with standing, the Board cannot defer its decision-making authority to the Parties. The Board must be satisfied that the issues recommended by the Agreement are proper, and the Board must consider those issues raised in the valid Notices of Appeal. Here, the EFCL and EFONES have not been determined to be directly affected, and therefore, the Notices of Appeal of the organizations alone cannot be considered by the Board. The same is true of Mr. Doull's Notice of Appeal.

[85] The issues that can be considered are those included in the Notices of Appeal of those deemed directly affected, including Mr. Cameron Wakefield, Mr. A. Ted Krug, Mr. Stan Kondratiuk, Mr. Ron and Ms. Gail Maga and Mr. Ron Maga Jr., Dr. Roger G. Hodkinson, Mr. Neil Hayes, and Ms. Anna T. Krug. (The Board recognizes that Ms. Krug's Notice of Appeal and the EFCL Notice of Appeal are the same document, and in this regard it can be considered.) When the Board reviews these Notices of Appeal, most of the issues stated in these Notices of Appeal are brought forward in the Agreement.

[86] The courts have considered joint submissions previously, usually in the context of sentencing provisions. In *R.* v. *G.W.C.*, the Alberta Court of Appeal recognized that joint submissions should be accepted unless they are unfit or contrary to the public interest and, if accepted, "…would bring the administration of justice into disrepute."[40] The Court quoted the Manitoba Court of Appeal stating, "…while a sentencing judge has an overriding discretion to

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[40] *R.* v. *G.W.C.*, [2000] A.J. No. 1585 (Alta.C.A.), at paragraph 18.

reject a joint recommendation, 'there must be a good reason to do so, particularly … where the joint recommendation is made by experienced counsel.'"[41]

[87] Reviewing the issues as presented in the Agreement, the Board is generally willing to accept these as the issues that will be heard by the Board. The issues brought forward and jointly agreed to were issues already stated in the Notices of Appeal filed by EFCL and EFONES and the individuals associated with these organizations. There is a strong public element to each of the issues, and the issues stated in the Agreement encompass the purpose of the Act as stated in section 2.[42]

[88] In addition to those issues stated in the Agreement, the Board will hear arguments on the use of tires as kiln fuel as brought forward by Mr. Neil Hayes in his Notice of Appeal, but solely as it relates to condition 4.1.17 of the Approval. The Director argued that the Board does not have jurisdiction to consider tires as these provisions were "carried over from the original approval." The Board does not accept that argument because condition 4.1.17 of the Approval is not simply a rewrite of the original condition. Although the Director is correct that most of the sections referring to the burning of tires are simply "carried forward" from the original approval, except for minor word changes that do not result in any difference in the application of those

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41 *R.* v. *G.W.C.*, [2000] A.J. No. 1585 (Alta. C.A.), at paragraph 18.

42 Section 2 of EPEA states:

"The purpose of the Act is to support and promote the protection, enhancement and wise use of the environment conservation 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;

(c) the principle of sustainable development, which ensures that the use of resources and the environment today does not impair prospects for their use by future generations;

(d) the importance of preventing and mitigating the environmental impact of development and of government policies, programs and decisions;

(e) the need for Government leadership in areas of environmental research, technology and protection standards;

(f) the shared responsibility of all Alberta citizens for ensuring the protection, enhancement and wise use of the environment through individual actions;

(g) the opportunities made available through this Act for citizens to provide advice on decisions affecting the environment; …

(h) the important role of comprehensive and responsive action in administering this Act."

terms, the Board is of the view that the wording of condition 4.1.17 has been changed in substance. In the amended Approval, condition 4.1.17 states:

> "4.1.17 Prior to commencing the use of tires as a kiln fuel, the approval holder shall obtain a written authorization from the Director."[43]

In the original version of the Approval, the Approval Holder did not require written authorization prior to burning tires, only that it "…notify the Director that tires will be used as fuel at least one day prior to the commencement of use of tires as fuel."[44]

[89] The Board is of the view that this is a change to the substance of the existing approval. As a result, the Board is of the view that the Approval Holder would certainly have the right to appeal such a change, and if the Approval Holder has the right to appeal this condition, the rules of natural justice would assume it only fair that the other Parties to these appeals would have equal opportunity to appeal. Therefore, the Board will add this as an additional issue to those listed in the Agreement.

