ALBERTA
ENVIRONMENTAL APPEAL BOARD

Decision

Date of Decision – June 15, 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 appeals filed by Mr. Andy Dzurny and Mr. William Procyk with respect to Amending Approval No. 9767-01-09 issued on October 26, 2001, by the Director, Northeast Boreal Region, Regional Services, Alberta Environment, to Shell Chemicals Canada Ltd.

Cite as: *Dzurny et al.* v. *Director, Northeast Boreal Region, Regional Services, Alberta Environment* re*: Shell Chemicals Canada Ltd.*

EXECUTIVE SUMMARY

The Board received Notices of Appeal from Mr. Andy Dzurny and Mr. William Procyk with respect to an amending approval issued by Alberta Environment to Shell Chemicals Canada Ltd. with respect to the operation of the Scotford Chemical Plant in Fort Saskatchewan, Alberta.

According to standard practice, the Board wrote to the Alberta Energy and Utilities Board (AEUB) asking whether the matters included in these Notices of Appeal had been the subject of a review or hearing under the AEUB's legislation. The AEUB advised the Board that it had held a hearing in relation to the Shell Scotford Chemical Plant. In response to this, the Board asked for submissions from Mr. Dzurny, Mr. Procyk, Shell Canada, and Alberta Environment as to whether the matters included in the Notices of Appeal had been the subject of a review or hearing under the AEUB's legislation.

Upon reviewing the documents provided by the AEUB and the submissions from the Parties to these appeals, the Board has concluded that the matters included in the Notices of Appeal were previously dealt with by the AEUB. The Board also notes that the real concern of Mr. Dzyrny and Mr. Procyk is one of land use, which is not within the Board's jurisdiction. Therefore, the Board is dismissing these appeals.

BEFORE

Mr. Ron V. Peliuck, Panel Chair;
Dr. John P. Ogilvie; and
Dr. Curt Vos.

WRITTEN SUBMISSIONS

Appellants:	Mr. Andy Dzurny and Mr. William Procyk.
Director:	Mr. Kem Singh, Director, Northeast Boreal Region, Regional Services, Alberta Environment, represented by Mr. Darin Stepaniuk, Alberta Justice.
Approval Holder:	Shell Chemicals Canada Ltd., represented by Mr. Brad Gilmore, Bennett Jones.

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I. BACKGROUND

[1] On October 26, 2001, Amending Approval No. 9767-01-09 (the "Approval") was issued by the Director, Northeast Boreal Region, Regional Services, Alberta Environment (the "Director") under the *Environmental Protection and Enhancement Act,* R.S.A. 2000, c. E-12 (the "Act" or "EPEA")[1] to Shell Chemicals Canada Ltd. (the "Approval Holder" or "Shell") in relation to the construction, operation, and reclamation of the Scotford chemical manufacturing plant (styrene monomer) and petrochemical manufacturing plant (ethylene glycol) ("Shell's Plant") near Fort Saskatchewan, Alberta. The amendment added a number of definitions and amended Table 4.2-1 to allow increased emissions of ethylene during startup of the etheylene glycol plant. The total daily emissions were to remain the same.

[2] The Environmental Appeal Board (the "Board") received Notices of Appeal on November 22, 2001, from Mr. William Procyk, and on November 26, 2001 from Mr. Andy Dzurny (collectively the "Appellants"). On November 23 and November 26, 2001, the appeals were acknowledged, and the Board requested that the Director provide the records (the "Records") related to the appeals. The Parties[2] were requested to provide their available dates for a mediation meeting and settlement conference or hearing by December 7, 2001. The Parties were also asked to advise the Board whether they were aware of any other persons who may have in interest in these appeals.

[3] 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 responded in the negative, and, in a letter dated December 19, 2001, the AEUB advised

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

[2] The "Parties" to these appeals are Mr. Dzurny, Mr. Procyk, the Director, and the Approval Holder.

