

ENVIRONMENTAL APPEALS BOARD

INFORMATION PACKAGE

Town of Strathmore

Environmental Protection and Enhancement Act
Amending Approval No. 1190-01-13
(Our Files: EAB 05-053 & 054)

HEARING

February 12-14, 2007, 8:30 am
Strathmore, Alberta

Please contact:
Gilbert Van Nes
General Counsel and
Settlement Officer

Environmental Appeals Board
306 Peace Hills Trust Tower
10011 – 109 Street
Edmonton, Alberta T5J 3S8
Phone: (780) 427-6207
Fax: (780) 427-4693
E-Mail: gilbert.vannes@gov.ab.ca
www.eab.gov.ab.ca

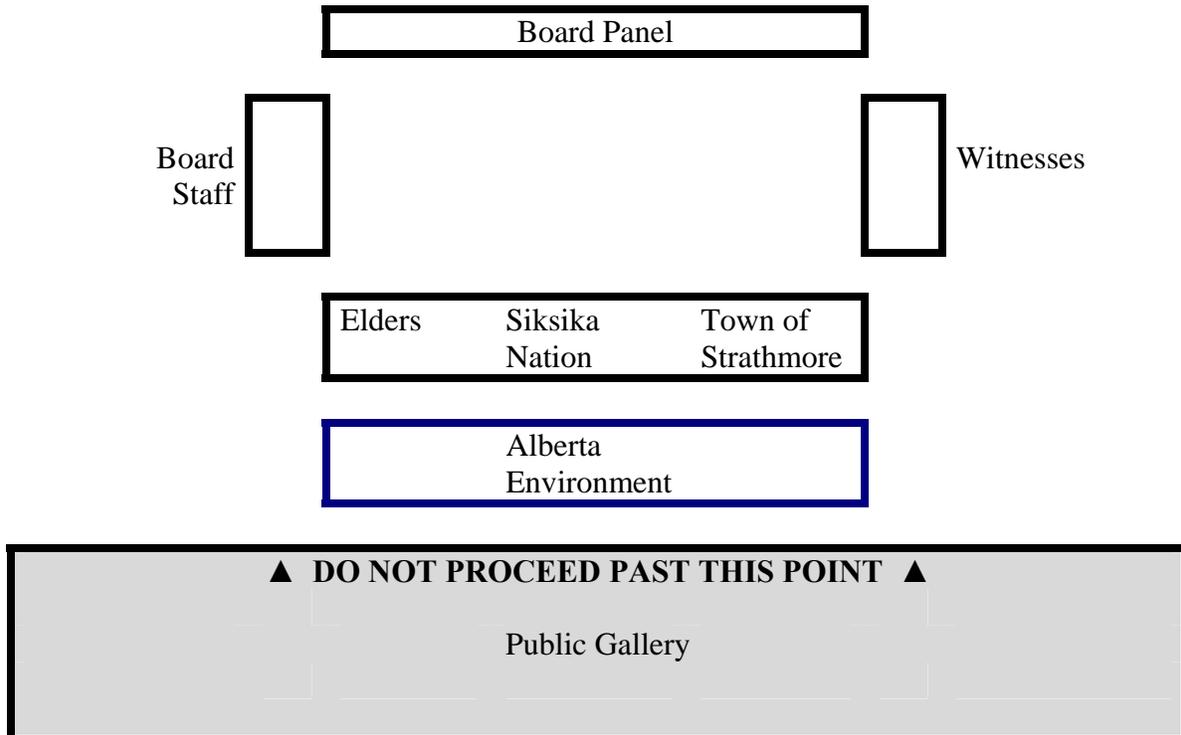
The Environmental Appeals Board is a separate and independent body that reviews certain decisions made by Alberta Environment. The Environmental Appeals Board is separate and apart from Alberta Environment and is composed of environmental experts from a variety of disciplines.

Set Up and Restrictions for Media:

- Please do not proceed past the public gallery.
- **No flash photography.**
- Please enter and exit by the rear door only while the Board is in session.
- Please turn off cell phones and pagers.

If you have any questions about the Board or these proceedings, please contact Board staff. Gilbert Van Nes would be pleased to answer your questions.

Layout for Room:



BRIEF SUMMARY:

This Hearing is with respect to Notices of Appeal filed by the Siksika Nation Elders Committee and the Siksika Nation regarding an Amending Approval issued by Alberta Environment to the Town of Strathmore for their wastewater system allowing the construction of a pipeline and the discharge of treated waste water into the Bow River.

Environmental Appeals Board Panel:

Dr. Steve E. Hrudehy, Chair
Mr. Ron Peiluck, Vice-Chair
Mr. Al Schulz, Board Member

Environmental Appeals Board Staff:

Gilbert Van Nes, General Counsel and Settlement Officer
Valerie Myrmo, Registrar of Appeals
Marian Fluker, Associate Counsel

Appearances:

Appellant: Siksika Nation Elders Committee

Witnesses: Elder Roy Little Chief, Donna Breaker, Kelly Breaker

Appellant: Siksika Nation

Represented by: Rangj Jeerakathil, McPherson Leslie & Tyerman

Witnesses: Hester Breaker, Chair, Siksika Water Advisory Panel; Ron Doore, Water Plant Operator; Gerry Gustad, Wastewater Advisor; Roy Crowther, Alpine Environmental Ltd.; James Marr, Banner Environmental Engineering Consultants Ltd.; and Clemen Bear Chief, Floyd Royal and Anne McMaster, Siksika Nation Elders

Approval Holder: Town of Strathmore

Represented by: Sabri Shawa, May Jensen Shawa Soloman

Witnesses: Dwight Stanford, Town Manager, Town of Strathmore; J.P. Bechtold, Golder Associates; Mark Ruault, UMA Engineering; Patricia Cross, Madawaska Consulting; and Steve Stanley, EPCOR Water Services Inc. and EPCOR Technologies Inc.

