



New EUB Public Consultation Requirements?

The Alberta Court of Appeal has decided in the case of *Graff v. Alberta Energy and Utilities Board* that it will hear an appeal of a decision of the Alberta Energy and Utilities Board (**EUB**) dismissing a landowner's objection to a sour gas well licence. What is significant about this is that the landowner is outside the emergency protection zone (**EPZ**). If this appeal is successful, applicants for wells, pipelines and facilities under the EUB's *Directive 056* may have to significantly expand their public consultation and notification efforts.

What Happened

In March 2006 EnCana applied for a well licence for a single sour gas well. The EPZ was 0.14 km and the well had a 0.2 km setback.

Landowners living approximately 2 km from the proposed wellsite objected claiming they would be adversely and directly affected due to medical conditions which would be exacerbated by emissions from the venting, flaring and incineration of natural gas.

Under Section 26 of the *Energy Resources Conservation Act*, the EUB may dismiss an objection if the Board feels the objector's rights will not be directly and adversely affected by the proposed activity. The EUB dismissed the landowner's objections on the grounds that since they were not within the 0.14 km EPZ or 0.2 km setback, they could not be directly and adversely affected by the well. The landowners requested the EUB review its decision under Section 40 of the *Energy Resources Conservation Act*, but the Board denied that request, again because the landowners failed to demonstrate they were potentially directly and adversely affected.

The landowners appealed to the Alberta Court of Appeal. Under Alberta's oil and gas legislation, a decision of the EUB may only be appealed to the Court of Appeal on questions of law or jurisdiction. An appeal may only actually proceed if permission, known as leave to appeal, is granted by the Court of Appeal.

The landowners argued that the EUB erred in law or jurisdiction when the EUB relied on *Directive 056* to deny the landowners the opportunity to make meaningful submissions about the direct and adverse impact the well might have on their health. They argued that the EUB had fettered its decision to determine if they could be impacted by the well. They said that the public consultation radius established by the EUB in its *Directive 056* should be a mandatory minimum level of consultation but should not preclude the EUB from considering concerns from people living outside the radius.

On January 23, 2007 the Alberta Court of Appeal granted the leave application. The Court was satisfied that the landowners had raised a serious and arguable point and that their argument was potentially meritorious.

The appeal date is yet to be set.

What This Means

What this lawsuit potentially might mean is that persons who can demonstrate they are potentially directly and adversely affected but who reside outside of the EPZ or setback for a well, facility or pipeline may in fact have standing to bring their objections before the Board, and the Board may be required to hear those objections. Since applicants must consult with all persons who are potentially directly and adversely affected, this case may require applicants to consult with persons outside of the EPZ. This case could open the door to many new intervenors to EUB hearings and increase the amount, complexity and cost of public consultation and notification.

For More Information

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