> "…a public hearing was held on November 25, 1997 into an application by Shell Chemicals, Application No. 1008234, for an industrial development permit. Shell Chemicals requested approval to use ethylene as a feedstock and natural gas as fuel in production of ethylene glycols at its ethylene glycols plant in the Fort Saskatchewan Area. Mr. A.M. Dzurny participated in the hearing as an intervener and representative of the Local Residents Group. In its decision on March 3, 1998, Decision 98-3, the Board approved Application No. 1008234."

A copy of Decision 98-3 and Industrial Development Permit No. IDP 98-2 were attached to this letter.

[4] On December 11, 2001, the Board received the Record from the Director and on December 20, 2001, copies were provided to the Appellants and the Approval Holder.

[5] In response to a request from the Board, the Parties identified four persons that may have a potential interest in this matter. On January 9, 2001, the Board wrote to all four of these persons informing them of the appeal, providing a copy of the Notice of Appeal and a copy of the Approval. No reply was received from any of these persons.

[6] In a letter dated January 31, 2002, the Board decided to have the Parties provide written submissions to determine the issues to be dealt with in these appeals and whether the Appellants had participated in a process before the AEUB on this matter. Accordingly, the Board set a schedule for receiving these written submissions, and the Board subsequently received these submissions from the Parties.

II. SUMMARY OF THE SUBMISSIONS

A. The Appellants

1. Mr. Procyk

[7] Mr. Procyk submitted that he "…never had an opportunity to participate in a process before the Alberta Energy and Utilities Board in regards to Amending Approval No. 9767-01-09/Application No. 013-9767 [(the Approval)]." He was concerned about increasing levels of ethylene on his farm, located near Shell's Plant.

[8] In his rebuttal submission, Mr. Procyk noted that the "…AEUB never held a public meeting in regards to Amending Approval 9767-01-09 [(the Approval)]." He argued that

the information provided by Shell in support of the original application is not applicable to the Approval that is currently before the Board. He objected to emissions from Shell's Plant and did not believe that his property should be used as a "…convenient dumping ground for shell [*sic*] to get rid of polutants [*sic*] they don't want."

2. Mr. Dzurny

[9] In his submission, Mr. Dzurny merely stated that the "…[A]EUB decision 98-3 and application by Shell Chemicals, Application No. 1008234 is not applicable to this appeal." There is no reference to any other issues that concern him. In his Notice of Appeal, he referred to ethylene levels on his property from two nearby sources, which were not specifically identified.

[10] In his rebuttal submission, Mr. Dzurny again stressed the effects of ethylene concentrations on his land. He stated:

> "To use the atmosphere for the deliberate and convenient release of Ethylene 'spikes' is senseless, preventable and avoidable. Actual data is required to provide proof of Ethylene exposure, not modelling. The actual data and close proximity of Ethylene source(s) to residents could determine that current and future releases are excessive, dangerous, irresponsible and could pose a serious health & safety threat (eg. Tobacco Industry)."

B. The Director

[11] The Director argued that the Approval does not increase the limit on the amount of ethylene that can be emitted by Shell's Plant in one day. The Director stated:

> "The amendment allows for an increased hourly emission rate of ethylene for a maximum 2 hour start-up period of 20/kg [*sic*] hour. The amendment did not change the 8.8 kg/hour ethylene emission limit that applies during normal operations. The amendment also did not affect the daily emission limit of 211 kg of ethylene."

[12] The Director noted that the Appellants raised a concern about the health risks of exposure to ethylene. He noted that the health risks were addressed in Shell's application to the AEUB as follows:

