
AGRIUM PRODUCTS INC.
Extension of a Phosphogypsum Storage Area
Redwater, Alberta
NRCB Application No. 03-01

Report of Pre-Hearing Meeting on
Preliminary and Procedural Matters
December 17, 2003
Fort Saskatchewan, Alberta

1. INTRODUCTION

The *Natural Resources Conservation Board Act* (the “Act”) provides that the Natural Resources Conservation Board (“the Board”) was created “... to provide for an impartial process to review projects that will or may affect the natural resources of Alberta in order to determine whether, in the Board’s opinion, the projects are in the public interest, having regard to the social and economic effects of the projects and the effect of the projects on the environment.”

The Act lists projects that are subject to review and prohibits the commencement of a reviewable project unless the NRCB, on application, has granted an approval for the project.

Agrium Products Inc. (“Agrium”) has applied for an approval of a northward extension of its existing phosphogypsum storage stack area at its fertilizer plant approximately 13 kilometres south of Redwater, Alberta at:

**The North Side of the North Saskatchewan River in
Sections 17 and 20
Township 56
Range 21
West of the Fourth (4th) Meridian**

By Order in Council number 184/2003 dated April 13, 2003 the proposed activity of Agrium was designated as a “reviewable project” pursuant to section 4(f) of the Act.

The Board held a public Pre-Hearing Meeting in Fort Saskatchewan, Alberta on Wednesday, December 17, 2003 to hear representations respecting certain aspects of the hearing to be held to consider the application. Those individuals or organizations that attended and participated in the meeting are listed in Appendix A.

The agenda items for the meeting were as follows:

- a) a discussion of the major issues to be examined at the hearing;
- b) the appropriate scope and jurisdiction of the review;
- c) the location for a hearing, the appropriate timing of a hearing, and deadlines for filing hearing submissions;
- d) a discussion of procedures to be followed at the hearing;

- e) requests from individuals and groups to be considered as interveners eligible to receive intervener funding, and for advance funding; and,
- f) other matters.

This report presents the Board's conclusions respecting matters considered at the meeting. It does not include all of the views presented by participants in the meeting, but the Board had regard for those views in reaching its conclusions. A transcript of the meeting is available for review at the Board's Edmonton office.

2. ISSUES RAISED

The Board is satisfied that all of the issues raised by the parties in their written material are appropriate for consideration at a public hearing on the proposed northern expansion of the phosphogypsum storage facility.

3. APPROPRIATE SCOPE AND JURISDICTION OF THE REVIEW

The issue of cumulative effects was raised by a number of parties. The Board is satisfied that it is important to have an understanding of the cumulative effects associated with a reviewable project. Having stated this, the Board is aware of the difficulties associated with providing predictions of cumulative effects and that any such assessment is complicated by development activity associated with a rapidly growing economy.

4. THE LOCATION OF THE HEARING

All of the participants supported holding the hearing in Fort Saskatchewan, Alberta. The Board believes that as a general principle, the hearing should take place in the same region as the proposed project. The Board finds that Fort Saskatchewan is the proper location for the hearing.

5. APPROPRIATE TIMING FOR A HEARING

Agrium proposes that the hearing take place roughly eight weeks after the Pre-Hearing Meeting, commencing on February 23, 2004. It submitted that given the lengthy period of time in which there has been public awareness of the project and given the limited capacity in the existing storage area and limited construction windows, a prompt hearing for this project is important.

Other participants requested hearing dates in March and April to accommodate expert review of the application and preparation for the hearing. In addition, counsel for the Northeast Strathcona County Residents group has a two-week scheduling conflict in the first half of March 2004.

The Board believes that prompt resolution on project applications can be beneficial. Also, having regard for the extensive data now before the Board, it does not see the need for additional field work by potential interveners and their technical witnesses. This issue is dealt with in greater detail by the Board in the section dealing with intervener funding.

