**BOARD ORDER: MGB 192/99**

**IN THE MATTER OF THE** "Municipal Government Act" being Chapter M-26.1 of the Statutes of Alberta 1994 (the Act).

**AND IN THE MATTER OF AN APPEAL** from a decision of the 1996 Assessment Review Board of the Municipal District of Bonnyville No. 87.

**BETWEEN:**

Amoco Canada Petroleum Company Ltd. - Appellant

- a n d -

Municipal District of Bonnyville No. 87 - Respondent

**BEFORE:**

J. Church, Presiding Officer
J. Schmidt, Member
F. Martin, Member
B. Fenske, Secretariat

Upon notice being given to the affected parties, a hearing was held in the City of Edmonton, in the Province of Alberta on March 9, 1999 to March 15, 1999 inclusive.

This is an appeal to the Municipal Government Board from a decision of the 1996 Assessment Review Board of the Municipal District of Bonnyville No. 87 with respect to property assessments entered in the 1996 assessment roll of the Respondent municipality as follows:

| Roll No. | Year | Legal Description | Improvements (M&E) | Improvements (B&S) |
|---|---|---|---|---|
| **7400002134** | **1996** | **NW 5-67-4-4** | **8,468,040** | **3,077,930** |
| **7400002135** | **1996** | **NE 5-67-4-4** | **24,500** | **60,350** |
| **7400002136** | **1996** | **NE 5-67-4-4** | | **47,620** |
| **7400002137** | **1996** | **NE 5-67-4-4** | | **46,700** |
| **7400002138** | **1996** | **NE 5-67-4-4** | | **46,700** |
| **7400002140** | **1996** | **SE 8-67-4-4** | **180,180** | **76,110** |
| **7400002141** | **1996** | **NE 8-67-4-4** | **313,240** | **64,050** |
| **7400002149** | **1996** | **SW 3-66-5-4** | **488,160** | **293,700** |
| **7400002150** | **1996** | **SE 3-66-5-4** | | **293,700** |
| **7400002151** | **1996** | **NE 3-66-5-4** | **488,160** | **293,700** |
| **7400002152** | **1996** | **NW 3-66-5-4** | **488,160** | **293,700** |

| Roll No. | Year | Legal Description | Improvements (M&E) | Improvements (B&S) |
|---|---|---|---|---|
| 7400002153 | 1996 | NW 3-66-5-4 | 488,160 | 293,700 |
| 7400002154 | 1996 | NW 7-66-5-4 | | 189,360 |
| 7400002155 | 1996 | NW 7-66-5-4 | | 199,640 |
| 7400002157 | 1996 | SW 8-66-5-4 | 207,990 | 80,740 |
| 7400002161 | 1996 | SE 10-66-5-4 | 488,160 | 293,700 |
| 7400002162 | 1996 | SW 10-66-5-4 | 488,160 | 293,700 |
| 7400002163 | 1996 | SW 10-66-5-4 | 480,230 | 293,700 |
| 7400002164 | 1996 | SE 10-66-5-4 | 488,160 | 293,700 |
| 7400002165 | 1996 | SE 10-66-5-4 | 488,160 | 293,700 |
| 7400002166 | 1996 | NE 10-66-5-4 | 488,160 | 293,700 |
| 7400002167 | 1996 | NW 10-66-5-4 | 488,160 | 293,700 |
| 7400002168 | 1996 | NW 10-66-5-4 | 488,160 | 293,700 |
| 7400002169 | 1996 | NE 10-66-5-4 | 488,160 | 293,700 |
| 7400002171 | 1996 | NW 12-66-5-4 | 438,650 | 200,340 |
| 7400002172 | 1996 | NE 12-66-5-4 | 212,740 | 173,900 |
| 7400002173 | 1996 | SE 13-66-5-4 | 438,650 | 200,340 |
| 7400002176 | 1996 | SW 17-66-5-4 | 221,690 | 173,900 |
| 7400002177 | 1996 | SW 17-66-5-4 | 25,370 | 203,350 |
| 7400002178 | 1996 | SW 17-66-5-4 | | 68,620 |
| 7400002179 | 1996 | SE 17-66-5-4 | | 174,130 |
| 7400002180 | 1996 | SE 17-66-5-4 | | 281,210 |
| 7400002181 | 1996 | NE 17-66-5-4 | | 174,250 |
| 7400002182 | 1996 | NW 17-66-5-4 | | 174,130 |
| 7400002183 | 1996 | NW 17-66-5-4 | 473,460 | 328,200 |
| 7400002184 | 1996 | NW 17-66-5-4 | | 171,190 |
| 7400002185 | 1996 | NE 17-66-5-4 | | 174,130 |
| 7400002186 | 1996 | SE 19-66-5-4 | 7,012,220 | 1,811,200 |
| 7400002187 | 1996 | SE 19-66-5-4 | 32,449,130 | 4,682,980 |
| 7400002188 | 1996 | NW 22-66-5-4 | 361,220 | 207,000 |
| 7400002192 | 1996 | NW 33-66-5-4 | | 758,760 |