Director, Alberta Environment: May Mah-Paulson, Director, Southern Region, Alberta Environment

Represented by: Charlene Graham, Alberta Justice

Witnesses: May Mah-Paulson, Director, Southern Region, Alberta Environment; and Frank Lotz, Alberta Environment

Intervenors: Jim Webber, Western Irrigation District

Description of Appeals:

The Environmental Appeals Board received Notices of Appeal from the Siksika Nation Elders Committee and the Siksika Nation (Notices of Appeal attached) appealing the Amending Approval issued to the Town of Strathmore under the *Environmental Protection and Enhancement Act* by Alberta Environment. The Amending Approval is

an amendment to an existing approval to construct a wastewater pipeline and associated outfall to the Bow River. The treated effluent pipeline will originate at the Strathmore wastewater storage cells located in the SE ¼ 11-24-25-W4M. The effluent conveyed by the pipeline is to be treated at the Strathmore wastewater treatment facility to tertiary standards, which includes removal of nitrogen and phosphorus nutrients. Treated effluent will discharge from an armoured outfall into an existing surface channel running along the toe of the embankment approximately 100 metres to the secondary channel at the confluence with the Bow River.

A complete copy of the Board's file in this matter is available for viewing at the Strathmore Municipal Library during its normal operating hours, and at the Office of the Environmental Appeals Board in Edmonton.

Hearing Procedures:

The procedures for the Hearing are as follows:

1. The Hearing will be held February 12-14, 2007 until approximately 4:30 pm each day. There will be a lunch break of approximately 1 hour. The Board may also recess the Hearing from time to time as it deems appropriate.
2. The Board will open the Hearing with a brief presentation outlining the procedures for the Hearing. **Elder Little Chief, Mr. Jeerakathil, Mr. Shawa, and Ms. Graham** will each be permitted to give a brief opening statement for up to **5 minutes**. The opening statements should consist of a brief summary of the case the party intends to present to the Board during the Hearing.
3. **Mr. Webber** will be permitted to make a presentation for up to **10 minutes**, followed by up to **5 minutes** of cross-examination by each **Elder Little Chief** and **Mr. Jeerakathil**.
4. **Elder Little Chief** will be permitted to present direct evidence for up to **4 hours**, followed by up to **40 minutes** of cross-examination by each **Mr. Shawa** and **Ms. Graham**. The Board is allowing extra time for the Siksika Nation Elders Committee to present their case in the event the Siksika Nation Elders Committee requires the services of a translator.
5. **Mr. Jeerakathil** will be permitted to present direct evidence for up to **1 hour and 30 minutes**, followed by up to **40 minutes** of cross-examination by each **Mr. Shawa** and **Ms. Graham**.
6. **Mr. Shawa** will be permitted to present direct evidence for up to **1 hour and 30 minutes**, followed by up to **40 minutes** of cross-examination by each **Elder Little Chief** and **Mr. Jeerakathil**.

7. **Ms. Graham** will be permitted to present direct evidence for up to **1 hour and 30 minutes**, followed by up to 40 minutes of cross-examination by each **Elder Little Chief** and **Mr. Jeerakathil**.
8. All parties will then have an opportunity to make closing comments. **Elder Little Chief, Mr. Jeerakathil, Mr. Shawa, and Ms. Graham** will each be permitted up to **20 minutes** for closing comments. Finally, as the burden of proof lies on the Appellants, **Elder Little Chief** and **Mr. Jeerakathil**, will be permitted to make a final comment for up to **5 minutes**.
9. The Board will consider granting the opportunity to present rebuttal evidence from the Appellants upon receipt of a request from Elder Little Chief and/or Mr. Jeerakathil. The purpose of rebuttal evidence is to respond to any evidence presented by the other parties that could not reasonably have been anticipated at the start of the Hearing. The presentation of new evidence that does not respond to the evidence of the other parties is not permitted.
10. Redirect evidence will be permitted where appropriate and at the discretion of the Chair.
11. Time limits will be strictly enforced by the Board and a timer will be used. The parties should have prepared their presentations and questioning with these time limits in mind.
12. During direct evidence parties may call their witnesses (testimony will be sworn) and present their case. Cross-examination will only be permitted between parties that are adverse in interest to each other. There are two main purposes of cross-examination. The first is to give the party an opportunity to ask questions of a witness adverse in interest, based on their testimony or statements, in order to support the party's position. The second purpose is to challenge the validity or accuracy of that witness' statements or testimony.
13. At each stage in the proceeding the Board may ask questions of the parties.
14. The Board will be recording the proceedings for its own use.
15. The Hearing is open to the public for viewing only.

Stay Request:

The Siksika Nation, Chief and Council, filed a Stay application with the Board. The Board will hear oral arguments from Siksika Nation, Siksika Nation Elders Committee, the Town of Strathmore, and Alberta Environment, at some point during the Hearing on February 13 or 14. The Stay application that is before the Board is a complex question, requiring the Board to balance the interests and concerns of the Siksika First Nation and

their potable water plant, with the interests and concerns of the Town of Strathmore and their sewage treatment system.