The Board agrees with the participants in the Pre-Hearing Meeting that time is required to prepare for the hearing. This need must be balanced with the requirement for fairness to the applicant. The Board notes that a hearing time in late March would potentially delay the

applicant but would provide little assistance to the Northeast Strathcona County Residents group due to the prior commitments of its counsel.

Having regard for these matters, the Board has scheduled the hearing to commence on February 23, 2004. Written submissions for the hearing shall be filed on February 13, 2003 on the understanding that the applicant will make its best effort to provide any written response materials in advance of the hearing.

6. ELIGIBILITY FOR FUNDING OF THOSE MAKING REQUESTS

This section reports the Board's rationale and conclusions about the eligibility of those requesting intervener funding. In order to be eligible for funding, individuals or groups of individuals must establish that they "are or may be directly affected by a reviewable project."

Proximity to a proposed project is not a single determining factor but it is an important one. In determining whether or not an intervener is or may be directly affected, there must be evidence acceptable to a reasonable person that:

- a) a plausible chain of causality exists;
- b) an effect would probably occur; and
- c) the effect would not be trivial,

before a potential effect can be considered to have been established.

Other points warrant mention here. Advances on intervener funding are not intended to cover the entire amount the Board might ultimately award as costs. The purpose is to ensure that eligible interveners have sufficient funds to retain experts and to make expenditures necessary to prepare for a hearing.

The Board is providing its views on the budgets presented by interveners, along with its decisions regarding advance funding, in order to give participants direction as to those costs that are likely to be recognized in the final cost awards. It is emphasized however, that the final cost awards will be made, on application, following the hearing. Cost awards may be made in an amount greater or less than set forth in this report.

The Board also emphasizes that in considering advance funding requests, it is providing only for those portions of an interveners' preparation and hearing work for which it believes the project applicant should provide costs. In general, the Board anticipates that this would be confined to work necessary to assess potential effects on individuals or groups of individuals and to work that would not duplicate work done by the applicant or other interveners.

The Board finds that both the Northeast Strathcona County Residents and Mr. Smulski have established that they may be directly affected by the proposal and are therefore eligible to apply for advance intervener funding. In the case of Ms. Brown, the Board did not find that her submission to the Pre-Hearing identified sufficient effects to establish that she would be directly affected by the proposed expansion.

7. FUNDING ADVANCES

Northeast Strathcona County Residents

The Northeast Strathcona County Residents group identified a number of experts for which it sought funding assistance. The Board found the descriptions of the proposed work to be vague and was not able to get satisfactory clarification during the Pre-Hearing Meeting. The Board considered the likely benefit to the application review process of engaging independent experts in addition to those who will review the application on behalf of Alberta Environment and the Board. In those areas where the Board was satisfied that financial assistance would benefit the review it has awarded advance funds. The advance funding is to be provided by Agrium. The Board reminds the intervener that a final cost award will be decided when all expenditures have been accounted for and justified. The Board has determined:

- a. **Analytical Costs** – The Board is not prepared to award any advance funds to collect data. The Board believes that the purpose of intervener funding is to allow interveners to undertake a critical assessment of the application to the NRCB. The responsibility to collect adequate data to identify the effects associated with a proposed project, and any risk of denial of the application arising from inadequacies in the assessment, rests with the applicant.
- b. **Costs Related to Facilitating the Intervention** – The Board is pleased that residents who share similar concerns have agreed to work together with the assistance of Ms. Klimek and Ms. Goodwin and is prepared to direct an advance of funds to support their work. This coordinated approach will facilitate the hearing process. The Board does not believe that efforts associated with “finalizing statements of concern” are eligible for intervener funding.
- c. **Potential Impacts of Fluoride Emissions** – The Board supports the interveners’ need to obtain funding to pursue effects of fluoride contamination on the environment and on human health. While none of the experts work proposals provided enough detail for the Board to assess their merits, the Board is prepared to accept that Dr. Baker’s review of the risks associated with fluoride emissions and particulates is appropriate.

The Board also believes that a need for funding Dr. Limeback’s work has been established. However, the Board finds that Dr. Limeback’s role should be limited to the critical review of the application and should not include interviews or photographs of residents’ teeth.

