



Environmental Appeal Board

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DECISION NO. 2016-EMA-064(a)

In the matter of an appeal under section 100 of the *Environmental Management Act*, S.B.C. 2003, c. 53.

BETWEEN:	Suncor Energy Inc.	APPLICANT (THIRD PARTY)
AND:	City of Burnaby	APPELLANT
AND:	Director, <i>Environmental Management Act</i>	RESPONDENT
BEFORE:	A Panel of the Environmental Appeal Board Alan Andison, Chair	
DATE:	Conducted by way of written submissions concluding on April 8, 2016	
APPEARING:	For the Applicant: For the Appellant: For the Respondent:	Sharon M. Urquhart, Counsel Richard E. Bereti, Counsel Stephen E. King and Cory Bargaen, Counsel

PRELIMINARY ISSUE OF STANDING TO APPEAL

APPLICATION

[1] The City of Burnaby (the "City") appealed two certificates of compliance issued on December 22, 2015 to Suncor Energy Inc. ("Suncor") by Peter Kickham, delegate for the Director, *Environmental Management Act* (the "Director"), Ministry of Environment (the "Ministry"). One certificate of compliance was issued in relation to City land (Appeal No. 2016-EMA-065); the other was issued for adjacent land owned by Suncor (Appeal No. 2016-EMA-064).

[2] In a letter dated February 3, 2016, Suncor challenged the City's standing to appeal the certificate of compliance pertaining to Suncor's land (hereinafter, the "Suncor Land Certificate"). Specifically, Suncor submits that the City is not "a person aggrieved" by the issuance of the Suncor Land Certificate within the meaning of section 100(1) of the *Environmental Management Act* (the "Act"). Suncor takes no issue with the City's appeal of the certificate of compliance issued in relation to the City's land.

[3] This application has been conducted by way of written submissions.

BACKGROUND***The properties***

[4] Suncor is the registered owner of a triangular shaped property located between Imperial Street and Kingsway in Burnaby, British Columbia, with a street address of 5955 Kingsway. Imperial Street lies along the north boundary of the property and Kingsway lies along the southwest boundary. A Petro-Canada service station and service garage were operated on the Suncor property from approximately 1963 to 1996, when the facilities were decommissioned. The property is currently vacant.

[5] The City is the owner of the portions of Imperial Street and Kingsway, the roadways adjacent to the Suncor property. The City has no legal or equitable interest in the Suncor property.

Contamination and the applications for certificates of compliance

[6] In 1995, site investigations for contamination were conducted on the Suncor property. The soils and groundwater on the Suncor property were found to be contaminated by petroleum hydrocarbon constituents, and this contamination was found to have migrated onto the adjacent City land.

[7] Suncor voluntarily remediated the contamination. It performed a remedial excavation program in 1996. In addition, a dual-phase extraction remedial system operated from August 1999 through July 2005 to recover residual petroleum hydrocarbon constituents in soil, groundwater and soil vapour. Suncor then began to work through the process of obtaining "certificates of compliance" from the Ministry of Environment for both properties.

[8] Certificates of compliance are issued under section 53 of the *Act*, the relevant portions of which are as follows:

53(3) A director, in accordance with the regulations, may issue a certificate of compliance with respect to remediation of a contaminated site if

- (a) the contaminated site has been remediated in accordance with
 - (i) the numerical or risk based standards prescribed for the purposes of the definition of "contaminated site",
 - (ii) any orders under this Act,
 - (iii) any remediation plan approved by the director, and
 - (iv) any requirements imposed by the director,

...

- (6) A director may issue ... a certificate of compliance for a part of a contaminated site.

[9] In order to obtain a certificate of compliance under section 53 of the *Act*, an applicant must provide the Ministry with a number of things under the *Contaminated Sites Regulation*, B.C. Reg. 375/96 (the "*Regulation*"), including preliminary and detailed site investigation reports, and a confirmation of remediation report which describes the sampling and analyses carried out after remediation of the contamination. Remediation standards, criteria and conditions are detailed in various schedules to the *Regulation*.