> "a) Shell's application to the [A]EUB included a *Revised Air Quality Report* prepared by Jacques Whitford Environment Limited dated September, 1997 ([A]EUB microfilmed application/hearing record re decision 98-3, sheet no. 17, row 3, document 11; Director's record item 80). The report contains cumulative effects air dispersion modelling of ethylene levels assuming an emission rate from Shell's plant of 2.433g/s (which is the same as 8.8 kg/hour or 211 kg/day). These levels are compared to Alberta Environment's interim ambient air quality guideline values of 120 and 50 micrograms per cubic meter for 6 hour and 30 day averaging periods (these values are unchanged in the current *Alberta Environment Ambient Air Quality Guidelines,* February, 2000). Predicted maximum 6 hour and 30 day average ethylene concentrations in the area near Shell's facilities are 29.5 and 2.8 micrograms per cubic meter respectively. The 6 hour guideline value is predicted to be exceeded over a small area centered on a neighboring facility. Ambient etheylene levels are predicted to be less than the 30 day guideline level through-out [*sic*] the study area.
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> b) The environmental impact assessment (EIA) report portion of Shell's application to the [A]EUB included a human health risk assessment. Ethylene was included in the assessment. The assessment was performed comparing estimated exposure to safe reference doses both for acute and chronic health effects. The assessment included adult resident and child resident exposure scenarios. Calculation of the estimated exposure to ethylene included conservative assumptions about air concentrations based on maximum reported concentrations or upper bound estimates of concentration levels. The conclusion of the health risk assessment was that neither the adult nor the child resident was at risk….
>
> c) The [A]EUB indicated in its decision report in s. 3.3 that 'the Board believes the emission impacts associated with the proposed plant to be minimal.'"

[13] The Director argued that the matter was heard by the AEUB and Mr. Dzurny participated in that hearing, and Mr. Procyk, while he did not attend, had every opportunity to do so. Therefore, according to section 95(5)(b)(i) of the Act,[3] both appeals should be dismissed.

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[3] Section 95(5)(b)(i) (previously 87(5)(b)(i)) of the Act provides:

> "The Board … shall dismiss a notice of appeal if in the Board's opinion (i) the person submitting the notice of appeal received notice of or participated in or had the opportunity to participate in one or more hearings or reviews under the *Natural Resources Conservation Board Act* or any Act administered by the Energy Resources Conservation Board at which all matters included in the notice of appeal were adequately dealt with…."

[14] The Director stated that:

> "This section [(95(5)(b)(i))] of the EPEA requires the board to make two essential findings: whether the appellant received notice of, participated in, or had an opportunity to participate in the [A]EUB hearing or review; and, if so, whether the matters in the notice of appeal were adequately dealt with by the [A]EUB."

[15] The Director also argued that section 95(5)(b)(i) also precludes an appeal from proceeding where the Notice of Appeal raises a matter that was not specifically addressed during an EUB hearing or review and the appellant had an opportunity to raise that matter during the EUB proceedings but failed to do so. The Director pointed to a previous interpretation of this section by the Board to support this position. In *Carter Group* v. *Director of Air and Water Approvals, Alberta Environmental Protection,*[4] which applied a similarly worded predecessor section[5] to section 95(5)(b)(i), the Board stated: "…an appellant cannot raise as a challenge to an approval, arguments which were available to the appellant when the ERCB [(now the AEUB)] heard the evidence and made its decision."[6]

[16] The Director also discussed *Bildson* v. *Acting Director of North Eastern Slopes Region #2, Alberta Environmental Protection*, re: *Smoky River Coal Limited*,[7] where the Board stated: "…the Legislature intended to preclude this Board from addressing particular concerns simply because they were never raised before the [A]EUB."[8]

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4 *Carter Group* v. *Director of Air and Water Approvals, Alberta Environmental Protection* (December 8, 1994), E.A.B. Appeal No. 94-012.

5 The predecessor section to section 95(5)(b)(i) stated:

> "(5) The Board … (b) shall dismiss a notice of objection if in the Board's opinion
>
> (i) the person submitting the notice of objection received notice of or participated in or had the opportunity to participate in one or more hearings or reviews under the Natural Resources Conservation Board Act or any Act administered by the Energy Resources Conservation Board at which all of the matters included in the notice of objection were considered…." (Section 87(5)(b)(i) of the *Environmental Protection and Enhancement Act*, S.A. 1992, c.E-13.3 as in force December 8, 1994.)

