

ENVIRONMENTAL APPEALS BOARD

INFORMATION PACKAGE

Town of Turner Valley

Environmental Protection and Enhancement Act
Amending Approval No. 1242-01-05
(Our File: EAB 06-071 and 072)

PRELIMINARY MEETING

February 8, 2007
Okotoks, Alberta

Please contact:
Gilbert Van Nes
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Settlement Officer

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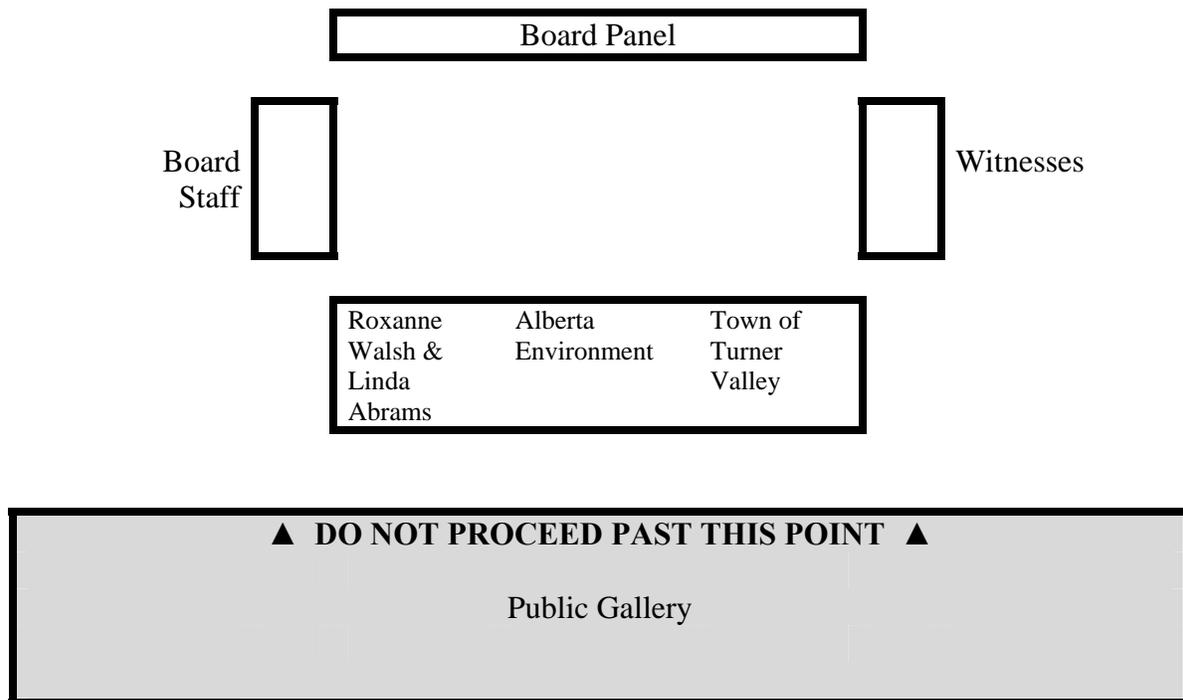
The Environmental Appeals Board is a separate and independent body that reviews certain decisions made by Alberta Environment. The Environmental Appeals Board is separate and apart from Alberta Environment and is composed of environmental experts from a variety of disciplines.

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 Preliminary Meeting is with respect to Notices of Appeal filed by Ms. Roxanne Walsh and Ms. Linda Abrams regarding an Amending Approval issued by Alberta Environment to the Town of Turner Valley authorizing the construction, operation, and reclamation of a raw water storage reservoir as part of the waterworks system for the Town of Turner Valley. The raw water storage reservoir is located at 835 Okalta Road, Turner Valley, at SE ¼ 1-20-3-W5M.

A complete copy of the Board's file in this matter is available for viewing at the Office of the Environmental Appeals Board in Edmonton, and upon request at the Preliminary Meeting.

Environmental Appeals Board Panel:

Dr. Steve E. Hruddy, Chairman
Mr. Ron Peiluck, Vice-Chair
Mr. Alex MacWilliam, Board Member

Environmental Appeals Board Staff:

Gilbert Van Nes, General Counsel and Settlement Officer
Marian Fluker, Associate Counsel
Denise Black, Board Secretary

Appearances:

Appellants: Roxanne Walsh and Linda Abrams

Witnesses: Roxanne Walsh and Linda Abrams are providing evidence.

Approval Holder: Town of Turner Valley

Represented by: Hugh Ham and Bonnie Anderson

Witnesses: Randy Boras, MPE Engineering Ltd. and Jim Montgomery, Almor Engineering Ltd.

Director, Alberta Environment: David Ardell, Director, Southern Region, Regional Services, Alberta Environment

Represented by: Charlene Graham, Alberta Justice

Witnesses: No witnesses will be called.

Description of Issues to be Heard at the Preliminary Meeting:

The Board will hear from the participants with respect to the following issues only:

1. The Stay request.

The Stay request filed by Ms. Walsh; and the Town's motion of whether Ms. Walsh has standing or jurisdiction to bring a Stay application.