## BACKGROUND

The properties under appeal are the Amoco Wolf Lake and Primrose facilities located in the Municipal District of Bonnyville No. 87, 50 to 70 kilometres north of the Town of Bonnyville. The Primrose Facility, primarily used to generate steam, was constructed in 1983. Wolf Lake #1 Plant was constructed in 1985. Wolf Lake #2 Plant was constructed in 1990. All three plants were designed as part of the processing of heavy oil. Amoco became the owner of these facilities in 1992.

The Wolf Lake plants process bitumen from oil sand deposits located approximately 500 metres below surface. Recovery can only be effected through in situ production technologies, whereby heat and pressure are introduced into the reservoir. This is accomplished by injecting high pressure steam down a well for several weeks. When this steam cycle is completed heated bitumen, water and gas are produced from the well until such time production rates decline to a level which justifies another steam cycle. Wells typically undergo seven cycles over a five to seven year period.

To minimize costs and environmental disturbance and maximize operational efficiencies, wells are directionally drilled from a central satellite pad. There may be as many as 16 to 22 wells clustered at a single satellite site.

There are 41 roll numbers under appeal. The parties, as the hearing progressed, held discussions IN CAMERA. The issues resolved during the IN CAMERA discussions were:

1. The appeal regarding the assessment of the Primrose steam injection facility was withdrawn.
2. The assessment of the machinery and equipment at the steam injection satellite pads is to be removed, however, the building and structures assessment is to remain.
3. The satellite pad buildings, assessed on a cost basis, are to be assessed according to the 1984 Manual and the reduction is to be added to the machinery and equipment assessment.
4. The Marguerite Lake facility assessment is to be reduced to account for the sale and removal of the laboratory building.

By joint recommendation of counsel for the two parties, the Board makes the following base revisions to the assessments which became the values under appeal. For brevity reasons the Board will use the last four digits of the roll numbers.

| Roll No. | Machinery & Equipment | Buildings & Structures |
|---|---|---|
| Primrose Facility, including 3 Satellite Pads | | |
| 2134 | 8,005,350 | 1,443,190 |
| Satellite Pads, 37 in Total | | |
| 2135 | 24,500 | 60,350 |
| 2136 | | 47,620 |
| 2137 | | 46,700 |
| 2138 | | 46,700 |