[10] In addition to the *Act* and the *Regulation*, there are protocols and technical guidance documents applicable to the remediation of contaminated sites.

[11] Between 2008 and 2014, Suncor's environmental consultant, Parsons Canada Ltd. ("Parsons"), completed the work in support of the certificate of compliance applications for both properties. Parsons conducted additional environmental investigations on both Suncor's property and the adjacent lands. Of relevance to the City's arguments on this preliminary application, the investigations identified volatile organic compounds ("VOCs") in the deeper groundwater table on both properties; specifically, trichloroethylene and 1,1-dichloroethelyne. Based on its investigations, Parsons concluded that the VOC plume came from an upgradient property, not the Suncor site. This VOC contamination was not delineated or remediated.

[12] In February of 2015, Parsons provided the City with a report containing the results of Parsons' environmental testing activities on the City's property, and an update on the regulatory process. Parsons stated that the investigations and report were in furtherance of obtaining certificates of compliance. Of note, Parsons' report discussed the VOCs and reported its conclusions as to their likely upgradient source. Parsons advised that, as the VOCs "appear to have originated from an upgradient property", not Suncor's property, Suncor would not be taking responsibility for the VOCs.

[13] Suncor submitted the required materials to an Approved Professional in accordance with Procedure 12 issued by the Ministry.¹

[14] On December 22, 2015, the Director issued a certificate of compliance for the City land and the Suncor Land Certificate. Both certificates outlined the substances remediated, and the applicable standards for such remediation. Of note, certain substances in both the soil and the groundwater were remediated to "risk based standards".

¹ The Ministry has created 16 procedure documents that are used to "guide administration on contaminated sites legislation and regulations". Procedure 12 is titled "Procedures for preparing and issuing contaminated sites legal instruments", which include certificates of compliance.

The appeals and the application

[15] On January 21, 2016, the City appealed the issuance of both certificates of compliance. Only the Suncor Land Certificate is at issue in this application.

[16] The City asks the Board to quash the Suncor Land Certificate on the general grounds that the Director's decision to issue a risk-based certificate of compliance for the Suncor property was unreasonable and contrary to law. Its specific grounds for appeal are summarized as follows:

1. Suncor's application for a certificate of compliance failed to meet all of the applicable requirements. As a result, the City's lands were not properly remediated in accordance with the applicable remediation standards under the *Act*, and the Suncor Land Certificate ought not to have been issued. In particular, Suncor:
 - failed to properly delineate and remediate the entire area of contamination;
 - failed to complete a proper investigation and remediation of the contamination that migrated from the Suncor property onto the City's lands to the applicable standards;
 - failed to meet its consultation obligations to the City; and
 - did not comply with the *Act*, the *Regulation* and the applicable protocols, guidances and procedures.
2. The Director breached the rules of procedural fairness and natural justice owed to the City, as the affected parcel owner, by:
 - failing to ensure that Suncor properly communicated, informed and consulted with the City regarding the contaminants and the remediation;
 - failing to provide the City with a full and fair opportunity to provide comments with respect to the environmental investigation, remediation and risk assessment relevant to the City lands;
 - failing to ensure that Suncor obtained and shared with the Director, all of the City's comments relevant to the applications;
 - failing to meaningfully consider the City's comments and/or failing to explain why the City's comments were not reflected in the Director's decision; and
 - failing to provide the City with a copy of the draft certificates of compliance along with an opportunity to comment prior to the issuance of the final certificates.

[17] Many of these grounds are also the City's grounds for appeal of the certificate issued for its lands.

[18] The Board joined the appeals for the purposes of a hearing. At the request of the parties, the Board agreed to hear the appeals by way of written submissions.

[19] Before the written submission schedule was finalized, Suncor applied to have the City's appeal of the Suncor Land Certificate dismissed on the grounds that the City is not "a person aggrieved" by the issuance of that certificate within the meaning of section 100(1) of the *Act*.

RELEVANT LEGISLATION AND THE LEGAL TEST

[20] The following section of the *Act* is relevant to the issue of standing:

100(1) A person aggrieved by a decision of a director or district director may appeal the decision to the appeal board.