6 *Carter Group* v. *Director of Air and Water Approvals, Alberta Environmental Protection*, (December 8, 1994), E.A.B. Appeal No. 94-012, at page 12.

7 *Bildson* v. *Acting Director of North Eastern Slopes Region #2, Alberta Environmental Protection*, re: *Smoky River Coal Limited* (December 8, 1998), E.A.B. Appeal No. 98-230-D2 ("*Bildson*").

8 *Bildson* v. *Acting Director of North Eastern Slopes Region #2, Alberta Environmental Protection*, re: *Smoky River Coal Limited*, (December 8, 1998) E.A.B. Appeal No. 98-230-D2, at paragraph 12.

[17] In the alternative, the Director submitted that section 95(2)(a)[9] of the Act provides the Board with authority to prevent an appeal on a matter that was not specifically addressed during an AEUB hearing or review where the appellant had an opportunity to raise that matter during the AEUB proceeding but failed to do so.

[18] Section 95(2)(a) provides that the Board, in determining the matters that will be included in the appeal hearing, may consider:

> "…whether the matter was the subject of a public hearing or review …. under any act administered by the Energy Resources Conservation Board [(AEUB)] and whether the person submitting the notice of appeal received notice of and participated in or had the opportunity to participate in the hearing or review."

[19] The Director submitted that fairness and efficiency dictate that an appellant should be precluded from being allowed to proceed with an appeal ground related to a matter that it could have advanced during an AEUB hearing or review. If section 95(5)(b)(i) of EPEA does not preclude this, then the Director submitted that the Board should apply section 95(2)(a) to prevent this from occurring. The Director submitted that interpretation and application of section 95(2)(a) should be interpreted in a manner consistent with the obvious objective of section 95(5)(b)(i).

[20] The Director concluded that the appeals should be dismissed.

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[9] Section 95(2)(a) of the Act provides:

"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 the appeal, and in making that determination the Board may consider the following:

(a) whether the matter was the subject of a public hearing or review under Part 2 of the Agricultural Operation Practices Act, under the Natural Resources Conservation Board Act or under any Act administered by the Energy Resources Conservation Board and whether the person submitting the notice of appeal received notice of and participated in or had the opportunity to participate in the hearing or review …."

C. The Approval Holder

[21] The Approval Holder presented a similar argument to that of the Director regarding the dismissal of the appeals because the matter had been covered by a previous hearing before the AEUB. In its submission, the Approval Holder noted that:

> "Under section 95(5)(b)(i) of the EPEA the Board is required by law to dismiss a notice of appeal if, in its opinion, the person submitting the notice of appeal 'received notice of or participated in or had the opportunity to participate in the hearing or review' under any Act administered by the Alberta Energy and Utilities Board ('[A]EUB') at which all the matters included in the notice of appeal were adequately dealt with."

[22] The Approval Holder noted that Mr. Dzurny attended the hearing of the matter before the AEUB. As evidence of this, the Approval Holder included, attached to its submission at Tab 2, a part of the transcript of the AEUB hearing where Ms. Erika Gerlock, Barrister and Solicitor, states that she is representing Mr. Dzurny. During the hearing, Ms. Gerlock conducted an extensive cross-examination of the Approval Holder and also had the opportunity to fully present Mr. Dzurny's case and raise any issues relevant to Mr. Dzurny.

[23] The Approval Holder contended that Mr. Procyk had ample opportunity to be aware of the AEUB hearing and of the project that it involved. Tab 1 attached to its submission listed the contacts made by Shell within the neighborhood between February and November of 1997. This list showed that, during that period, five notices and letters regarding the project and the up-coming hearing were hand delivered to all residents within five kilometers of the site. Shell noted that the tenant on Mr. Procyk's property received the hand delivered notices and so Mr. Procyk should have been aware of the matter.

[24] In addition, the Approval Holder advised that public notices advertising the AEUB hearing were published in The Edmonton Journal, The Edmonton Sun, The Calgary Herald, The Calgary Sun, and the Fort Saskatchewan Record on September 30, 1997, and again on October 14 and 15, 1997, when the AEUB hearing was rescheduled.