| Roll No. | Machinery & Equipment | Buildings & Structures |
|---|---|---|
| 2140 | 180,180 | 76,110 |
| 2141 | 313,240 | 64,050 |
| 2149 | 614,990 | 87,260 |
| 2150 | | 87,260 |
| 2151 | 614,990 | 87,260 |
| 2152 | 614,990 | 87,260 |
| 2153 | 614,990 | 87,260 |
| 2155 | | 97,500 |
| 2157 | | 97,500 |
| 2161 | 614,990 | 87,260 |
| 2162 | 614,990 | 87,260 |
| 2163 | 614,990 | 87,260 |
| 2164 | 614,990 | 87,260 |
| 2165 | 614,990 | 87,260 |
| 2166 | 614,990 | 87,260 |
| 2167 | 614,990 | 87,260 |
| 2168 | 614,990 | 87,260 |
| 2169 | 614,990 | 87,260 |
| 2171 | | 97,500 |
| 2172 | | 97,500 |
| 2173 | | 97,500 |
| 2176 | | 97,500 |
| 2177 | | 97,500 |
| 2178 | | 68,620 |
| 2179 | | 97,500 |
| 2180 | | 97,500 |
| 2181 | | 97,500 |
| 2182 | | 97,500 |
| 2183 | | 97,500 |
| 2184 | | 97,500 |
| 2185 | | 97,500 |
| 2188 | 493,260 | 97,500 |
| 2192 | | 97,500 |
| Marguerite Lake Facility | | |
| 2154 | | 144,080 |

Wolf Lake #1 Plant

| Roll No. | Machinery & Equipment | Buildings & Structures |
|---|---|---|
| 2186 | 7,012,220 | 1,811,200 |
| Wolf Lake #2 Plant | | |
| 2187 | 32,449,130 | 4,682,980 |

Satellite Pads

The assessment, following the joint recommended changes to the assessment roll, includes a total of 41 satellite pads of which.

- 3 are part of the Primrose Facility,
- 1 is referenced as the Marquerite Lake Facility, and
- 37 with no specific reference

All contain assessments for buildings and structures and over one-half of the roll numbers show active machinery and equipment assessments. In most instances, the assessment sheets do not show a breakdown, but only indicate a total for both buildings/structures and machinery/equipment.

Each satellite pad may accommodate from 2 to 21 or more wells.

Typically, a satellite pad has a building which houses valves, manifold, test separator, meters, heat exchanger, chemical injector, together with a vent tank and flare stack.

The issue surrounding these satellite pads relates to whether or not all or part of the assessed components are already captured and assessed as linear property. The parties argued the issue by way of reference to a “Typical Satellite Pad Schematic” which for reference has been attached to this Order as Appendix “C”.

Following the hearing, the Board upon reviewing the evidence, had a question as to what is actually located at the satellite pads. To establish some correlation between the schematic diagram in the Appellant’s evidence and the pictures of the facilities in the Respondent’s evidence, the Board requested a site inspection of a typical satellite pad. Counsel for both parties agreed with this proposal and the site inspection was conducted on May 27, 1999. Present that day were Board Members F. Martin, J. Schmidt, J. Church, and counsel for the parties, G. Ludwig and L. Burgess. The tour was conducted by J. Averil of Amoco, and Board Secretariat, B. Fenske.

Mr. Averil explained the equipment in the facility and traced the flow of product from the wellhead through the satellite pad to the pipeline going to the main plant. In the presence of counsel, the Board Members asked a number of clarifying questions of Mr. Averil. No new evidence was presented nor was there any argument made by the parties' counsel.

Wolf Lake #1 Plant

As of the date of assessment (December 31, 1995), this plant was effectively shut-in. Notwithstanding, certain parts of the plant remain operative and the Respondent's machinery and equipment assessment on the operative part totaled $1,430,510 out of the total assessment of $7,012,220. In arriving at the remaining $5,581,710 assessment on the shut-in part, the Respondent applied the following guideline:

> "If a facility is shut-in but is not being mothballed or dismantled then a 50% reduction to the facilities total assessment is allowed."

Normal depreciation is based on a 20-year age life for machinery and equipment.

Wolf Lake #2 Plant

The Respondent's assessed value is based on construction cost returns received from the Appellant. Normal depreciation is based on a 20-year age life for machinery and equipment. The Respondent takes the position that the Appellant's cost returns on this plant were exclusive of non-assessable costs.