[90] Mr. Hayes and some of the EFONES individuals also mentioned the need for a full environmental impact assessment in their Notices of Appeal.[45] The Board does not have jurisdiction to hear appeals with respect to the decisions made regarding whether an environmental impact assessment should or should not be done prior to the issuance of an approval. Section 91 lists the circumstances under which this Board can hear an appeal. The decision made regarding an environmental impact assessment, pursuant to section 44(1) of the Act, is not included as one of the grounds of appeal under section 91, subject to the decision of Mr. Justice Wilkins in *Slauenwhite*, who seemed to indicate the contrary.[46]

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[43] See: the Approval, Director's Record, Tab 1.

[44] See: the original Approval (Approval No. 10339-01-00), condition 4.1.27.

[45] See: Statement of Concern filed by Mr. Cameron Wakefield, dated October 12, 2001, and included as part of his Notice of Appeal, dated June 21, 2002.

[46] See: *Slauenwhite et al.* v. *Environmental Appeal Board et al.* (31 August 1995), Action No. 9404-00052 (Alta. Q.B.) at paragraphs 42 to 46, where it states:

> "The failure by the Director to consider the environmental impacts flowing from the full utilization of the capacity of the proposed plant prior to its development approval is a fundamental breach of the duty imposed on the Director to review the application under the provisions of Approvals Procedure Regulation of 110/93 s. 6(1).
>
> It is the conclusion of this Court that the failure by the Director to undertake the review required of him by regulation is a 'matter' properly before the Board. The conduct of the Director's statutory review cannot be categorized only a, a matter of site selection previously considered before the

[91] It must be understood that the Act has made a clear separation between the Director who makes the decision regarding the environmental impact assessment process and the Director who makes the decision whether to issue an approval. This two-step process allows different evaluations of the proposed project to be undertaken, potentially increasing the correctness of the decisions. In this case, the EIA Director determined that an environmental impact assessment was not required, and the Appellants do not agree. And maybe they are right. However, this Board cannot provide any assistance to the Appellants on this question.

[92] While the Board does not have the jurisdiction to decide if an environmental impact assessment was necessary, it does have the jurisdiction and the duty to ask if the Director had sufficient information before him to make the decision regarding the Approval. Therefore, the issue regarding the adequacy of the baseline data will be heard by the Board.

[93] The issue of the coal source and quality is not included as part of any of the valid Notices of Appeal. However, the Board is certain that coal quality will be a factor in determining if proper air quality standards have been determined. Therefore, the Board will hear the issue of coal quality as it relates to the appropriate standards.

> ERCB [(now AEUB)] hearing. The Board was incorrect to so conclude. Indeed, it would appear to this Court to be 'patently unreasonable' for the Board to reach the conclusion that the Act itself precluded the Board from determining whether or not the environmental impacts of the whole of this project had been weighed in accordance with the Act and regulations. Such a conclusion is not consistent with either the spirit or the wording of the Act.
>
> The additional statements in the Board decision to which the Applicants have taken exception also require comment. The Board is incorrect where it suggests that citizens objecting to the development have an onus to oppose or cross-examine representatives of the Director or Department [(Alberta Environment)] at the ERCB [(AEUB)] hearings or to themselves gather evidence at an earlier stage of the proceedings, failing which they may lose grounds for appeal before the Board. The duty to ensure that developments of this type conform to the Act and its regulations does not rest with the Applicants or others objecting to the application. It rests with the Director.
>
> *The Director's performance of that duty can and should be reviewed by the Board to ensure that the assessment of environmental impacts has been made in accordance with the Act and regulations.*
>
> The Board should place no reliance whatsoever on any perceived deficiencies in the gathering of evidence, participation in procedures, or cross-examinations by the Applicants as a basis for limiting a right of appeal. It is not the obligation of the Applicant to ensure that all environmental impacts are reviewed by the Director. Any deficiencies in that regard must rest with the Director who has the statutory duty to ensure full consideration of environmental impacts." (Emphasis added. Footnotes deleted.)

