ALBERTA ENVIRONMENTAL APPEAL BOARD

Decision

Date of Decision – December 12, 2002

IN THE MATTER OF Sections 91, 92, and 95 of the *Environmental Protection and Enhancement Act,* R.S.A. 2000, c. E-12;

-and-

IN THE MATTER OF Notices of Appeal filed by Ron and Gail Maga and Ron Maga Jr., Cameron Wakefield, A. Ted Krug, Stanley Kondratiuk, Roger G. Hodkinson, Neil Hayes, and Anna T. Krug, with respect to Amending Approval No. 10339-01-03 issued to Lehigh Inland Cement Limited by the Director, Northern Region, Regional Services, Alberta Environment.

Cite as: Adjournment Decision: *Maga et al.* v. *Director, Northern Region, Regional Services, Alberta Environment* re: *Lehigh Inland Cement Limited.* (12 December 2002), Appeal Nos. 02-023, 024, 026, 029, 037, 047, and 074-ID2 (A.E.A.B.).

BEFORE: William A. Tilleman, Q.C., Chair;
Dr. Steve E. Hrudey; and
Mr. Al Schulz.

PARTIES:

Appellants: Mr. Ron and Ms. Gail Maga and Mr. Ron Maga Jr., Mr. Cameron Wakefield, Mr. A. Ted Krug, Mr. Stanley Kondratiuk, Dr. Roger G. Hodkinson, and Edmonton Friends of the North Environmental Society represented by Ms. Jennifer Klimek; Ms. Anna T. Krug and Edmonton Federation of Community Leagues, represented by Mr. Gavin Fitch, Rooney Prentice; and Mr. Neil Hayes.

Director: Mr. Kem Singh, Director, Northern Region, Regional Services, Alberta Environment, represented by Mr. William McDonald and Mr. Darin Stepaniuk, Alberta Justice.

Approval Holder: Lehigh Inland Cement Limited, represented by Mr. Dennis Thomas and Mr. Martin Ignasiak, Fraser Milner Casgrain LLP.

EXECUTIVE SUMMARY

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

The Board held a Preliminary Meeting to determine the standing of the parties who filed the appeals and to determine the issues to be considered at the subsequent hearing. The majority of the parties reached an agreement and presented a joint submission to the Board on these questions, which the Board has accepted in principle. As a result, the Board decided to accept seven of the appeals and to make the Edmonton Friends of the North Environmental Society (EFONES) and the Edmonton Federation of Community Leagues (EFCL) parties to theses appeals.

On November 26, 2002, the Board commenced the hearing into this matter and heard a number of preliminary motions. Among these motions was a request by the EFONES and EFCL groups for an adjournment of the hearing. The basis of this request was the EFONES and EFCL required more time to respond to a health impact study, and a supplement to that study, that was filed by Lehigh Inland Cement as part of their written submissions. The Board concluded it was necessary for the Board to accept the studies, as they were directly relevant to the matters before the Board. As a result, the Board granted this request for an adjournment. The Board believes that the principles of natural justice and procedural fairness, that give a party the right to know the case against them and the right to respond to this case, are best served by granting the adjournment and that none of the parties before the Board are prejudiced by granting the adjournment.

As human health is a fundamental consideration in these appeals, the Board ordered that the Medical Officer of Health for the Capital Health Authority attend the hearing.

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I. BACKGROUND

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

[2] Between June 14, 2002, and July 2, 2002, the Environmental Appeal Board (the "Board") received a total of twenty-nine appeals with respect to the Approval. Notices of Appeal were received from Mr. David Doull (02-018), Mr. James Darwish (02-019), Ms. Verona Goodwin (02-020), Ms. Elena P. Napora (02-021), Mr. Don Stuike (02-022), Mr. Ron and Ms. Gail Maga and Mr. Ron Maga Jr. (02-023), Mr. Cameron Wakefield (02-024), Mr. David J. Parker (02-025), Mr. A. Ted Krug (02-026), Mr. Bill Bocock (02-027), Mr. Michael Nelson (02-028), Mr. Stanley Kondratiuk (02-029), Mr. Greg Ostapowicz (02-030), Mr. Douglas Price (02-031), Ms. Holly MacDonald (02-032), Mr. Stuart Pederson (02-033), Ms. Linda Stratulat (02-034), Mr. Leonard Rud (02-035), Mr. Marcel Wichink (02-036), Dr. Roger G. Hodkinson (02-037), Ms. Lorraine Vetsch (02-038), Ms. Gwen Davies (02-039), Mr. Garry Marler (02-040), a group of Community Leagues from the City of Edmonton (02-041),[2] Mr. Neil Hayes (02-047), Mr. Robert Wilde (02-060), the Edmonton Friends of the North Environmental Society ("EFONES") (02-061),[3] Ms. Bonnie Quinn (02-073), and Ms. Anna T. Krug (02-074) (collectively the "Appellants").[4]

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[1] On September 11, 2002, counsel for the Approval Holder notified the Board that Inland Cement Limited is now Lehigh Inland Cement Limited.