During the course of the hearing, the Board received substantial evidence and argument relating to the various issues identified before and during the hearing. The positions of the parties within this order is intended to be a brief summary of the evidence and argument of the parties. Anyone wanting to undertake an in-depth review of the evidence and argument should consult the exhibits and written transcripts.

**ISSUES**

Satellite Pads

Does the municipal assessment result in double taxation as the satellites are already included in the assessment of linear property?

Are satellite pads linear property?

Wolf Lake #1 Plant

Does the assessment recognize machinery and equipment that is not an integral part of an operational unit?

Should normal depreciation allowed on machinery and equipment be based on a 15-year age life in place of the 20-year age life used by the Respondent?

Wolf Lake #2 Plant

Does the assessment for both machinery/equipment and buildings/structures include non-assessable costs?

Should normal depreciation allowed on machinery and equipment be based on a 15-year age life in place of the 20-year age life used by the Respondent?

For the purpose of clarity, the issues involved in the hearing will be dealt with separately within this order.

**LEGISLATION**

Municipal Government Act

*284(1) In this Part and Parts 10, 11 and 12,*

*(j) "improvement" means*

*(i) a structure,*

*(ii) any thing attached or secured to a structure, that would be transferred without special mention by a transfer or sale of the structure,*

*(iv) machinery and equipment;*

*(k) "linear property" means*

*(iii) pipelines, including*

*(A) any continuous string of pipe, including loops, by-passes, cleanouts, distribution meters, distribution regulators, remote telemetry units, valves, fittings and improvements used for the protection of pipelines intended for or used in gathering, distributing or transporting gas, oil, coal, salt, brine, wood or any combination, product or by-product of any of them, whether the string of pipe is used or not,*

*(C) any pipe in a well intended for or used in*

*(I) obtaining oil or gas, or both, or any other mineral,*

*(II) injecting or disposing of water, steam, salt water, glycol, gas or any other substance to an underground formation,*

*(III) supplying water for injection to an underground formation, or*

*(IV) monitoring or observing performance of a pool, aquifer or an oil sands deposit,*

*(D) well head installations or other improvements located at a well site intended for or used for any of the purposes described in paragraph ( C) or for the protection of the well head installations,*

*(F) the inlet valve or outlet valve or any installations, materials, devices, fittings, apparatus, appliances, machinery or equipment between those valves in*

*(I) any processing, refining, manufacturing, marketing, transmission line pumping, heating, treating, separating or storage facilities, or*

*(II) a regulating or metering station,*

*or*

*(G) land or buildings;*

*(u) "structure" means a building or other thing erected or placed in, on, over or under land, whether or not it is so affixed to the land as to become transferred without special mention by a transfer or sale of the land;*

*298(1) No assessment is to be prepared for the following property:*
*(z) machinery and equipment, except to the extent prescribed in the regulations;*

Alberta Regulation 365/94

*1 In this Regulation,*
*(g) "machinery and equipment" means materials, devices, fittings, installations, appliances, apparatus and tanks other than tanks used exclusively for storage, including supporting foundations and footings and any other thing prescribed by the Minister that forms an integral part of an operational unit intended for or used in*

*(i) manufacturing,*

*(ii) processing,*

*(iii) the production or transmission by pipeline of natural resources or products or byproducts of that production, but not including pipeline that fits within the definition of linear property in section 284(k)( iii) of the Act,*

*(iv) the excavation or transportation of coal or oil sands, as defined in the Oil Sands Conservation Act,*

*(v) a telecommunications system, or*

*(vi) an electric power system,*

*whether or not the materials, devices, fittings, installations, appliances, apparatus, tanks, foundations, footings or other things are affixed to land in such a manner that they would be transferred without special mention by a transfer or sale of the land;*

## SUMMARY OF APPELLANT'S POSITION

Satellite Pads

The municipal assessment of the satellite pads result in double taxation as the satellite are already included in the assessment of linear property.