The Board's Report:

Once the Hearing is concluded, the Board will issue its Report and Recommendations to the Minister of Environment in accordance with section 99 of the *Environmental Protection and Enhancement Act*. The Board will recommend to the Minister to confirm, reverse, or vary Alberta Environment's decision to issue the Approval. The Minister will then make the final decision with respect to this appeal by issuing a Ministerial Order. Once the Minister has made his decision, the Board will ensure that all parties to these appeals receive a copy of the Board's Report and Recommendations and a copy of the Minister's Order. If you wish to receive a copy of the Board's Report and Recommendations or have any questions about the proceedings today, please speak to Gilbert Van Nes at this venue today. Board staff can also be reached at (780) 427-6207, or via e-mail at gilbert.vannes@gov.ab.ca.

About the Environmental Appeals Board:

The Environmental Appeals Board was established on September 1, 1993, by the proclamation of the *Environmental Protection and Enhancement Act*. In 1994, the Board was given jurisdiction under the *Government Organization Act*, and in 1999, the Board was also given jurisdiction under the *Water Act* to hear appeals of certain matters.

The Environmental Appeals Board provides Alberta citizens and industry with a mechanism to appeal certain decisions made by Alberta Environment regarding a range of environmental issues stemming from the approval of activities that have environmental consequences. The Board offers those persons who are directly affected by such activities an opportunity to have their concerns heard. As such, the Board plays an important quasi-judicial role in ensuring the protection, enhancement, and wise management of the environment. In this role, the Board is committed to taking a proactive stance in the fair, impartial, and efficient resolution of all matters before it.

The Board is in a unique position in relation to the Department of Environment and the Ministry of Environment. For budgetary reasons and for the purpose of providing the Minister with its decisions and reports, and notwithstanding the Board's effort to balance environmental and economic interests, the Board remains aligned with the operations and goals of the Ministry of Environment. However, in order to maintain its adjudicative objectivity, the Board operates at arms-length from the Department of Environment, allowing it to maintain a necessary degree of independence.

The Board is comprised of appointed Board members who are supported by Board staff. Board members are appointed by Cabinet (under the *Environmental Protection and Enhancement Act*, section 90(1)) based on their background and expertise in environmental or policy fields. All members are part-time and are paid on a per diem

basis (set by Order in Council) and are reimbursed for their expenses. Staff, including legal and research staff, are employed by the Alberta Government, who facilitate the Board's operations and adjudication. The fundamental premise of the Board's operation is that the staff embraces the fiscal, environmental, and human resource goals of both the government and the Board. The Board approaches each appeal with an impartial and unbiased view while remaining cognizant of the operational goals within the Ministry of Environment. The Board's organizational structure has helped to ensure efficiency and productivity without compromising its purpose and integrity.

Environmental Appeals Board Panel Members for February 12-14, 2007:

Steve E. Hrudehy, Chair

Dr. Hrudehy has a risk management and environmental health sciences background, with a Ph.D. in Public Health Engineering and a D.Sc. (Eng) in Environmental Health Sciences and Technology from the University of London. He is currently a Professor of Environmental Health Sciences and Associate Dean (Academic) of Canada's first School of Public Health at the University of Alberta. After developing the environmental engineering and science program in the University of Alberta's Department of Civil Engineering, he moved to establish an environmental health sciences program in the Department of Public Health Sciences in 1988. His areas of research expertise are drinking water safety, environmental contaminant exposure assessment, environmental decision-making, and approaches for health risk assessment, risk management, and risk communication. He held the Eco-Research Chair in Environmental Risk Management from 1993 to 1998. Dr. Hrudehy has served on several editorial boards, the Natural Sciences and Engineering Research Council of Canada (NSERC) strategic grants panel on environmental quality, and the NATO Priority Panel on Environmental Security in Brussels, and he chaired the Royal Society of Canada Expert Panel to review social economic models for Canada-wide air quality standards. From 2000 to 2002, Dr. Hrudehy served as a member of the Research Advisory Panel to the Walkerton Inquiry, and he served as Leader of the Protecting Public Health Program for the Canadian Water Network until July 2005. He was appointed in June 2005 to the Science Advisory Council for the National Collaborating Centres of the Public Health Agency of Canada. In May 2006, he was appointed to a 3 member expert panel to conduct public hearings across Canada to advise the Federal Minister of Indian and Northern Affairs on regulatory options to assure safe drinking water for First Nations communities in Canada. He has extensive experience with scientific evidence in environmental cases before courts and tribunals as an expert witness, scientific advisor and as a decision-maker. He has authored or coauthored 140 refereed journal articles, 5 books, 12 book chapters, 6 expert panel reports, and over 100 other publications in environmental sciences. Dr. Hrudehy was elected a Fellow of the Royal Society of Canada, Academy of Sciences, in 2006 and he was also named as a winner of the 2006 TD/Canada Trust Walter Bean Environment Award at the University of Waterloo, and the 2006 Distinguished Visiting Speaker at the National Water Research Institute. Previously, he was awarded the Killam Annual Professorship (2003) for overall academic contributions (Faculty of Medicine and Dentistry), an Emerald Award for Environmental Research in Alberta (1995), the Albert

Berry Medal for contributions to environmental engineering in Canada from the Canadian Society for Civil Engineering (1991), and the McCalla Research Professorship (1986 in the Faculty of Engineering) at the University of Alberta.