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

[3] A total of three Notices of Appeal were filed on behalf of EFONES. On July 2, 2002, EFONES filed its third Notice of Appeal. Attached to this Notice of Appeal was a letter from EFONES indicating that the Notices of

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

[4] According to standard practice, the Board wrote to the Natural Resources Conservation Board ("NRCB") and the Alberta Energy and Utilities Board ("AEUB") asking whether this matter had been the subject of a hearing or review under their respective legislation.[5]

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

[6] On August 27, 2002, the Board advised all Parties that a Preliminary Meeting would be held on September 17, 2002, with potential hearing dates in November 2002.

[7] On September 5, 2002, EFONES contacted the Board and advised that it, along with the Director, Approval Holder, and the EFCL were close to an agreement on recommending

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Appeal filed by Mr. James Darwish and Mr. Robert Wilde were intended to be filed on behalf of themselves and EFONES. The Board has taken copies of the Notices of Appeal filed by Mr. Darwish and Mr. Wilde and added them to the Notice of Appeal filed by EFONES alone.

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

[5] The NRCB notified the Board that these appeals were not subject to review under its legislation. The AEUB stated that it had not held a public hearing or review into the subject matter of the Appeals. However, the AEUB did provide a copy of Industrial Development Permit No. IDP 00-1 and IDP IC 80-1, permitting "...Inland to use natural gas produced in Alberta as fuel in the production of cement in the Province...." (See: AEUB's Letter, dated July 17, 2002.) After reviewing the documentation provided by the AEUB and the submissions of the Parties, the Board determined that the issues that are before the Board have not been considered in any hearing or review by the AEUB.

to the Board what issues should be considered at the hearing and who should be granted status as parties.

[8] On October 2, 2002, the Board wrote to the Parties, advising of its decision, and the reasons for its decision were provided to the Parties on October 11, 2002.[6] The Board determined that Mr. Cam Wakefield (02-024), Mr. Ted Krug (02-026), Mr. Stan Kondratiuk (02-029), Mr. Ron and Ms. Gail Maga and Ron Maga Jr. (02-023), Dr. Roger Hodkinson (02-037), Mr. Neil Hayes (02-047), and Ms. Anna T. Krug (01-074) would have standing at the Hearing. The Board also accepted the Edmonton Friends of the North Environmental Society and the Edmonton Federation of Community Leagues as full parties to these appeals.[7] The remaining Notices of Appeal were withdrawn.[8] The Board also determined the issues to be included in the hearing of these appeals.[9]

[9] Written Submissions for the Hearing were received from the Parties on November 15, 2002. Included in the Written Submissions from the Approval Holder was a health impact

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

[7] See: Preliminary Issues: *Doull et al.* v. *Director, Northern Region, Regional Services, Alberta Environment*, re: *Inland Cement Limited* (11 October 2002), Appeal Nos. 02-018-041, 047, 060, 061, 073, and 074-ID1 (A.E.A.B.) at paragraphs 96 and 97. The appeal of Mr. David Doull was dismissed. The other appellants not granted standing had agreed to withdraw their appeals and allow the EFCL and EFONES present their concerns.

[8] See: Letter from EFONES, dated November 25, 2002.