To assess the satellite pads as machinery and equipment, the question of what the facility is must be answered. It is a production pad that gathers the flow of bitumen and sends it onto the plant. Incidental to that, there is one test separator that takes the production from one well at a time and separates the bitumen, gas and water for testing to satisfy the AEUB obligations. The bitumen, gas and water are then co-mingled and sent along with the production from the other wells to the processing plant.

To assess the whole production facility as machinery and equipment just because there is one small test separator in the facility, is allowing something that is incidental to the facility to dictate what is the purpose of the whole facility.

To decide what is assessable as linear property and what is assessable as machinery and equipment one must look the definitions section of the Act and in section 284(1) it states:

*(k) "linear property means"*

*(iii) pipelines, including*

*(A) any continuous string of pipe, including loops, by-passes, cleanouts, distribution meters, distribution regulators, remote telemetry units, valves, fittings and improvements used for the protection of pipelines intended for or used in gathering, distributing or transporting gas, oil, coal, salt, brine, wood or any combination, product or by-product of any of them, whether the string of pipe is used or not,*

*(C) any pipe in a well intended for or used in*

*(I) obtaining oil or gas, or both, or any other mineral,*

*(II) injecting or disposing of water, steam, salt water, glycol, gas or any other substance to an underground formation,*

*(D) wellhead installations or other improvements located at a well site intended for or used for any of the purposes described in paragraph ( C) or for the protection of the wellhead installations,*

*but not including*

*(F) the inlet valve or outlet valve or any installations, materials, devices, fittings, apparatus, appliances, machinery or equipment between those valves in*

*(I) any processing, refining, manufacturing, marketing, transmission line pumping, heating, treating, separating or storage facilities, or*
*(II) a regulating or metering station,*

*(G) land and buildings*

The Act does not say, in the "not including" section (F), machinery and equipment that is related to or connected with or in the same chain as a separating facility. It says between the inlet and outlet valves of a facility. Even though there are manifolds and rotary vales that might be related to or associated with a separating facility, they are not between the inlet valve and outlet valve. The term is not association, because everything is associated from the wellhead to the plant, it is all a connected stream. To determine what is or is not included in machinery and equipment, a reasonable look at what the linear assessment intended to cover must be undertaken.

Counsel for the Appellant argued that the principles of statutory interpretation the Board should follow are as set out in *Bon-Secours* v. *Communaute Urbain de Quebec*. The *Bon-Secours* principles are briefly summarized as follows. When deciding on the meaning of legislation, the first step is to have regard to the plain meaning of the words, keeping in mind the purpose of the legislation. Secondly, the legislation should be interpreted strictly or liberally depending on the purpose. Thirdly, if after seeking the plain meaning one is left with two equally reasonable interpretations, only then can you fall back on the presumptions previously used to interpret tax legislation. Falling back on the presumptions is to be used as a way to choose between two reasonable interpretations.

Counsel stated that the two presumptions are (i) there is a doubt about the meaning of legislation, then the benefit of the doubt goes to the taxpayer, and (ii) tax exemptions should be strictly construed.

Regarding the purpose of the legislation at issue in this appeal, the Respondent stated that the purpose of the Act as to provide a good method of raising revenue and to distribute the tax burden equally among taxpayers. The Appellant took the position that the purpose as explained by the Respondent was too general to be of assistance, and argued that the Board should look to the purpose of the sections at issue. Counsel stated that the purpose of the definition of linear property was to attempt to standardize linear property. Whereas the purpose of the definitions of machinery and equipment was to render assessable a certain type of described property.

Following this line of reasoning, the Appellant asked the Board to find that the Satellite wellhead installations fall within the definition of pipeline and accordingly have already been captured in the standardized rates for linear property and should be removed from the municipal roll.