[25] The Approval Holder submitted that the question of whether the Appellants had an opportunity to appear at the AEUB hearing is almost identical to the matter considered by the Board in *Dzurny et al.* v. *Director, Northeast Boreal Region, Alberta Environment* re*: Dow Chemical Canada Inc.*[10] The Approval Holder stated that, in the *Dzurny/Dow Chemical* case, the Board held that Mr. Dzurny had participated in two hearings of the AEUB concerning permits[11] issued to Dow Chemical and that, while Mr Procyk did not participate in the AEUB hearings, he had an opportunity to become aware of the hearings and participate if he wished to do so.

[26] With respect to the matters contained in the Notices of Appeal, the Approval Holder submitted that the Environmental Impact Assessment filed with the application to the AEUB included a study of the air emissions that would occur under normal operating conditions, *as well as those associated with upset conditions*. These upset conditions included the effects of a power failure and fire. The study concluded that there would be no health risks to adults and children residing within the 10 kilometer study area around Shell's Plant.

[27] The Approval Holder submitted that Mr. Procyk had ample opportunity to know that the hearing was to be held and, therefore, had the opportunity to participate. Furthermore, it contended that the matters objected to in the Notices of Appeal were effectively, but perhaps not specifically, dealt with during the AEUB hearing.

[28] The Approval Holder, therefore, argued that the Board should dismiss the appeals.

D. AEUB Decision

[29] The Board has reviewed AEUB Decision No. 98-3. The Board notes that the AEUB, having before it the study of air emissions that would occur under normal operation conditions, as well as those associated with upset conditions, made the following comments regarding air emissions:

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[10] *Dzurny et al.* v. *Director, Northeast Boreal Region, Alberta Environment* re*: Dow Chemical Canada Inc.* (November 24, 1999), E.A.B. Appeal No. 99-137 ("*Dzurny/Dow Chemical*").

[11] Industrial Development Permits issued by the AEUB for the use of natural gas as a feedstock. *Dzurny et al.* v. *Director, Northeast Boreal Region, Alberta Environment* re*: Dow Chemical Canada Inc.* (November 24, 1999),

> "Having considered all the evidence, the Board [(AEUB)] believes the emission impacts associated with the proposed plant to be minimal. The Board [(AEUB)] believes the analysis of emissions carried out by the applicant [(Shell)] represents a realistic picture of cumulative effects in the area."[12]

III. CONSIDERATIONS OF THE BOARD

[30] There are two issues before the Board as presented in the submissions of the Parties to these appeals. They are:

1. Was this matter previously dealt with by the AEUB and did the Appellant participate in or have the opportunity to participate in that review?
2. If a hearing is held by our Board, what matters should be dealt with at the hearing?

A. Section 95(5)(b)(i)

[31] Considering the first issue, section 95(5)(b)(i) of the Act provides:

> "The Board … shall dismiss a notice of appeal if in the board's opinion (i) the person submitting the notice of appeal received notice of or participated in or had the opportunity to participate in one or more hearings or reviews under the *Natural Resources Conservation Board Act* or any Act administered by the Energy Resources Conservation Board [(AEUB)] at which all the matters included in the notice of appeal were adequately dealt with…."

[32] To determine whether an appeal meets the requirements of section 95(5)(b)(i), three conditions must be met. They are:

a) Was there a hearing or review regarding the matter appealed by the AEUB?

b) Did the appellants
   - i) receive notice of the hearing, or
   - ii) participate in the hearing, or
   - iii) have an opportunity to participate in the hearing?

E.A.B. Appeal No. 99-137, at paragraph 3.

[12] *Shell Chemicals Canada Ltd.* (New Ethylene Glycols Plant, Fort Saskatchewan Area) (March 3, 1998), A.E.U.B. Decision No. 98-3, at section 3.2.

c) Were all the matters included in the Notice of Appeal adequately dealt with?