2. Ms. Abrams' Statement of Concern.

Alberta Environment's motion that Ms. Abrams did not file a Statement of Concern; which is a prerequisite to filing a Notice of Appeal with the Board; and the Town's motion that the Board does not have jurisdiction to accept Ms. Abrams' Notice of Appeal as a result of Ms. Abrams not filing a Statement of Concern.

3. Ms. Abrams' late filed appeal.

The question of whether Ms. Abrams' appeal was filed late was raised in the Board's letter of October 23, 2006; and the Town's motion that because the appeal was filed late, the Board does not have jurisdiction to accept Ms. Abrams' Notice of Appeal.

4.(a) Issues raised in Ms. Abrams' Notice of Appeal.

Alberta Environment's motion and the Town's motion that the issues stated in Ms. Abrams' Notice of Appeal are not related to the current Amending Approval before the Board, and therefore, the Board does not have jurisdiction to accept Ms. Abrams' Notice of Appeal. Alberta Environment also argues that these issues would be the subject of a separate application to the Director for an approval, and that such an application for an approval has not been filed with Alberta Environment.

4.(b) Issues raised in Ms. Walsh's Notice of Appeal.

The Town's motion that the issues stated in Ms. Walsh's Notice of Appeal are not related to the current Amending Approval before the Board and therefore, the Board does not have jurisdiction to accept Ms. Walsh's Notice of Appeal.

5. Amending Approval not required.

The Town's motion that an Amending Approval may not have been required, rendering the appeals and Stay issue moot.

6. Security.

The Town's motion that security be posted by Ms. Walsh to indemnify the Town against losses attributed to any delay in the project.

7. Is Ms. Walsh directly affected?

The Town's motion that Ms. Walsh is not directly affected and, therefore, the Board does not have jurisdiction to accept her Notice of Appeal.

8. Is Ms. Abrams directly affected?

The Town's motion that Ms. Abrams is not directly affected and, therefore, the Board does not have jurisdiction to accept her Notice of Appeal.

9. Issues to be heard.

Pursuant to sections 95(2), (3), and (4), of the *Environmental Protection and Enhancement Act*, the Board shall, if necessary, determine the issues to be considered at a hearing, should one be held.

Preliminary Meeting Procedures:

The procedures for the Preliminary Meeting are as follows:

1. The Preliminary Meeting will be held today until approximately 5:30 pm. There will be a lunch break of approximately 1 hour. The Board may also recess the Preliminary Meeting from time to time as it deems appropriate.
2. The Board will open the Preliminary Meeting with a brief presentation outlining the procedures for the Preliminary Meeting.
3. **Ms. Walsh, Ms. Abrams, Mr. Ham, 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 they intend to present to the Board during the Preliminary Meeting.
4. **Ms. Walsh** will then be permitted to present argument and/or direct evidence for up to **55 minutes**, followed by up to **15 minutes** of cross-examination by each **Mr. Ham** and **Ms. Graham**.
5. **Ms. Abrams** will then be permitted to present argument/or direct evidence for up to **55 minutes**, followed by up to **15 minutes** of cross-examination by **Mr. Ham** and **Ms. Graham**.
6. Re-direct evidence by **Ms. Walsh** and **Ms. Abrams** will be permitted after they have presented direct evidence and have been cross-examined. Re-direct evidence is permitted if clarification is needed, or if anything arises from the cross-examination that they feel needs to be explained to the Board. Re-direct evidence will only be permitted where appropriate and is at the discretion of the Chairman.
7. **Mr. Ham** will then be permitted to present argument/or direct evidence for up to **55 minutes**. Followed by up to **15 minutes** of cross-examination by each **Ms. Walsh** and **Ms. Abrams**.
8. Re-direct evidence by **Mr. Ham** will be permitted after presenting direct evidence and being cross-examined.
9. **Ms. Graham** will then be permitted to present argument for up to **55 minutes**. There will be no cross-examination by Ms. Walsh and Ms. Abrams as Ms. Graham is not calling any witnesses on behalf of Alberta Environment to present direct evidence.
10. Cross-examination is only permitted between participants that are adverse in interest to each other, and where direct evidence has been given. There are two main purposes of cross-examination. The first is to provide an opportunity to ask questions of a witness adverse in interest, based on their testimony or statements, in order to support your position. The second purpose is to challenge the validity or accuracy of that witness' statements or testimony.

11. All participants will then have an opportunity to make closing comments. **Ms. Walsh, Ms. Abrams, Mr. Ham, and Ms. Graham** will each be permitted up to **10 minutes** for closing comments.
12. Finally, as the burden of proof lies on the Appellants, **Ms. Walsh and Ms. Abrams** will each be permitted to make a final comment for up to **5 minutes**.
13. At each stage in the proceeding the Board may ask questions of the participants.
14. The Board has given each participant a specific time frame in which to provide their direct evidence and/or arguments. This is to ensure that each participant gets equal and fair time in which to present their case to the Board. A timer will be used and the participants should prepare their presentations with these time limits in mind.
15. During direct evidence participants will present their case (testimony will be sworn).
16. The Board will be recording the proceedings for its own use.
17. The Preliminary Meeting will be open to the public for viewing only.