Ron Peiluck, Vice-Chair

Mr. Peiluck is Managing Director of SCOPE Environmental and Projects, Alberta-based companies that provide environmental and landscape architectural design and contracting services to a broad range of private and municipal clients; Scope Projects Inc. specializes in the design, construction and maintenance of patented wetland and biofiltration systems for application in golf course, residential and commercial ponds. Mr. Peiluck has a BSc from St. Johns College in chemistry, microbiology and earth sciences. He obtained a Diploma in Business Administration after successfully completing the first year of the MBA program at the University of Western Ontario. After graduate studies and applied research at the universities of Saskatchewan and Manitoba, he earned an MA in resource planning. Mr. Peiluck obtained his national certification to conduct environmental site assessments between 2000 and 2004. During his position as President of The Lombard North Group Ltd., the company grew to become the largest landscape architectural based environmental, planning and engineering firm in Canada. He has extensive experience as an advisor and witness to 24 judicial and quasi-judicial boards, including the Alberta Energy and Utilities Board, Alberta Natural Resources Conservation Board, the U.S. Federal Power Commission, and the National Energy Board. Mr. Peiluck has extensive international experience having worked in 7 countries including Brazil, Russia, Saudi Arabia and the United States.

Al Schulz, Board Member

Mr. Schulz holds a B.Sc. in Chemical Engineering and a M.Eng. in Mechanical Engineering from the University of Alberta. He served the Alberta Government from 1968 to 1997, concluding his career as the Assistant Deputy Minister of Environmental Regulatory Services with Alberta Environment. Mr. Schulz is currently a consultant to industry, Regional Consultant with the Canadian Association of Chemical Producers, member of the Board of the Tire Recycling Management Association, and past Chair of the Environmental Committee of the Alberta Professional Engineers, Geologists, and Geophysicists of Alberta.

Schedule for February 12, 2007:

This schedule is a guide only and is subject to change.

Order of Presentation	Time Allotted	Estimated Schedule
Hearing start time Day 1		8:30 AM
Opening speech by the Board Chairman	0:15	8:45 AM
Opening Comments by the Siksika Elders Committee	0:05	8:50 AM
Opening Comments by Siksika Nation	0:05	8:55 AM
Opening Comments by the Town of Strathmore	0:05	9:00 AM
Opening Comments by Alberta Environment	0:05	9:05 AM
Intervenor Presentation by Western Irrigation District	0:10	9:15 AM
Cross-Examination of the Western Irrigation District by the Elders Committee	0:05	9:20 AM
Cross-Examination of the Western Irrigation District by the Siksika Nation	0:05	9:25 AM
Board's Questions for the Western Irrigation District	0:15	9:40 AM
Direct Evidence of the Siksika Elders Committee	4:00	1:40 PM
Lunch	1:00	2:40 PM
Cross Examination of the Siksika Elders Committee by the Town of Strathmore	0:40	3:20 PM
Cross Examination of the Siksika Elders Committee by Alberta Environment	0:40	4:00 PM
Break	0:15	4:15 PM
Re-Direct Evidence by the Siksika Elders Committee	0:05	4:20 PM
Board's Questions for the Siksika Elders Committee (estimate only)	0:30	4:50 PM
Approximate time for end of Day 1 of Hearing.		4:50 PM

Schedule for February 13, 2007:

Order of Presentation	Time Allotted	Estimated Schedule
Hearing start time Day 2		8:30 AM

Opening speech by the Board Chairman	0:05	8:35 AM
Direct Evidence of Siksika Nation	1:30	10:05 AM
Break	0:15	10:20 AM
Cross Examination of Siksika Nation by the Town of Strathmore	0:40	11:00 AM
Cross Examination of Siksika Nation by Alberta Environment	0:40	11:40 AM
Re-Direct Evidence of Siksika Nation	0:05	11:45 AM
Board's Questions for Siksika Nation (estimate only)	0:30	12:15 PM
Lunch	1:00	1:15 PM
Direct Evidence of the Town of Strathmore	1:30	2:45 PM
Break	0:15	3:00 PM
Cross Examination of the Town of Strathmore by the Siksika Elders Committee	0:40	3:40 PM
Cross Examination of the Town of Strathmore by Siksika Nation	0:40	4:20 PM
Re-Direct Evidence of the Town of Strathmore	0:05	4:25 PM
Board's Questions for the Town of Strathmore (estimate only)	0:30	4:55 PM
Approximate time for end of Day 2 of Hearing.		4:55 PM

Schedule for February 14, 2007:

Order of Presentation	Time Allotted	Estimated Schedule
Hearing start time Day 3		8:30 AM
Opening speech by the Board Chairman	0:05	8:35 AM
Direct Evidence of Alberta Environment	1:30	10:05 AM
Break	0:15	10:20 AM
Cross Examination of Alberta Environment by the Siksika Elders Committee	0:40	11:00 AM
Cross Examination of Alberta Environment by Siksika Nation	0:40	11:40 AM
Re-Direct Evidence of Albert Environment	0:05	11:45 AM
Board's Questions for Alberta Environment (estimate only)	0:30	12:15 PM

