

ALBERTA
ENVIRONMENTAL APPEAL BOARD

DECISION

Date of Decision - November 20, 1997

IN THE MATTER OF Sections 84, 85, 86, and 87 of the
Environmental Protection and Enhancement Act, (S.A. 1992, ch. E-
13.3 as amended);

-and-

IN THE MATTER OF an appeal filed by Mr. Bill Lucey,
Confederation of Regions Political Party (Federal) with respect to
Approval No. 47345-00-00 issued to Petro-Canada Oil and Gas by
Mr. Chris Powter, Acting Director of Land Reclamation Division,
Alberta Environmental Protection.

Cite as: Lucey #3 v. Acting Director of Land Reclamation, Alberta Environmental
Protection.

BACKGROUND

On October 20, 1997, Mr. Bill Lucey, Leader of the Confederation of Regions Political Party (CORE), filed a Notice of Appeal with the Environmental Appeal Board (Board) dated October 5, 1997. Mr. Lucey objected to Approval No. 47345-00-00 issued to Petro-Canada Oil and Gas by Mr. Chris Powter, Acting Director, Land Reclamation, Alberta Environmental Protection (Department). The appeal was filed within the 30 day time limit prescribed by section 84(4)(c) of the *Environmental Protection and Enhancement Act* (Act).

The Approval issued to Petro-Canada Oil and Gas was for the construction and reclamation of the Willesden Green to Ferrier Pipeline Project.

On October 20, 1997, the Board informed Petro-Canada Oil and Gas that an appeal had been filed by Mr. Lucey and provided them with a copy of Mr. Lucey's appeal.

On October 28, 1997, Petro-Canada Oil and Gas responded to the Board's request for representations.

After receiving Mr. Lucey's written appeal, the Board, in a letter dated November 5, 1997, asked Mr. Lucey to respond to correspondence from Mr. Sprague, Civil Law Branch, Alberta Justice, dated October 31, 1997. Mr. Sprague's letter stated:

- "a) the document sent to the Board does not contain the grounds of appeal nor a description of any relief which is within the mandate of the Board, contrary to s. 5 of the Board's Rules of Practice.
- b) the Director of Land Reclamation did not accept Mr. Lucey as a person who was directly affected by the Application and did not accept his initial letter as a Statement of Concern. Therefore, Mr. Lucey does not have status to appeal the decision to issue an Approval: s. 84(1)(iv) EPEA.
- c) the Board has the ability to dismiss an appeal if a person is not directly affected by the decision in question: s. 87(5)(a)(i.i) EPEA.

- d) Mr. Lucey has filed similar documents in relation to other matters (EAB No.s 96-072, 97-003, 97-033 and 97-037). In those matters where a decision has been given, the board has consistently found that Mr. Lucey was not a person directly affected by the decision in question.

Given the foregoing, I request that the Board review the document sent by Mr. Lucey in this matter and dismiss the appeal on the basis of non-compliance with the Board's practice and legislation and his failure to demonstrate that he is directly affected by the decision of the Director Land Reclamation."

According to standard practice, on November 3, 1997, the Board also wrote to the Alberta Energy and Utilities Board (AEUB) and the Natural Resources Conservation Board (NRCB) requesting that both advise whether the matter was the subject of a public hearing or a review under either of their legislation. As of the date of this Decision, no response has been received from the NRCB or the AEUB.

ISSUES

The Board identifies the primary issue in this appeal to be whether Mr. Lucey or CORE is directly affected by the Acting Director's decision.

THE BOARD'S CONSIDERATIONS

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

As noted above, the Board asked Mr. Lucey to respond to Mr. Grant Sprague's letter by November 10, 1997. The following is Mr. Lucey's reply:

"Some of the main reasons of this appeal are;

- (1) From Nov. 5/97 letter to Nov. 10/97 is too short of a time "frame", for us to

seek legal counsel, and, research and prepare a “brief”, in response to your letter. (1 MONTH REQUIRED).

- (2) seek a legal opinion, and an opinion from Environment Canada in Ottawa about “Petro-Canada’s”, negative attitude to our environment. (eg. greenhouse gas emissions from their gas compressors and gas plants.
- (3) seek leadership from World Environment Conference in Japan next month.
- (4) seek legal aid to take on the powerful, “gang buster”, type of lawyers from “Alberta Justice” and “Petro-Canada.”
- (5) contract the Alberta press counsel re: reporters.”

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

“Two ideas emerge from this analysis about standing. First, the possibility that any given interest will suffice to confer standing diminishes as the causal connection between an approval and the effect on that interest becomes more remote. This first issue is a question of fact, i.e., the extent of the causal connection between the approval and how much it affects a person’s interest. This is an important point; the Act requires that individual appellants demonstrate a personal interest that is directly impacted by the approval granted. This would require a discernible effect, i.e., some interest other than the abstract interest of all Albertans in generalized goals of environmental protection. ‘Directly’ means the person claiming to be ‘affected’ must show causation of the harm to her particular interest by the approval challenged on appeal. As a general rule, there must be an unbroken connection between one and the other.”¹

The appellant does not meet the first part of the test referred to by the court. He is not directly affected.

DECISION OF THE BOARD

Mr. Lucey’s Notice of Appeal does not meet any of the criteria related to standing necessary for the

¹ *Martha Kostuch v. The Environmental Appeal Board and the Director of Air and Water Approvals Division*, 35 Admin L.R. (2d) 160 (Q.B. March 28, 1996); the original decision is found at 17 C.E.L.R. (N.S.) 246 (EAB, August 23, 1995).

Board to continue its jurisdiction. Mr. Lucey has not, to the Board's satisfaction, raised specific environmental matters related to Petro-Canada's Approval. He has not shown that either he or the Confederation of Regions Political Party (Federal) or any of its members are plausibly directly affected by the Acting Director's decision in the Willesden Green to Ferrier Pipeline Project.

The Board responds to each notice of objection in a serious manner, and requests further information from individuals to assist the Board in determining whether or not the Board has jurisdiction to deal with the decision in issue. The Board has become increasingly concerned by the universality and inexactitude of Mr. Lucey's responses. In this appeal, as in his previous appeal No. 97-037, his responses were characterized by vagueness that infer generalities, making it impossible for the Board to draw the necessary causal link with Petro Canada's approval. The many notices of objections filed by Mr. Lucey have related to a variety of illimitable matters and none have raised environmental grounds specifically related to the decisions Mr. Lucey has sought to appeal. Despite the Board's written requests to Mr. Lucey for more specific information on how Mr. Lucey or CORE is directly affected by the particular decision, Mr. Lucey has consistently failed to provide the Board with adequate factual information to establish that either he or the CORE or any of its members have been directly affected by the *particular* decision sought to be appealed. The Board concludes that, while Mr. Lucey has returned answers to the Board's request for additional information, the miscellaneousness with which he writes precludes true feedback contemplated by section 85 of the Act.

CONCLUSION

This appeal is, therefore, dismissed.

Dated on November 20, 1997 at Edmonton, Alberta.



Dr. William A. Tilleman