[9] The issues to be included in the hearing of this appeal were determined to be:

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

study by Cantox Environmental entitled "Human Health Risk Assessment of the Lehigh Inland Cement Limited Substitution Fuel Project", dated November 13, 2002. On November 22, 2002, the Board received a revised version of this health impact study, dated November 21, 2002.[10]

[10] The Board received letters from the EFCL and EFONES on November 25, 2002. These Appellants objected to the admission of the Health Impact Studies submitted by the Approval Holder, and they requested the opportunity to address the issue before the Board at the commencement of the Hearing. They stated that the November 22, 2002 report was not proper rebuttal evidence and it is new evidence that they were not given adequate opportunity to review and provide critical analyses of the data. EFONES also argued that the health reports should have been part of the application process.[11] They subsequently indicated that they would be seeking an adjournment if the Board were to accept the Health Impact Studies. Mr. Neil Hayes also expressed concern regarding the late filing of the documents.[12]

[11] The Board notified the Parties on November 25, 2002, that it intended to address the admissibility of the health reports as a preliminary matter at the Hearing and requested the Parties to be prepared to present submissions on the matter. The Board would also hear arguments as to whether an adjournment should be granted.[13]

[12] Following the Board's review of the submissions of the Parties, and as the issue of public health was important to all of them, the Board contacted the Parties and the Capital Health Authority ("CHA") to determine if a representative of the Capital Health Authority should attend the Hearing and appear as one of the Director's witnesses or as an independent witness.[14] On November 25, 2002, the Board received a letter from the Capital Health Authority stating that it "Believes that the process and decision were reasonable. In view of the short time frame, Capital Health is unable to adequately prepare for the hearing, and as a result, we will not be attending the hearing."[15]

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10 Collectively the "Health Impact Study".

11 See: EFONES' Letter, dated November 25, 2002, and the EFCL Letter, dated November 25, 2002.

12 See: Mr. Neil Hayes' Letter, dated November 25, 2002.

13 See: Board's Letter, dated November 25, 2002.

14 See: Board's Letter, dated November 22, 2002.

15 Capital Health Authority Letter, dated November 25, 2002.

[13] The Hearing of the issues commenced on November 26 and 27, 2002, in Edmonton, Alberta. At the start of the Hearing, the Board heard and decided a number of preliminary matters. These are the reasons for the Board's decisions on these preliminary matters.

II. DISCUSSION

[14] The preliminary motions presented to the Board at the start of the Hearing were: (1) the admissibility of Health Impact Studies filed by Inland on November 15 and 22, 2002 and the corresponding adjournment request from EFONES and the EFCL; (2) receipt of evidence from one of EFCL's witnesses out of the normal sequence of receiving evidence; (3) Mr. Hayes' request to present an additional witness; and, (4) whether, in the event of an adjournment, the Board would again request that the Capital Health Authority provide a witness to speak at the Hearing.

A. Health Impact Studies

[15] The preliminary issues concerning the admissibility of the health impact studies and the adjournment requests are interrelated. They will therefore be dealt with as set out below.

1. Admissibility of Human Health Risk Assessment Reports

[16] On November 15, 2002, the Board received a Health Impact Study prepared by Cantox Environmental entitled "Human Health Risk Assessment of the Lehigh Inland Cement Limited Substitution Fuel Project", dated November 13, 2002. On November 22, 2002, the Board received a revised version of this Health Impact Study, dated November 21, 2002. In both cases, these Health Impact Studies were attached to Affidavits of Mr. Gordon Brown, a witness for Inland. By letters to the Board dated November 25, 2002, Ms. Klimek (counsel for the EFONES group), Mr. Fitch (counsel for the EFCL group), and Mr. Hayes (one of the Appellants) expressed concerns about the admissibility of the November 21 Heath Impact Study. By letter dated November 25, 2002, the Board advised all Parties that it would like to address this issue as a preliminary matter at the Hearing the following day. In a telephone conversation with Board Counsel, Ms. Klimek advised that given the nature of the November 21 Health

Impact Study, in the event that the Board decided to accept it into evidence, she would be requesting an adjournment.

[17] At the hearing, the Board heard argument from all Parties on the issue of the admissibility of the Health Impact Studies, in particular, the November 21 Health Impact Study. The Appellants argued that filing of the Health Impact Studies in an "unfair manner" by Inland, was a form of "ambush" or "bootstrapping", and it raised a related issue of whether the Director had all of the information before him to make the decision he did – since these Health Impact Studies should have been before him before he made his decision.[16] For these reasons, the Appellants asked that the Health Impact Studies not be admitted. However, all of the Appellants also recognized that the issue of human health was the most important issue before the Board in this Hearing, and, for that reason, the Board might wish to have the Health Impact Studies admitted. If the Board wished to admit the evidence, the Appellants argued that an adjournment be granted to enable the Appellants to properly address any new evidence presented in the Health Impact Studies.