[Emphasis added]

[21] Over the years, the Board has interpreted the words "a person aggrieved" in section 100(1) of the *Act* to mean that an appellant must establish that he or she "has a genuine grievance because an order has been made which prejudicially affects his interests." This was based, in part, upon a decision of the House of Lords in *Attorney General of the Gambia v. N'Jie*, [1961] 2 ALL E.R. 504 (P.C.), which found as follows:

The words "person aggrieved" are of wide import and should not be subjected to a restricted interpretation. They do not include, of course, a mere busybody who is interfering in things that do not concern him; but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests.

[Emphasis added]

[22] In *Gagne v. Sharpe*, 2014 BCSC 2077 [*Gagne*], the BC Supreme Court confirmed the Board's interpretation of "a person aggrieved". The Court also clarified that a person seeking to appeal a decision under the *Act* must show how his or her specific interests are prejudiced – prejudiced in a way that is particular to the individual - and that the prejudice be established on a *prima facie* evidentiary standard. The Court states at paragraph 74:

... I also agree with the respondents when they say that the word "aggrieved" must have some meaning that separates a challenger from the general public and the Board may require a challenger to establish, on a *prima facie* basis, something more than a subjective genuine interest. Simply stated, a person aggrieved must demonstrate some form of prejudice to their individual interest, albeit only on a *prima facie* basis.

[Emphasis added]

[23] In a subsequent oral judgment delivered by the BC Supreme Court on a judicial review from the Board's reconsideration of its standing decision (*Gagne v. Environmental Appeal Board*, Victoria 14-3037, October 31, 2014) [*Gagne #2*], the Court addressed the meaning of a *prima facie* evidentiary standard. The Court applied the following general principles from *In the Matter of a Production Order*, (6 July 2006), Vancouver BL0455 (B.C.S.C.):

[26] Justice Hollinrake in the oral ruling cited earlier provided the additional clarification that what must be shown is more than a mere allegation of fact, but less than proof on a balance of probabilities. The "prima facie" evidentiary standard means that the petitioners must present some evidence beyond [m]ere assertions, but short of proof on a balance of probabilities.

[Emphasis added]

[24] Applying that standard, the Court in *Gagne #2* then found as follows at paragraph 24:

It is not inconsistent with the *prima facie* standard to require at least some objective evidence of how the amendment prejudicially affects a person's interests. In my view, it was not unreasonable for the Board to conclude that the evidence of the petitioners was insufficient in these particular circumstances. Even on a *prima facie* standard, the burden is on a person seeking standing to disclose enough information or evidence to allow the Board to reasonably conclude that the person's interests are, or may be, prejudicially affected. It was the Board's view of the totality of the evidence that the claim of the petitioners failed to meet this burden, even on a *prima facie* basis.

[Emphasis added]

[25] The Court's reference to objective evidence and a reasonableness standard in *Gagne #2*, builds upon the Court's previous comment in *Gagne* when it stated that "the Board may require a challenger to establish, on a *prima facie* basis, something more than a subjective genuine interest." (paragraph 74).

ISSUE

[26] The sole issue to be decided is whether the City has provided sufficient evidence to establish, on a *prima facie* basis, that the Suncor Land Certificate prejudicially affects the City's interests, such that it is "a person aggrieved" under section 100(1) of the *Act*.

DISCUSSION AND ANALYSIS

Whether the City has provided sufficient evidence to establish, on a *prima facie* basis, that the Suncor Land Certificate prejudicially affects the City's interests, such that it is "a person aggrieved" under section 100(1) of the *Act*.

The Parties' submissions

[27] The City submits that it is "objectively and *prima facie*" a person aggrieved by the decision of the Director to issue the Suncor Land Certificate, which conclusively determines the adequacy of Suncor's delineation and remediation efforts with respect to the City's lands.