1. Hearing By AEUB

[33] Regarding the first condition, the Board has evidence before it, and all Parties accept this evidence, that there was clearly a hearing before the AEUB regarding Shell's Plant that is the subject of this Approval. As stated in a letter from the AEUB, dated December 19, 2001:

> "…a public hearing was held on November 25, 1997 into an application by Shell Chemicals, Application No. 1008234, for an industrial development permit. Shell Chemicals requested approval to use ethylene as a feedstock and natural gas as fuel in production of ethylene glycols at its ethylene glycols plant in the Fort Saskatchewan Area."

[34] However, the Appellants argued that the hearing before the AEUB was not with regard to the Approval that is under appeal before this Board. Mr. Procyk submitted that he "…never had an opportunity to participate in a process before the Alberta Energy and Utilities Board…" regarding the Approval and that the "…AEUB never held a public meeting in regards to…" the Approval.

[35] Mr. Procyk is correct that the AEUB did not hold a hearing regarding the *Approval* that is the subject of the appeal before this Board. However, that is because the AEUB is not required to do so. The AEUB *never* holds hearings regarding approvals issued by Alberta Environment under EPEA.

[36] Rather, the AEUB holds hearings regarding *facilities* – in this case, Shell Chemicals Canada Ltd.'s Scotford chemical manufacturing plant and petrochemical manufacturing plant near Fort Saskatchewan, Alberta – that require an authorization under the legislation that the AEUB administers. As stated, in this case, there is clear and uncontroverted evidence that the AEUB held a hearing regarding the Shell's Plant – the Shell Scotford facility.

[37] The Appellants also argued that the information provided by Shell in support of its application to the AEUB is not applicable to the Approval that is currently under Appeal before the Environmental Appeal Board. Mr. Dzurny stated the "…[A]EUB decision 98-3 and application by Shell Chemicals, Application No. 1008234 is not applicable to this appeal."

[38] The Board totally disagrees. The subject matter of this appeal is an Approval that deals with amendments to allow increased emissions of ethylene during start-up. The AEUB hearing clearly dealt with air emissions of ethylene. Again, the Board is of the view that section 95(5)(b)(i) contemplates situations in which the AEUB and the Environmental Appeal Board are dealing with similar issues.

[39] As a result, the Board concludes that that there was a hearing or review before the AEUB within the meaning of section 95(5)(b)(i), and the first requirement has been met.

2. Participation

[40] With respect to the second condition, according to the transcript of the hearing before the AEUB and as mentioned in the AEUB Decision's, Mr. Dzurny did participate in the hearing and his lawyer extensively cross-examined the Approval Holder's panel of witnesses. At that time he could have brought up any matters he wanted considered by the AEUB. As a result, with respect to the general requirement, "received notice of or participated in or had the opportunity to participate in" an AEUB hearing or review, this condition has clearly been met with respect to Mr. Dzurny.

[41] Mr. Procyk claimed he had no knowledge of the hearing. Even if we believed him, Mr. Procyk had ample opportunity to learn that the AEUB hearing was to be conducted and this is all that is required under section 95(5)(b)(i). As noted by the Approval Holder, during the eight months preceding the hearing, five written notices were hand delivered to the tenant who was renting Mr. Procyk's house and land. Further, the hearing was advertised twice in four major newspapers, the Edmonton Sun, the Edmonton Journal, the Calgary Sun, and the Calgary Herald as well as in the Fort Saskatchewan Record. There were also numerous public meetings regarding the proposed development of Shell's plant.

[42] The Board also notes that it is the standard practice of the AEUB to permit any person who lives or owns property near a proposed plant, such as Shell's Plant, to participate in a

hearing, if a hearing is held.[13] As a result, the Board believes that Mr. Procyk "received notice of" and "had the opportunity to participate in" an AEUB hearing or review, and as a result, the second condition of the test under section 95(5)(b)(i) has been met with respect to Mr. Procyk.

3. Adequately Dealt With

[43] The final requirement of the test under section 95(5)(b)(i) that needs to be met is that in the opinion of the Board "all the matters included in the notice of appeal were adequately dealt with" by the AEUB.