[18] Inland argued that the Health Impact Studies should be admitted as they are relevant and will assist the Board in reaching its decision and in preparing its Report and Recommendations. Inland agued that it could have simply have held back and come forward during the hearing with its expert witness, Dr. Brown, and entered the revised evidence *viva voce*. For time-saving and fairness reasons, Inland chose instead to file the evidence before the hearing. Inland suggested that the Appellants' expert, Dr. Brauer, and Inland's expert, Dr. Brown, be given the opportunity to meet and discuss the reports in one of the Board's meeting rooms in order that they might reach some consensus on the matter.

[19] The Board directed the experts to meet in an attempt to reach some consensus on the issue while the Board adjourned briefly to consider the issues of admissibility and adjournment. No consensus among the Parties was reached.

[20] The Hearing reconvened, and the Board denied the Appellants' motions to exclude the reports. The Chairman stated that the "...information is quite obviously relevant to the hearing because both documents of the 15th and the 22nd relate to issues of health which concern

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16 Transcript, dated November 26, 2002, at pages 22 and 28.

the citizens which, because of that, have found their way into the matters that this Board must hear for this appeal, so those documents will come in."[17]

[21] The Chairman then stated that with "...respect to the adjournment, then, for reasons that will shortly follow in a letter of decision, the adjournment then will be granted."[18]

2. Appellants' Motion for an Adjournment

A. Fairness

[22] As set out above, the Appellants sought an adjournment in these proceedings in the event that the Board decided to admit the November 21 Health Impact Study filed by Inland three days before the Hearing. In support of their motion for an adjournment, the Appellants argued that they needed time to properly assess and understand the content of the November 21 Health Impact Study in order to prepare their examination-in-chief. They also argued that they needed time to determine what changes were made in the Health Impact Studies, and to determine the significance of these changes, particularly as these relate to NO_2 emissions, particulate matter ("PM"), cumulative effects, and metals. While the Appellants agreed that the hearing was a *de novo* hearing, they argued this should not be interpreted to mean that an approval holder can "ambush" appellants with new evidence by filing this important evidence only days before a hearing. The Appellants argued that the principles of natural justice provide that parties have time to know the case and meet it. The Appellants agreed that the information provided by the report goes to a core issue, that of health impacts, and that fairness would be prejudiced if the hearing were to go ahead under the circumstances. The Appellants also argued that costs should be awarded against Lehigh Inland to cover the costs of having to bring in experts again at a later date.

[23] Inland submitted that the Board refuse the adjournment request and argued that the costs of adjourning be assessed the other way around, or as a "saw-off" at best.

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17 Transcript dated November 26, 2002, at page 41, lines 30-35.

18 Transcript dated November 26, 2002, at page 42, lines 02-04.

[24] The Director argued that there was no need for an adjournment and that, from the Director's perspective, an adjournment might make it difficult to produce the necessary departmental personnel due to internal reorganizations taking place.

[25] In response to the submissions of Inland and the Director, the Appellants argued that fairness should not be sacrificed for convenience. Ms. Klimek argued:

> "We are prepared to make sacrifices to ensure this is fair. ... This is the citizens last avenue to have this addressed. We know there is a strong prohibitive clause, and even if we can go to court you don't ... This is the last stop and so important to these individuals that they have their concerns addressed fairly."[19]

Mr. Fitch argued: "...[A]re we prepared to address a report that is filed 3 days before the hearing commences? No, that is the issue."[20]

[26] As set out above, the Board granted the adjournment requested by the Appellants. We granted this request because the substance of the Health Impact Studies, dated November 15 and November 21, relate to the core issue in these appeals, that of human health. Indeed, there is little doubt that this is the most important issue in these appeals. The Board also concurs with the Appellants that the principles of natural justice require that fairness be ensured in proceedings such as these, by ensuring that parties know the case to be met. Where, as here, the late-filed evidence is of the sort that goes to the core issue in a proceeding, the Board must be especially protective of this requirement. The Appellants obviously need to be able to respond to this new information and to properly address it.[21]

B. *De novo*

[27] During the course of argument on this issue, the Board heard reference to the issue of the nature of the hearing before the Board – and, in particular, the issue of whether these proceedings are hearings *de novo*. The Board notes that Berger, J.A., delivering judgment of the Alberta Court of Appeal clearly stated in *Chem-Security (Alta.) Ltd.* v. *Alta (Environmental*

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19 Transcript, dated November 26, 2002, at page 50.