[28] The City submits that the following factors establish prejudice, on a *prima facie* basis, to the City's individual interests as a result of the Director's decision to issue the Suncor Land Certificate:

- Suncor's historic operation of a service station resulted in contamination of soils and groundwater at the Suncor property and the adjacent City roads.
- The Suncor property and the City roads were rendered a single contaminated site and Suncor relied on the same materials in applying for the two certificates.
- The City is an innocent victim of contaminated migration and is, therefore, exempt from responsible person status in relation to the impacted City roads pursuant to section 46(1)(j) of the *Act*.
- Suncor was required to complete a proper delineation and remediation of the entire area of contamination sourced from the Suncor property, including contamination which migrated from the Suncor property onto neighbouring properties.
- The Director ought to have required Suncor to properly delineate and remediate all contamination on the City roads sourced from the Suncor property pursuant to Protocol 6. Section 4.5 of that Protocol required Suncor to complete a proper delineation and remediation of the entire area of contamination sourced from the Suncor property, including contamination which migrated to neighbouring properties. However, the City asserts that Suncor completed a partial environmental investigation and remediation of its property and the impacted City roads, and obtained risk-based certificates of compliance for both properties. [City's emphasis]
- The City is aggrieved by the decision because the Suncor Land Certificate conclusively determines the adequacy of Suncor's delineation and remediation efforts in respect of the City lands. By issuing that certificate, the Director effectively concluded that all contamination that originated from the Suncor property, including contamination that migrated to City land, had been properly delineated (laterally and vertically) and remediated to applicable standards. The City disagrees. To address the propriety of the delineation and remediation on City roads, the propriety of delineation and remediation on the Suncor property must be examined in this appeal.
- Suncor did not delineate and remediate VOC contamination on City roads on the basis that it did not originate on Suncor's property; it originated upgradient. The City submits that VOC contamination may still pose a risk, thus a prejudice, to the City. It argues that there was insufficient evidence for Parsons' conclusion on where the contamination originated and that the Director should have required Suncor to address the contamination on the City land as a

condition of issuance of the Suncor Land Certificate in accordance with Protocol 6. The City states:

Key to the Board's assessment of this issue is the science employed and conclusions reached by Suncor in respect of VOC contamination on the Suncor property. This is one example of a key technical issue that the City requires standing to address in detail through its appeal of the certificate for the Suncor Property.

- By issuing the Suncor Land Certificate without requiring Suncor, "as a condition of the issuance of that specific certificate," to properly delineate and remediate all contamination on the City roads sourced from the Suncor site, the Director has "deprived the City of the significant benefit to which it was entitled". The City submits that "this is real, substantial prejudice to the City's interests, arising from the decision."

[29] In summary, the City submits as follows:

The site is singular and the certificates interrelated. To divide the appeal in respect of one contaminated site by virtue of the issuance of two certificates would be artificial and would unnecessarily and unfairly hamstring the City and the Board in pursuing all areas of inquiry, technical and legal, that may properly follow from the City's notice of appeal. Ultimately, it would be a highly unjust result, contrary to the principles underpinning the *EMA* and Protocol 6, for the certificate of compliance for the City Roads to be rescinded (if the City is successful in establishing that Suncor failed to properly delineate and remediate its contamination on the City Roads), but the certificate for the Suncor Property to remain in place.

[30] In support of its arguments, the City provided a letter dated March 17, 2016 from a professional hydrogeologist and Approved Professional, Reg North, Core 6 Environmental Ltd. Mr. North conducted a preliminary review of the certificates of compliance and the documents/reports that were submitted in support of Suncor's applications for the certificates. Mr. North identified several issues which, in his opinion, are "potentially significant", in that they could impact the conclusions of the detailed site investigation for the Suncor property and the off-site lands. In particular, he identifies contradictions, deficiencies and data that suggest that the Suncor property may not be a "flow-through" site for the VOCs; rather, it may be the source of the VOCs. If so, Mr. North states that further characterization will be required both on and off the Suncor property to delineate this contamination.

[31] In addition, Mr. North states that the presence of additional metals should be investigated on the Suncor site, a complete investigation for metals in groundwater should be performed, and a detailed risk assessment.