The Board does not believe that the need for the work proposed by Dr. Krook was established. The Board finds that part of the proposed work includes data collection, which the Board is not prepared to support. The Board also finds that another part of Dr. Krook’s work overlaps with Dr. Baker’s work plan.

- d. **Potential Impact of Naturally Occurring Radioactive Materials** – The Board is satisfied that the proposal to have Dr. Resnikoff review the potential impacts of

radioactive materials is reasonable and is important for the Board and the intervener to obtain an understanding of this issue.

- e. **Other Issues** –The Board does not believe the Northeast Strathcona County Residents group has established the need to fund an independent review of the noise assessment. The Board has access to expertise in this area and will ensure a complete evaluation of the assessment.
- f. The advance cost awards are summarized in Appendix B. These costs are to be paid by Agrium to Ms. Klimek at the earliest convenience.

Mr. Smulski

Mr. Smulski’s proposal for intervener funding was too vague for the Board to make any decisions with respect to advance funding or what may be expected in terms of a final costs claim. The Board would suggest that once Mr. Smulski develops his proposal further, he may wish to approach Agrium directly to discuss the potential for reaching an agreement on costs.

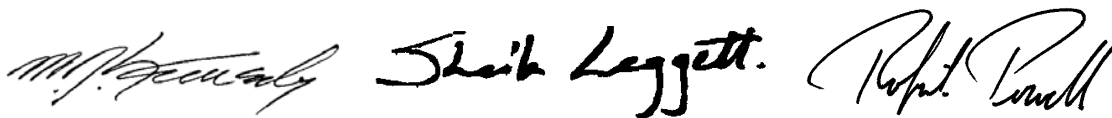
8. SUMMARY

The Panel has scheduled a hearing to commence February 23, 2004 in Fort Saskatchewan. Notice of the location and times will be published one month prior to the hearing. Participants in the Pre-Hearing Meeting will also be notified directly. The deadline for written interventions is February 13, 2004. Copies of such interventions should be made available to the participants of this meeting, who are listed in Appendix A.

The Board is directing Agrium Products Inc. to make the advances set out in Appendix B.

DATED at Calgary, Alberta on December 29, 2003.

NATURAL RESOURCES CONSERVATION BOARD



William Y. Kennedy
Division Chair

Sheila Leggett
Board Member

Dr. Robert Powell
Acting Board Member

Appendix A

Pre-Hearing Meeting Participants Fort Saskatchewan, December 17, 2003

Agrium Products Inc. (Agrium)
Richard Neufeld

Alberta Environment
Heather Veale
Michelle Williamson

Northeast Strathcona County Residents
Jennifer Klimek

Anne Brown

Ken Smulski

Natural Resources Conservation Board
Kurt Stilwell
Susan Schlemko

Appendix B
Funding Requests

| Intervener | Requested ¹ | Recognized Costs | Advance |
|--|------------------------|------------------|------------------|
| Northeast Strathcona County Residents | | | |
| Analytical | \$ 11,500 | \$ 0 | \$ 0 |
| Dr. Limeback | \$ 14,270 | \$ 10,000 | \$ 6,000 |
| Dr. Krook | \$ 18,466 | \$ 0 | \$ 0 |
| Dr. Baker | \$ 14,125 | \$ 14,125 | \$ 9,000 |
| Dr. Resnikoff | \$ 23,398 | \$ 23,398 | \$ 16,000 |
| Dr. Schindler | \$ 10,500 | \$ 0 | \$ 0 |
| Mr. Farquharson | \$ 5,800 | \$ 0 | \$ 0 |
| Ms. Goodwin | \$ 12,000 | \$ 12,000 | \$ 8,000 |
| Ms. Klimek | \$ 30,425 | \$ 29,350 | \$ 10,000 |
| Total: | \$ 140,484 | \$ 88,873 | \$ 49,000 |

¹ Amounts presented in the submission in \$US have been converted to \$C at the exchange rate of 1.32834 \$C/\$US.