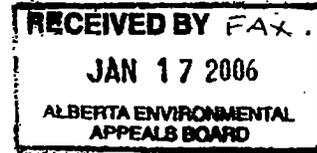
Lunch	1:00	1:15 PM
Rebuttal by the Siksika Elders Committee (if permitted)	0:07	1:22 PM
Cross Examination of the Sikiska Elders Committee by the Town of Strathmore	0:05	1:27 PM
Cross Examination of the Sikiska Elders Committee by Alberta Environment	0:05	1:32 PM
Re-Direct Evidence of the Siksika Elders Committee	0:05	1:37 PM
Board's Questions for the Siksika Elders Committee (estimate only)	0:30	2:07 PM
Rebuttal by Siksika Nation (if permitted)	0:07	2:14 PM
Cross Examination of Siksika Nation by the Town of Strathmore	0:05	2:19 PM
Cross Examination of Siksika Nation by Alberta Environment	0:05	2:24 PM
Re-Direct Evidence of Siksika Nation	0:05	2:29 PM
Board's Questions for Siksika Nation (estimate only)	0:30	2:59 PM
Break	0:15	3:14 PM
Closing Comments by the Siksika Elders Committee	0:20	3:34 PM
Closing Comments by Siksika Nation	0:20	3:54 PM
Closing Comments by the Town of Strathmore	0:20	4:14 PM
Closing Comments by Alberta Environment	0:20	4:34 PM
Final Closing Comments by the Siksika Elders Committee	0:05	4:39 PM
Final Closing Comments by Siksika Nation	0:05	4:44 PM
Closing Speech by Board Chairman	0:05	4:49 PM
Approximate time for end of Day 3 of Hearing		4:49 PM

- Allocated times may also vary during the Hearing and any changes to the times will be at the discretion of the Chairman.
- The times for lunch and breaks may vary and will be decided by the Chairman.
- Time for questioning of the parties by the Board may vary because the length of time required for questioning cannot be determined until the Board has heard all of the evidence.
- The parties should have prepared their presentations and questioning with these time limits in mind.
- The Board will hear oral arguments with respect to the Stay application filed by the Siksika Nation, Chief and Council, at some point during the Hearing on February 13 or 14.

05-053

January 16, 2006

Alberta Environmental Appeals Bared
306 Peace Hills Trust Tower
10011 - 109 Street
Edmonton, Alberta
T5J 3S8



Attention: Denise Black, Board Secretary

EAB File - AEB05-053

Dear Madam,

Take Notice That,

I, Donna Breaker, of RR #1, Box 34, Strathmore, Alberta, T1P 1J6, (403) 734-2344, consider myself affected by a decision made pursuant to the Environmental Protection and Enhancement Act, and hereby APPEAL to the Environmental Appeals Board.

I am appealing the decision of May Mah-Paulsen, Approvals Manager, Alberta Environment, Southern Region dated November 24, 2005 to issue Amending Approval No. 11901-01-13 to the Town of Strathmore for the construction, operation and reclamation of a wastewater system.

I received notice of Alberta Environment's decision on November 24, 2005, when Frank Lotz and Tracy Campbell from Alberta Environment called me at home and told me that the approval was going to be given to the Town of Strathmore. I had wondered why I had not heard back from Alberta Environment sooner considering that my appeal letter was faxed on October 3, 2005.

Object to Alberta Environment's decision for the following reasons:

1. I am the spokesperson for the Siksika Nation's Elders Committee. My mother is also part of the Elders Committee. As a Holder of Siksika Traditional Environmental Laws, someone had to address this issue and take it to the Elders.

2. When I first learned of the project, I brought this matter to the Elders Committee's attention. I happened to see the public notice in the Strathmore Standard newspaper. There was also some information posted (very poorly) in the Siksika Nation local post office.
3. There was a lack of proper notification of the project by the Town of Strathmore to the Siksika Elders Committee and to Siksika residents, especially those who live along the BOW RIVER.
4. There was no information regarding the project was provided to the Elders Committee by the Town of Strathmore. There was no reliable data provided by professionals.
5. Therefore, there was a lack of proper consultation with the Elders Committee by the Town of Strathmore.

Concerns regarding the Alberta Environment Decision

6. I object to the project, the extremely close location of the pipeline and outfall to the Reserve boundary. One of the Elders explained this way, "It (the water) should have time to clean itself." Another Elder said the following:

"Families who live in flood areas will not only deal with muddy water – but will now also deal with sewer (poopy water). This is a HEALTH HAZARD to those families, animal and plant life.

We as Native people are taught to care for our environment including WATER; as First Nations we have respected and passed on to our children what we were taught!

We have every right to speak out regarding saving pure natural water. Despite worldwide and Canadian campaigns on ensuring safe water quality – this project is another example of what we call (fork tongue) say one thing and you do the opposite – not to be trusted. It's always the dominant society to own air, water, the sun, land, animals etc. We are humans too.

We have Treaty rights signed in 1877 includes land, water and resources. We never surrendered our rights to protect our land, water and environment."

- 7. There are sacred grounds along the river, including burial sites that need to be protected that have not been identified.**
- 8. Our people still go for Vision Quests along the river – they go near the river – where they fast for 4 days and 4 nights. It is unknown how this project will affect them.**
- 9. We have no idea what the appearance of the pipeline and outfall will look like (noise, smell, aesthetics) – it may prevent people from using that portion of the river.**
- 10. We do not have assurances that the reclamation process of the pipeline or the outfall will be satisfactory.**
- 11. Siksika community residents have historically collected and harvested plants along the river (including medicinal, food and ceremonial purposes). We have no guarantees that outsiders will not disturb our highly sensitive areas. We want to ensure that these areas are protected.**
- 12. Sweetgrass grows along the river – we would like assurances that this is going to be protected.**
- 13. People are unwilling to catch and eat fish from the river. We do not know how this project will further disturb and degrade the river.**
- 14. We would like assurances that if any traditional sites are discovered throughout the construction process, that they will notify the appropriate authorities (the Siksika Elders) in order to preserve the sites.**
- 15. In consideration of the time factor and the lack of time allowed for Siksika community members including the Elders to inform themselves, to debate and to think about the issues, this eleventh hour opportunity to inform outsiders about our historical relationship with our lands and environment are clear indicators that Alberta**

Environment has already shown its bias by granting construction and a credible environmental review to/for the Town of Strathmore.