[32] The Director takes no position on whether the City has standing to appeal the Suncor Land Certificate.

[33] Suncor argues that the City has not been prejudiced by the Director's decision; therefore, the City is not "a person aggrieved" within the meaning of section 100(1) of the *Act*. Suncor does not dispute that the City roads were historically impacted by contamination emanating from the Suncor property, but submits that the impact is just that, historic.

[34] The City lists a number of factors that it says "establishes demonstrable prejudice" to its interests. Suncor disagrees with this claim.

[35] First, Suncor states that there is not a "single contaminated site"; rather, there are separate properties owned by different parties. While Suncor relied upon the same material in support of its applications, it submits that this has no impact on whether the City is prejudiced by the Director's decision to issue the Suncor Land Certificate.

[36] In addition, pursuant to section 4.5 of Protocol 6, an applicant is only required to delineate the entire area of the contamination if the applicant is a "responsible person" for the contamination as defined in the *Act*. Suncor submits that it was not required to delineate the VOC contamination because, according to its environmental investigations, this contamination originated from an upgradient source. Suncor is not responsible under the *Act* for that contamination. However, Suncor submits that it provided the information required for it to establish non-responsibility for the flow-through contamination, and did delineate the VOCs within the Suncor property, which is what the Ministry required.

[37] Suncor argues that the decision to issue the Suncor Land Certificate is consistent with the purposes of Part 4 of the *Act*, which includes the expeditious remediation of contaminated sites. It is also in accordance with section 53(6) of the *Act*, which allows a certificate of compliance to be issued for part of a contaminated site.

[38] With respect to Mr. North's letter, Suncor submits that it contains mere assertions and simply puts into question whether Suncor's property is the source of the VOC contamination. Suncor further submits that, while the City suggests that there are certain evidentiary gaps in Parsons' investigation report, it has "failed to provide any evidence (i.e. some proof) which indicates that the Suncor Property is actually a source site of the VOC contamination." Suncor argues that this does not satisfy the *prima facie* standard of proof. Moreover, Suncor maintains that Parsons' investigations are addressed in its reports and there is no positive evidence that they are incorrect.

[39] In the alternative, even if Mr. North's preliminary opinions are accepted as providing some proof that the Suncor property was the potential source of the VOC contamination, Suncor submits that the City has not established that it is prejudiced by the issuance of the Suncor Land Certificate. Even if the VOC contamination originated on Suncor's property and migrated to the City's land, this does not mean that the City has standing to appeal the Suncor Land Certificate. Suncor submits that, under the *Act*, the property to which contamination migrated can be dealt with separately from the source site. In support, Suncor relies on the Board's decision in *455161 BC Ltd. v. Director*, (Decision No. 2010-EMA-007(b), September 15, 2011) [*455161 BC Ltd.*].

[40] In *455161 BC Ltd.*, the Board found that it was not necessary for the contamination on the neighboring property to be delineated and remediated in order to grant a certificate of compliance for the source property. The Board found that directors under the *Act* have a broad range of statutory tools to address contamination on neighboring properties: directors can address migration onto neighboring properties separately.

[41] Although the City argues that the Suncor Land Certificate determines the adequacy of the delineation and remediation efforts in respect of the City's lands, Suncor disagrees. It submits that, if evidence becomes available that the VOC contamination originated on the Suncor property, the Director may make an order for further remediation of the Suncor property under Part 4 of the *Act*, despite the existence of the Suncor Land Certificate. This is authorized by section 60, which states:

Government retains right to take future action

60 A director may exercise any of a director's powers or functions under this Part, even though they have been previously exercised and despite any voluntary remediation agreement, if

- (a) additional information relevant to establishing liability for remediation becomes available, including information that indicates that a responsible person does not meet the requirements of a minor contributor,
- (b) activities occur on a site that may change its condition or use,
- (c) information becomes available about a site or a contaminating substance at the site that leads to a reasonable inference that the site poses a threat to human health or the environment,
- (d) a responsible person fails to exercise due care with respect to any contamination at the site, or
- (e) a responsible person directly or indirectly contributes to contamination at the site after previous action.