20 Transcript, dated November 26, 2002, at page 39, lines 20 to 23.

21 There are numerous cases that discuss the two fundamental requirements of natural justice and procedural fairness – the right to know the case to be met and the right to answer that case. These requirements were first enunciated in *Board of Education* v. *Rice*, [1911] A.C. 179 (H.L.). More recently, these requirements have been discussed in *R.* v. *College of Physicians and Surgeons of Alberta* (1970), 13 D.L.R. (3d) 379 (Alta. C.A.), *Kane* v. *University of British Columbia*, [1980] 1 S.C.R. 1105 (S.C.C.), and *Stinchcombe* v. *Law Society of Alberta,* 2002

Appeal Board) (1997) 56 Alta L.R. 153 at 157: "...the hearing before the Board is a de novo hearing. The Board is empowered to consider evidence that was not before the Director."

[28] The Board reiterates, however, that the admission of new evidence cannot be done under circumstances that would violate the principles of natural justice. The late filing of this important evidence by Inland, and the potential prejudice to the Appellants in terms of not being able to properly address this new evidence, makes an adjournment necessary in this case.

C. Costs

[29] With regard to the issue of whether costs associated with the adjournment should be granted or denied, the Board stated at the Hearing that it was not prepared to award such costs at this time. The Board noted that the only prejudice the Board could identify was one of finances and travel tickets as compared to harm to the merits of the appeal. The Board encouraged all Parties and their experts to take advantage of the remainder of the day to meet in the Board's rooms in an attempt to try to resolve some of their professional disagreements.

B. Evidence out of the Normal Sequence

[30] The EFCL requested permission to call one of its witnesses, a municipal councilor, out of the normal sequence of receiving evidence. The granting of an adjournment made this issue moot. However, as the Board noted at the Hearing, the receipt of evidence out of the normal sequence does pose some potential prejudice for all Parties. For this reason, the Board is cautious to permit such a change and will only due so in exceptional circumstances.

C. Request to Present an Additional Witness

[31] Mr. Hayes' requested the Board allow him to present an additional witness. The Board allowed his request, stating that it was doubtful anyone would argue against this request. The Board believes that this request is reasonable.

ABCA 106 (Alta. C.A.).

D. Attendance of Medical Officer of Health

[32] By letter dated November 22, 2002, the Board requested that the Capital Health Authority ("CHA") provide a witness to attend the hearing. On November 25, 2002, the Board received a letter from the CHA refusing the Board's request, stating in "...view of the short time frame, Capital Health is unable to adequately prepare for the hearing, and as a result, we will not be attending the hearing." The letter also confirmed that the CHA, "...through the coordination of Mr. Alex MacKenzie of Alberta Health and Wellness, participated in the review of the request by Lehigh Inland to use coal as a fuel at their Edmonton facility."

[33] At the hearing, the Board raised as a preliminary issue whether, in the event of an adjournment, the CHA might again be requested to provide a witness, preferably the Medial Officer of Health, Dr. Gerry Predy, to attend the Hearing. During her submissions, Ms. Klimek also queried whether the CHA should be at the hearing, given that the most important issue before the Board is health concerns.

[34] After deciding to grant the adjournment on other grounds, the Board then stated its intention to request that the Medical Officer of Health of the CHA, Dr. Gerry Predy, attend the hearings. The Board stated that having the Medical Officer of Health in attendance would be extremely beneficial – in acting as an independent witness and answering questions on the very important issue of health. In response, Ms. Klimek and Mr. Fitch both raised questions regarding the role of the CHA witness, in terms of being asked questions regarding their involvement in the approval process as opposed to having a witness here to listen to all sides and then provide an assessment.

[35] Board Counsel referred to a prior hearing in which an independent witness was provided at the request of the Board, not *per se* as part of the evidence being tendered by any of the parties, and suggested that there are various options available for how CHA would like to come forward. The Board has decided to request the Medical Officer for Health to attend, leaving the option entirely open to him of appearing as an independent witness or as part of the Director's panel. The provision of an oral or written submission by the CHA is also at the CHA's prerogative.

III. DECISION

[36] For the reasons discussed above, the Hearing is adjourned and will proceed on December 16, 17, and 18, 2002, in accordance with the terms and conditions specified in this decision.

Dated on December 12, 2002, at Edmonton, Alberta.

William A. Tilleman, Q.C.
Chair

Dr. Steve E. Hrudey

Mr. Al Schulz