- 16. From indicators to our appeal, it appears that schedules have been set to the needs of the Town of Strathmore rather than on the needs of those like Siksika Nation who will once again be subjected to environmental impacts such as evident with the oil and gas excessive activities in the past 5 years.**
- 17. Most importantly, Siksika Nation are signatories to Treaty 7 (1877). Environmental assessments (EA) do not consider how projects infringe on Treaty and aboriginal rights. Treaty rights are federal fiduciary obligations.**
- 18. As well, Alberta Environment's decision failed to consider values important to Siksika Nation's social, health, cultural impacts, and traditional teachings concerning traditional ecological knowledge. As long as our knowledge is going to be ignored, not respected and of no concern then our overall approach to the ecosystem including water protection, must be precautionary in the extreme. The absence of our principles of Environmental Law will invite further chaos to our livelihood.**

We would like the Board to do the following:

- 1. Ensure proper consultation with the Siksika Elders Committee is completed. This will take time and resources. Elders require enough time for the information to be understood and time to consider what they have heard. They require presentation in their own language. This process will take patience.**
- 2. We would like the Board to welcome other sources of significant insights that are not available through modern science-based research methods and analyses.**
- 3. Allow Siksika Nation community members as stakeholders to their lands and environment to take a lead role to ensure as more comprehensive consideration of our local ecological environment.**

4. To promote a more democratic process for sharing information, we would like the Board to permit Siksika Nation members to make informed conclusions and decisions.

I would also like to have hard copies of all the documents relating to this appeal. We do not have computers.

The dates the Elders and I are available for a hearing are dependant upon the weather. If the hearing or any meeting were held on the Siksika Nation reserve, it would make it much easier for us to attend.

I would also like to include Ann McMaster, President of the Elders Committee as another person who should be involved in this appeal. She can be reached through:

Ann McMaster
President, Siksika Nation Elders Committee
Phone 403-734-2299
Box 81
Cluny, Alberta
T0J 0S0

There is a meeting of the Elders Committee scheduled for January 18th, 2006. We would like an opportunity to raise this issue (and provide more information about the project which we don't have) to the Elders Committee.

I would also like to submit an application for a Stay to the Board. If the construction of the pipeline goes ahead, it will be very difficult to change the location of the pipeline or the outfall. It will cost too much money, and that should not be a reason why the pipeline goes ahead.

I would also like to add that a disturbance to the land is a disturbance felt by a person. We are trying to honour the sacredness of our culture.

Sincerely,



Donna Breaker



ALBERTA
ENVIRONMENTAL APPEALS BOARD

05-054
RECEIVED BY E-MAIL
DEC 22 2005
ALBERTA ENVIRONMENTAL
APPEALS BOARD

NOTICE OF APPEAL

Under the *Environmental Protection and Enhancement Act* (Section 91), under the *Water Act* (Section 115) and under the *Government Organization Act* (Schedule 5).

This form must be received by the Environmental Appeals Board within stringent time limits after you receive notice of the decision by Alberta Environment that you are appealing. These time limits are set out in section 91(4) of the *Environmental Protection and Enhancement Act* and section 116(1) of the *Water Act* and Schedule 5 of the *Government Organization Act*. **Please Note:** Those wishing to file a Notice of Appeal electronically, must also mail, fax or deliver their appeal with signature to:

Environmental Appeals Board
306, 10011 - 109 Street
Edmonton, Alberta T5J 3S8
Fax: (780) 427-4693
Phone: (780) 427-6207 (Toll Free: 310-0000)
E-mail Notice of Appeal to: gilbert.vannes@gov.ab.ca

You may wish to send your appeal to the Environmental Appeals Board by registered mail, so that you know your appeal was received by the Board within the required time. It is your responsibility to ensure that your Notice of Appeal is received by the Board. If you do not have a copy of the *Environmental Protection and Enhancement Act* (Part 4), the *Water Act* (Part 9), the *Government Organization Act* (Schedule 5), the Environmental Appeal Board Regulation, or the Board's Rules of Practice, the Environmental Appeals Board will provide copies free of charge.

TO: THE ENVIRONMENTAL APPEALS BOARD

TAKE NOTICE THAT

I, Chief Adrian Stimson, on behalf of the Siksika Nation Chief and Council, and the Siksika Nation	
of the Province of Alberta	
Phone: (403) 734-5336	Fax: (403) 734-5337

consider myself affected by a decision made pursuant to the *Environmental Protection and Enhancement Act*, the *Water Act*, or the *Government Organization Act* and hereby appeal to the Environmental Appeals Board.

The information collected on this form is necessary to allow the Environmental Appeals Board to perform its function. The information is collected under the authority of the *Freedom of Information and Protection of Privacy Act*, section 33(c). Section 33(c) provides that personal information may only be collected if that information relates directly to and is necessary for the processing of your appeal. For more information, please contact Gilbert Van Nes, General Counsel, Environmental Appeals Board at the address and phone number above.

If you are being represented, please supply the following information:

MacPherson Leslie & Tyerman LLP (lawyer in charge of file: Rangi G. Jeerakathil)	
1500, 410-22nd Street East Saskatoon, SK S7K 5T6	
Phone: (306) 975-7107	Fax: (306) 975-7145

You must provide all the information requested. If you have any questions, please contact the Board. Please note that the Board has no information related to any matters until you file a Notice of Appeal. We do not have your Statement of Concern that you filed with Alberta Environment and if you want the Board to consider the matters raised in your Statement of Concern, you should repeat those concerns in this Notice of Appeal.