[Suncor's emphasis]

[42] Accordingly, Suncor submits that the Director's decision to issue the Suncor Land Certificate does not prevent the Director from making a subsequent order regarding remediation if new information becomes available about contamination, and Suncor is responsible for the contamination.

[43] Suncor also refers to and relies upon the Board's decision in *427958 B.C. Ltd. (dba Super Save Group of Companies) v. Deputy Director of Waste Management*, Decision No. 2004-WAS-007(a), November 2, 2004 [*Super Save*]. In that case, Super Save appealed an approval in principle ("AIP") issued to BC Hydro and Power Authority ("BC Hydro"), approving a remediation plan for the BC Hydro lands. Super Save appealed the AIP on the grounds that the Deputy Director failed to adequately investigate off-site impacts of the contamination. Super Save asked the

Board to amend the AIP to require investigation of the off-site impacts for the purposes of including a requirement in the AIP to remediate any contamination on Super Save's land.

[44] BC Hydro challenged Super Save's standing to appeal the AIP on the grounds that it was an adjacent property owner, and was not aggrieved by the AIP.

[45] The Board found that Super Save was not a person aggrieved by the AIP, and dismissed its appeal. The Board found as follows at page 9:

... the Panel notes that section 27.6(6) of the [Waste Management] *Act* states that the Deputy Director "may issue an approval in principle... for part of a contaminated site."² Therefore, even if Super Save's lands were contaminated by migrating contaminants originating from the BC Hydro Properties, the Deputy Director is not precluded from issuing an approval in principle for part of a contaminated site. In addition, the Panel notes that the power to issue an approval in principle must be considered in light of the purposes of Part 4 of the *Act*, which include the expeditious remediation of contaminated sites. The Panel finds that, even if Super Save's property was contaminated by migrating contaminants, refusing to issue the AIP until after Super Save's concerns are resolved would delay the remediation on the BC Hydro Properties and the Transport Canada property.

[46] The Board also states at pages 9-10:

With regard to Super Save's claim that the BC Hydro Properties could be re-contaminated by Super Save's property after the BC Hydro Properties are remediated, the Panel notes that such concerns can be addressed as the remediation work progresses. In addition, the Panel notes that the AIP states as follows at page 2:

The provisions of this approval are without prejudice to the right of the ministry to make orders or to require additional remedial measures as the ministry may deem necessary in accordance with applicable laws and nothing contained in this approval shall in any way restrict or impair the ministry's powers in that regard.

Thus, the Panel finds that, should circumstances change or new information arise in the future, the Deputy Director may exercise his discretion under the *Act* to require additional remedial action to address the contamination on Super Save's property. Furthermore, the Panel notes that, if Super Save remediates its property, and evidence establishes that the contamination on its property originated from the BC Hydro Properties, Super Save may apply to recover its reasonably incurred remediation costs from BC Hydro under section 27(4) of the *Act*.

[47] Suncor points out that the Suncor Land Certificate includes a term similar to the one in BC Hydro's AIP. The Suncor Land Certificate states:

² This authority is now found in section 53(6) of the *Environmental Management Act*.

The provisions of this Certificate of Compliance are without prejudice to the right of the Director to make orders or impose requirements as the Director may deem necessary in accordance with applicable laws. Nothing in this Certificate of Compliance will in any way restrict or impair the Director's power in this regard.

[48] Suncor argues that, as in *Super Save*, the issuance of the Suncor Land Certificate will not preclude the Director from taking further action should it subsequently be determined that the VOC contamination originated from the Suncor property. Therefore, the City cannot be aggrieved due to the Director's decision to issue the Suncor Land Certificate.

[49] Suncor submits that the evidence upon which the Suncor Land Certificate is based "establishes conclusively that the contamination on the Suncor Property is stable and receding. That contamination poses no further threat to the City Roads." It submits that there is no information or evidence to suggest that the standards to which the Suncor property has been remediated will adversely or negatively affect the City roads and/or the City's interests as the owner of the roads.