[94] Although the issue of the necessity of converting to coal was specifically stated only in the EFONES appeal, it was alluded to in the Notices of Appeal filed by the EFONES individuals. The issue of needing to convert to coal is relevant in these appeals, and it provides the Approval Holder the opportunity to provide evidence on the value of conversion versus maintaining the status quo. Therefore, the Board will allow the issue of the need for the conversion to coal to be heard at the hearing.

F. Consolidation of Appeals

[95] Under the *Environmental Appeal Board Regulation*, A.R. 114/93, the Board can combine Notices of Appeal.[47] In a situation such as the one before the Board the issues brought forward by most of the Appellants are similar in content and intent. Therefore, the Board will combine the valid appeals and hear them together.

IV. CONCLUSION

[96] The Board determines that the following Appellants have standing: Mr. Cameron Wakefield (02-024); Mr. A. Ted Krug (02-026); Mr. Stan Kondratiuk (02-029); Mr. Ron and Ms. Gail Maga and Mr. Ron Maga Jr. (02-023); Dr. Roger G. Hodkinson (02-037); Mr. Neil Hayes (02-047); and Ms. Anna T. Krug (02-074).

[97] Further, the Board accepts the Edmonton Friends of the North Environmental Society and the Edmonton Federation of Community Leagues as full parties to these appeals. The Notices of Appeal field by EFONES (02-061) and the EFCL (02-41) are dismissed.

[98] The Board determines that Mr. Doull does not have standing to bring an appeal, and his appeal is therefore dismissed (02-018). The Board also determines that Ms. Quinn does not have standing to bring an appeal, and her appeal is therefore also dismissed (02-073).

[99] Pursuant to section 95(2), (3), and (4), the Board determines that the following issues will be included in the hearing of these appeals:

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[47] Section 3 of the Environmental Appeal Board Regulation, A.R. 114/93, provides:

"Where the Board receives more than one notice of appeal in respect of a decision, it may combine the notices of appeal for the purposes of dealing with them under this Regulation."

1. emission limits for particulate matter, sulphur dioxide, nitrogen oxides, heavy metals and radioisotopes;
2. adequacy of existing baseline data;
3. emission monitoring, including the type, location and frequency of monitoring – see Approval Clauses 2.3.1, 3.2.5, 3.2.6, 3.2.10 to 3.2.12, 4.1.20 to 4.1.22, 4.126 to 4.1.29, 4.1.38 to 4.1.44, and 4.1.47 to 4.1.49;
4. appropriateness and validity of modeling methods and results;
5. appropriateness of including certain requirements in the Approval as opposed to making them requirements of the application, specifically:
   a. ambient air monitoring plans – see Approval Clauses 3.2.7 to 3.2.12,
   b. trial burn – see Approval Clauses 3.2.14 to 3.2.19,
   c. fugitive emission reduction plan – see Approval Clauses 3.2.20 to 3.2.25,
   d. use of landfill gas – see Approval Clauses 3.2.26 to 3.2.28, and
   e. information regarding the type and source of coal;
6. use of best available demonstrated technology – see Approval Clauses 4.1.4 to 4.1.8;
7. timeline for installation of a baghouse – see Approval Clauses 4.1.34 to 4.1.37;
8. number of trips – see Approval Clauses 4.1.31to 4.1.33;
9. local residents trip notification system;
10. adequacy of health impact assessment – see Approval Clauses 4.1.51 to 4.1.54;
11. appropriateness of health impact assessment update – see Approval Clauses 4.1.51 to 4.1.54;
12. ongoing consultation with local residents and local residents liaison committee;
13. need for the conversion to coal as a fuel source;
14. control of greenhouse gas emissions; and
15. use of tires as kiln fuel limited to Approval Clause 4.1.17.

Pursuant to section 95(4) of EPEA, the Board will not accept representations on other issues.

[100] The Board directs that these appeals will be consolidated and heard together on November 26 and 27, 2002.

Dated on October 11, 2002, at Edmonton, Alberta.

"original signed by"

William A. Tilleman, Q.C.
Chair