[44] The only matter included in the Notices of Appeal filed by Mr. Procyk and Mr. Dzurny was a concern over the effect of the increased ethylene emissions during startup.

[45] The application filed with the AEUB with respect to the hearing that it held, included a study of the air emissions that would occur under normal operating conditions, *as well as those associated with upset conditions*. These upset conditions included the effects of a power failure and fire. The study concluded that there would be no health risks to adults and children residing within the study area - within 10 kilometres of Shell's Plant.

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[13] Section 28(1) of the *Energy Resources Conservation Act*, R.S.A. 2000, c.E-10 provides:

> "In this section, "local intervener" means a person or a group or association of persons who, in the opinion of the Board,
>
> (a) has an interest in, or
>
> (b) is in actual occupation of or is entitled to occupy
>
> land that is or may be directly and adversely affected by a decision of the Board in or as a result of proceeding before it, but, unless otherwise authorized by the Board, does not include a person or group or association of persons whose business includes the trading in or transportation or recovery of any energy resource."

Frequently Asked Questions on the Development of Alberta's Energy Resources, Alberta Energy and Utilities Board, http://www.energy.gov.ab.ca/BBS/public/EnerFAQs/EnerFAQs2.htm#6:

> "WHAT IS AN INTERVENER?
>
> An intervener is anyone other than the applicant who registers at an [A]EUB hearing for a proposed energy project in Alberta. An intervener may be opposed to or in support of a project or may wish to express concerns."

[46] The AEUB, having before it the study of air emissions that would occur under normal operation conditions, as well as those associated with upset conditions, made the following comments regarding air emissions:

> "Having considered all the evidence, the Board [(AEUB)] believes the emission impacts associated with the proposed plant to be minimal. The Board [(AEUB)] believes the analysis of emissions carried out by the applicant [(Shell)] represents a realistic picture of cumulative effects in the area."[14]

[47] The Board has reviewed the study provided to the AEUB and the AEUB's conclusions. The Board believes that the study and the AEUB adequately considered the impact of ethylene "spikes" similar to the "spikes" contemplated in the Approval. As a result, the Board concludes that "all the matters included in the notice of appeal were adequately dealt with" by the AEUB. As a result, the third requirement of section 95(5)(b)(i) has been met.

[48] Therefore, the Board believes that all three conditions required to satisfy section 95(5)(b)(i) of the Act have been met and, as a result, the Board must dismiss the two appeals.

B. Issues to be Considered at the Hearing

[49] Having decided that the appeals are dismissed, the Board does not need to consider the second issue regarding what matters should be heard at the hearing.

C. Land Use

[50] There is another matter that the Board believes should be mentioned. The Board notes that the Appellants' submissions were very general in nature and, as a result, were not very useful to the Board in making its decision. The Board believes that the real objection of the Appellants is one of land use in an area containing both industry and residences. An objection of this type is not in the Board's jurisdiction. Therefore, even if the requirements of section

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[14] *Shell Chemicals Canada Ltd.* (New Ethylene Glycols Plant, Fort Saskatchewan Area) (March 3, 1998), A.E.U.B. Decision No. 98-3, at section 3.2.

95(5)(b)(i) had not been met, the Board would still dismiss the appeals as not being otherwise properly before the Board.

IV. DECISION.

[51] For the reasons provided above, the Board concludes that the appeals of Mr. Dzurny and Mr. Procyk must be dismissed under section 95(5) of the Act.[15]

Dated on June 15, 2002, at Edmonton, Alberta.

"original signed by"
Mr. Ron V. Peiluck

"original signed by"
Dr. John P. Ogilvie

"original signed by"
Dr. Curt Vos

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[15] Section 95(5) of the Act provides in part:
"The Board (a) may dismiss a notice of appeal if
(i) it considers the notice of appeal to be frivolous or vexatious or without merit, …
(iii) for any other reason the Board considers that the notice of appeal is not properly before it…."