I.	<p>I am appealing the decision of: May Mah-Paulson, Director Southern Region, Alberta Environment</p> <p>dated November 24, 2005 issued to Town of Strathmore (name of company/person)</p> <p>Location of operation or activity which is subject of Alberta Environment's decision (municipality, county, etc.): Strathmore, AB</p> <p>On what date and how did you receive notice of Alberta Environment's decision: November 25, 2005 (via email); a copy of the Approval was received by fax and e-mail on December 16, 2005</p> <p>Please provide any further information you may have regarding the decision you are appealing. The information can be found on the decision or the notice of decision from Alberta Environment and will assist us in processing your appeal.</p> <p>May Mah-Paulson (the "Director") issued an Amending Approval (Approval No. 1190-01-13) under the Environment Protection and Enhancement Act, R.S.A. 2000, c. E-12, as amended on November 24, 2005, in response to an application by the Town of Strathmore (Application No. 019-1190) regarding the construction, operation and reclamation of a wastewater system for the Town of Strathmore.</p>
II.	<p>I submit this Notice of Appeal under the:</p> <p><i>Environmental Protection and Enhancement Act, section 91</i></p>
III.	<p>What parts of Alberta Environment's decision do you not like? (Note: If you fail to state all of your objections here, you may be prevented from raising them later in your appeal.)</p> <p>The Siksika Nation No. 430 ("Siksika" or the "Siksika Nation") objects to the approval of the construction and operation by the Town of Strathmore of a wastewater pipeline and associated outfall to the Bow River without appropriate studies being undertaken and without measures being put in place to address the concerns of the Siksika Nation.</p>
IV. (a)	<p>What are your concerns with respect to Alberta Environment's decision? (Note: If you fail to state all of your reasons here, you may be prevented from raising them later in your appeal.)</p> <p>I. The Siksika Nation is concerned that the decision of Alberta Environment was made on the basis of insufficient evidence, including, but not limited to</p> <ul style="list-style-type: none"> a. The Golder Memo relied upon by Alberta Environment is not signed or stamped by a professional engineer and is not reliable as an expert report or with respect to the matters addressed in the Memo or required to be addressed by applicable legislation; b. The assumptions in the Golder Memo about 100% mixing at the outfall location and downstream of the outfall location are false. The Golder Memo did not use appropriate mixing models and made incorrect mixing assumptions and its assessment of the effects of the discharge on the Bow River and downstream users is therefore incomplete and/or inaccurate;

- c. **The conditions used in the Golder Memo to predict water quality effects on the Bow River are not valid given the low flow levels in the discharge channel (especially during the winter months). The mixing required to meet the concentration levels used in the Golder Memo are unlikely to occur in the secondary channel throughout much of the year and it is unlikely that complete mixing will occur for an extended distance downstream;**
 - d. **The Golder Memo did not consider heavy metals or pharmaceuticals and other harmful pollutants;**
 - e. **Data relied on in the Golder Memo was collected upstream of the area to be potentially impacted and is not representative of the conditions at the site of discharge.**
 - i. **No data was collected from the area of concern (i.e. that reach of the river used by the Siksika Nation); and**
 - ii. **No data was collected from the vicinity of Siksika's water intake systems;**
 - f. **Data relied on by Golder does not reflect the cumulative impacts of not only the addition of treated wastewater, but also of increasing urbanization, and other upstream impacts or proposed impacts;**
 - g. **The Golder Memo was based on the previous location of the outfall. The outfall location has since been moved upstream and no analysis has been done of the new location or whether it is similar to the previous location;**
 - h. **The Golder Memo used incorrect data for Total Suspended Solids.**
2. **The Siksika Nation is concerned that Alberta Environment issued the Approval without implementing sufficient safeguards to ensure that downstream water quality was maintained, including but not limited to the following:**
- a. **There is no requirement that Strathmore upgrade its sewage treatment facilities;**
 - b. **The potential effects on the Siksika water intake systems were not adequately considered, including but not limited to the plugging of infiltration gravels;**
 - c. **There is no provision requiring the monitoring of levels of heavy metals, pesticides, and pharmaceuticals;**
 - d. **There is no provision requiring that the effluent to be tested for toxicity at the discharge point;**
 - e. **The potential serious health risks to the Siksika Nation members and other downstream users were not adequately considered or addressed;**
 - f. **Total phosphorous levels will exceed the CCME guideline and will exceed levels protective of the viability of the ecosystem in reach 7 and will result in increased algal growth and other changes to the aquatic ecosystem and this was not mitigated;**
 - g. **Negative Impacts on fish and fish habitat, by the depositing of deleterious substances, were not adequately considered;**
 - h. **Other Cumulative impacts were not considered.**

3. Although Alberta Environment recognized the need for an independent review of the Golder Memo and a Traditional Use Effects Study and Mitigation Plan, provisions of the approval do not require that all steps be undertaken and all concerns be addressed prior to the discharge of wastewater by the Town of Strathmore, including but limited to:
 - a. There is no requirement that an independent review of the Golder Memo be completed prior to Strathmore beginning to discharge wastewater into the river;
 - b. There is no requirement that concerns raised by the independent review be addressed in any way;
 - c. There is no provision whereby the discharge by the Town of Strathmore is suspended pending an analysis and/or implementation of the Traditional Use Effects Study or the Impacts Mitigation Plan.