[50] Further, Suncor argues that the remaining contamination on the Suncor property does not, in any way, prejudice the City's individual interest and, by extension, neither does the Suncor Land Certificate. In the absence of such prejudice, Suncor submits that the City has no standing to appeal the Suncor Land Certificate.

[51] Finally, Suncor notes that, while the City has a policy not to accept risk-based certificates of compliance, this policy should not be determinative of its standing to appeal. The *Act* specifically allows certificates of compliance to be issued on the basis of risk-based standards.

The Panel's findings

[52] To establish standing, an appellant must provide evidence or information that, on its face, demonstrates that the appealed decision prejudicially affects the appellant's interests, as distinct from those of the general public. In the present case, the Panel agrees with Suncor that the City does not meet that test. The Panel finds that the City has not established that it is a person aggrieved by the Suncor Land Certificate.

[53] Similar to the Board's findings in *Super Save*, the City has not demonstrated some form of prejudice on a *prima facie* basis. While it clearly has standing to appeal the certificate of compliance issued for its lands, its submissions on this application amount to speculation and/or mere assertions. In relation to Mr. North's letter, the Panel finds that his preliminary opinions are relevant to the City's appeal of the certificate of compliance for its own lands, but his opinions do not assist the City in establishing that it is aggrieved by the Suncor Land Certificate. The Panel finds that, even if there are defects in Parsons' investigations and reports, as alleged by Mr. North, the City is only prejudiced by, or has a genuine grievance, if those defects mean that the contamination has not been remediated on the City's property, or the contamination is flowing onto the City's property. Those are matters relevant to its appeal of the certificate issued for its land. At this

time, there is no evidence of any kind that the issuance of the Suncor Land Certificate, whether that certificate was properly issued or not, impacts the City's interests.

[54] The Panel also agrees that nothing turns on whether the site was considered as a single site or two sites in this case. For the purposes of assessing the applications for certificates of compliance, the Director treated them as separate properties and they were given separate certificates.

[55] In support of its standing to appeal the Suncor Land Certificate, the City states: "To address the propriety of the delineation and remediation on City Roads, the propriety and remediation on the Suncor Property must be examined in this appeal." The Panel disagrees. In the Panel's view, its decision on standing does not prevent the City from presenting evidence and argument regarding the delineation and remediation on Suncor's property, if that evidence and argument is relevant to the contamination, delineation and remediation of the City's land. To the contrary, as noted by both parties, Suncor relied upon the same materials when applying for the two certificates. What was or was not done on the Suncor property, may well be relevant to the propriety of the delineation and remediation of contamination on the City's land in support of the certificate of compliance issued for that land.

[56] Finally, the Panel finds that, even if there are flaws and/or defects in the investigation, delineation and remediation of the Suncor property, within this statutory regime, this does not mean that the City is aggrieved by the Suncor Land Certificate. The Panel agrees with the Board's analysis of the legislation in *455161 BC Ltd.* and in *Super Save*. Similar to *Super Save*, the Panel finds that, if contaminants on the City's property have not been addressed by Suncor's remediation activities, that contamination may be the subject of additional regulatory action. This is the way that this regulatory scheme is intended to work.

[57] In conclusion, the Panel finds that the City has not provided sufficient evidence to establish, on a *prima facie* basis, that its interests are, or may be, prejudicially affected by the Suncor Land Certificate. The Panel finds that it is not "a person aggrieved" by that certificate under section 100(1) of the *Act*. In arriving at this finding, the Board has not considered, and makes no findings on, the adequacy of Suncor's investigation and remediation that led to the issuance of the Suncor Land Certificate.

DECISION

[58] In making this decision, the Panel has considered all of the evidence and submissions before it, whether or not specifically reiterated herein.

[59] For all of the reasons provided above, the Panel finds that the City has not established that it is "a person aggrieved" by the Suncor Land Certificate within the meaning of section 100(1) of the *Act*.

[60] Accordingly, the appeal is dismissed.

"Alan Andison"

Alan Andison, Chair

April 22, 2016