The Board's Decision:

Once the Preliminary Meeting is concluded, the Board will issue its Decision in accordance with section 98 of the *Environmental Protection and Enhancement Act*. Once the Board has made its decision, the Board will ensure that all participants to these appeals receive a copy of the Board's Decision. If you wish to receive a copy of the Board's Decision or have any questions about the proceedings today, please speak to Gilbert Van Nes at this venue today. Mr. Van Nes 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 statutory vehicle 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 8, 2007:

Steve E. Hrudey, Chairman

Dr. Hrudey 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. Hrudey 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. Hrudey 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 V. 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.

Alex MacWilliam, Board Member

Mr. MacWilliam is a lawyer and partner with the law firm of Fraser Milner Casgrain LLP and has practiced environmental law for the past 12 years. He has appeared extensively before a wide variety of administrative boards, including both the Alberta Energy and Utilities Board and the Natural Resources Conservation Board. He has considerable experience in dealing with contaminated land issues, brownfield developments, and intensive livestock operations. He is a member of the Environment Committee of the Canadian Chamber of Commerce and a frequent lecturer on environmental issues to various industry seminars and conferences. Mr. MacWilliam has appeared before all levels of Court in Alberta, and the Federal Court of Canada. He was called to the Bar in 1986.

Schedule for Preliminary Meeting:

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

Order of Presentation	Time Allocated (in minutes)	Start time	End time
Opening Speech by the Board	0:15	8:30 AM	8:45 AM
Opening Comments by Ms. Walsh	0:05	8:45 AM	8:50 AM
Opening Comments by Ms. Abrams	0:05	8:50 AM	8:55 AM
Opening Comments by Mr. Ham	0:05	8:55 AM	9:00 AM
Opening Comments by Ms. Graham	0:05	9:00 AM	9:05 AM
Legal Argument/Direct Evidence by Ms. Walsh	0:55	9:05 AM	10:00 AM
Cross Examination of Ms. Walsh by Mr. Ham	0:15	10:00 AM	10:15 AM
Cross Examination of Ms. Walsh by Ms. Graham	0:15	10:15 AM	10:30 AM
Re-Direct Evidence by Ms. Walsh	0:05	10:30 AM	10:35 AM
Board's Questions for Ms. Walsh	0:15	10:35 AM	10:50 AM
Break	0:15	10:50 AM	11:05 AM
Legal Argument/Direct Evidence by Ms. Abrams	0:55	11:05 AM	12:00 PM
Cross Examination of Ms. Abrams by Mr. Ham	0:15	12:00 PM	12:15 PM
Cross Examination of Ms. Abrams by Ms. Graham	0:15	12:15 PM	12:30 PM
Re-Direct Evidence by Ms. Abrams	0:05	12:30 PM	12:35 PM
Board's Questions for Ms. Abrams	0:15	12:35 PM	12:50 PM
Lunch	1:00	12:50 PM	1:50 PM
Legal Argument/Direct Evidence by Mr. Ham	0:55	1:50 PM	2:45 PM
Cross Examination of the Town of Turner Valley by Ms. Walsh	0:15	2:45 PM	3:00 PM
Cross Examination of the Town of Turner Valley by Ms. Abrams	0:15	3:00 PM	3:15 PM
Re-Direct Evidence by Mr. Ham	0:05	3:15 PM	3:20 PM
Board's Questions for Mr. Ham	0:15	3:20 PM	3:35 PM
Legal Argument by Alberta Environment	0:55	3:35 PM	4:40 PM

Board's Questions for Alberta Environment	0:15	4:40 PM	4:55 PM
Break	0:15	4:45 PM	5:00 PM
Closing Comments by Ms. Walsh	0:10	5:00 PM	5:10 PM
Closing Comments by Ms. Abrams	0:10	5:10 PM	5:20 PM
Closing Comments by Mr. Ham	0:10	5:20 PM	5:30 PM
Closing Comments by Ms. Graham	0:10	5:30 PM	5:40 PM
Final Closing Comments by Ms. Walsh	0:05	5:40 PM	5:45 PM
Final Closing Comments by Ms. Abrams	0:05	5:45 PM	5:50 PM
Estimated End Time for Preliminary Meeting		5:50 PM	5:50 PM

- The time allocated for the Chair's opening speech may vary.
- Allocated times may vary during the Preliminary Meeting.
- The appropriate time for lunch and breaks will be decided by the Chair.
- Time allocated for questioning of the participants by the Board is approximately 15 minutes. This time may vary.
- Any changes to the allocated times will be at the discretion of the Chair.
- The participants should prepare their presentations with these time limits in mind.
- The schedule is provided as a general guideline only. The Board will attempt to follow this schedule as best as possible. All participants are required to attend the entire Preliminary Meeting unless excused by the Chair.