4. The Siksika Nation is concerned that Alberta Environment issued the Approval without ensuring that adequate consultation with the Siksika Nation took place, including but not limited to:
 - a. The approval was issued without adequate prior consultation with the Siksika Nation;
 - b. There is no provision outlining the manner in which the Town of Strathmore must act upon Siksika's response to the information provided;
 - c. The consultation provision is more in the nature of a provision "updating" Siksika rather than seeking Siksika's input and addressing Siksika's concerns;
 - d. Siksika submits that consultation in such a manner after the approval has already been issued does not satisfy the requirement of meaningful consultation.
5. Such other concerns as may be set out at any hearing of this matter and allowed by the Appeal Board.

IV. How is Alberta Environment's decision affecting you? (Note: If you fail to state all of your reasons here, you may be prevented from raising them later in your appeal.)
(b)

1. The Siksika Nation is directly affected by the decision of Alberta Environment. Strathmore's proposed new outfall location is within a kilometre of the Reserve boundary.
2. The Bow River has a unique and sensitive biology which is being negatively affected by increased nutrient levels, suspended solids and likely other components added as a result of regional urbanization and rapid population expansion, the input of storm waters, and wastewater. The additional nutrient and solids load being proposed to be discharged to the river by Strathmore under the Approval just upstream of Siksika lands will accelerate these effects and will likely negatively affect the usability of these waters to downstream users in a cumulative manner.
3. Siksika is a downstream user of the Bow River, and relies on it for drinking, household, agricultural, recreational, and traditional uses like hunting, trapping, and fishing.
4. The Nation has two infiltration gates on the Bow River and has concerns about the effect on

the quality of water that its members will use and consume and the costs of any potential change to facilities. Strathmore's proposed outfall location is located only approximately 15 km from one infiltration gate on the Reserve and approximately 50 km from another.

5. Given the Nation's proximity to the Bow River, the Nation submits that the effect of any pollution will be more intense for its members, especially given cumulative effects encountered through the City of Calgary's proposed discharge into the Bow River upstream of the Reserve.
6. The location of the Siksika Reserve under Treaty 7 was specifically chosen because of its proximity to the Bow River, which passes through the full length of the Reserve.
7. The Siksika Reserve makes up the majority of lands within reach 7 of the river basin, which is the second longest reach. Siksika exercises Treaty rights over its traditional territory which includes the Bow River and areas surrounding the Bow River, both within and outside of the Reserve. As a result Siksika must be consulted about impacts to the Bow River. Siksika submits that given the above, it is affected by Alberta Environment's decision in a much more significant way than the average Albertan.
8. Such other effects as may be set out at the hearing of this matter and allowed by the Appeal Board.

IV. Why do you not like the decision made by Alberta Environment? (Note: If you fail to state all of your reasons here, you may be prevented from raising them later in your appeal.)
(c)

1. The Siksika Nation is concerned that the decision by Alberta Environment was made:
 - a. On the basis of insufficient evidence;
 - b. Without implementing sufficient safeguards to ensure the maintenance of downstream water quality;
 - c. Without ensuring adequate consultation with the Siksika Nation;
 - d. By noting the legitimate concerns of Siksika, but failing to take appropriate action to address the concerns;
 - e. Such other reasons as may be set out at the hearing of this matter.

V. What would you like the Board to do to resolve your appeal? (Note: If you fail to state all the solutions to your appeal here, you may be prevented from raising them later in your appeal.)

1. The concerns of Siksika's expert consultants as set out in the attached Expert Reports must be meaningfully addressed and any recommendations implemented which concerns and recommendations include, but are not limited to:
 - a. Preparation of a mixing study, using information collected within the river reach of concern and based on investigations of the hydrogeology and flow patterns within that reach, including the potential flow pattern of water into groundwater wells used by Siksika and adjacent to the Bow River bed;
 - b. Conducting an independent, risk-based assessment of the proposed discharge design and its impacts on downstream users;

- c. **Use of a mid-channel diffuser outlet at the outfall;**
 - d. **Assessment of appropriate impacts on the Siksika Nation's traditional uses of the river;**
 - e. **Monitoring of levels of heavy metals, pesticides and pharmaceuticals;**
 - f. **Conducting multi-level tests for toxicity to aquatic life to mitigate deleterious effects on aquatic life;**
 - g. **Upgrades to Strathmore's sewage treatment plant;**
 - h. **Testing of the effluent at the release point for toxicity;**
 - i. **Such other solutions as are set out in the attached expert reports and as may be set out at the hearing of this matter and allowed by the Board.**
2. **An impacts mitigation plan must be completed and evaluated by the Director.**
 3. **An emergency response plan must be completed and evaluated by the Director.**
 4. **No approval should be issued until the concerns of the Siksika Nation have been evaluated and adequately addressed.**
 5. **Meaningful consultation with Siksika should be required at and during each of the stages above to ensure that the concerns of the Siksika Nation are adequately addressed.**
 6. **Such other solutions as may be set out at the hearing of this matter and allowed by the Appeal Board.**

Please feel free to attach copies of any additional documents that may be of assistance to the Board.

The above information is true and correct to the best of my information and belief.

Submitted and signed by:

Dated at **Saskatoon, Saskatchewan**, this 22nd day of **December, 2005**.



Rangji G. Jeerakathil
MacPHERSON LESLIE & TYERMAN LLP
1500 - 410 22nd Street East
Saskatoon, Saskatchewan
S7K 5T6