The Board has dealt directly on point with the same issue in Board Order MGB 153/96 where in part the Board stated: "While the Board agrees that gas is separated from the bitumen for the purpose of metering the produce, it is returned and the whole is transported to the plant for processing. In simplistic terms, the produce entering the metering facility is identical to that leaving the facility. Given the unchanged nature of the product, the Board is of the opinion that processing does not take place and the facility is assessed under the Electric Power and Pipe Line Act."

No changes have taken place with respect to the function and operation of the satellite pads since they were considered by the Board in Board Order MGB 153/96.

In recent cases, the Board holds the proper approach is to characterize the property by first looking at the definitions in the Act and the Regulations and then considering the specific facility. The facility, as a whole, must be looked at in determining its proper characterization as either linear property or machinery and equipment.

In terms of comprise, it may be that the separating facility itself and the building is not linear property, falling within the not including part in section (F) which would be consistent with the plain reading of the Act.

It is suggested that, in this instance, the appropriate inlet and outlet valve would be the one just prior and just after the separator and everything else is clearly linear property. The reason there may be some support for this argument is that the incidental component could be considered a separating facility. The Act does not say machinery and equipment that is related to or connected with or in the same chain as a separating facility. It says the inlet value and outlet value or any installations, materials, devices, fittings, apparatus, appliances, machinery and equipment between those valves in a processing facility.

Heavy oil satellite pads are unique. There is none of the processing or treating activity contemplated by the exclusions to the pipeline definition occurring at these pads. They are essentially only a clearing house for heavy oil production and the processing occurs elsewhere. The heavy oil satellites pads fit within the definition of pipeline of s.284(k) of the Act. They are not machinery and equipment and are presently assessed as linear property.

<u>Shut in Equipment at Wolf Lake #1 Plant</u>

The shut in equipment at Wolf Lake #1 Plant should not be liable to assessment as it is not an integral part of an operational unit.

Board Order MGB 153/96, the Board decision that dealt with the 1995 assessment appeal of the same plant, provided that shut in machinery and equipment of the Wolf Lake #1 Plant should receive 100% obsolescence in recognition of its "at rest" state. The assessor re-assessed and

granted a 50% obsolescence for the 1996 tax year and hence the issue was again raised in this appeal.

The same issue was raised and dealt with in Board Order MGB 171/98, VTR Industrial on behalf of Pembina Resources Ltd. v. Municipal District of Foothills No. 31. The Board found the machinery and equipment was not operational and therefore is not consistent with the definition of machinery and equipment under the Act and Alberta Regulation 365/94. Also, there are a number of Alberta Assessment Appeal Board decisions relating to the same issue but under the former legislation, the Municipal Taxation Act.

Improvement, as defined in section 1 of the Municipal Taxation Act, is similar to the definition of machinery and equipment in the Act and the Board found that before the production issue could be addressed, it must first be determined if the equipment in question formed an "integral part of an operational unit." It was concluded the word operational could not be used in isolation from the phrase "integral part of an operational unit". The previous Alberta Assessment Appeal Board chose to address the claim for abnormal depreciation by removing from the assessment for the idled equipment.

Alberta Regulation 365/94 establishes the standards of assessment and in section 1(g) defines machinery and equipment as follows:

> *(g) and equipment means materials, devices, fittings, installations, appliances, apparatus and tanks other than tanks used exclusively for storage, including supporting foundations and footings and any other thing prescribed by the Minister that forms an integral part of an operational unit intended for or used in*
> *(i) manufacturing,*
> *(ii) processing,*
> *(iii) the production or transmission by pipeline of natural resources or products or byproducts of that production, but not including pipeline that fits within the definition of linear property in section 284(k)( iii) of the Act,*
>
> *whether or not the materials, devices, fittings, installations, appliances, apparatus, tanks, foundations, footings or other things are affixed to land in such a manner that they would be transferred without special mention by a transfer or sale of the land;*

The proper interpretation of Regulation 365/94 provides that to be considered as machinery and equipment the subject must be an integral part of an operational unit. If the unit as a whole is not operational, then the property is not assessable. Second, if the unit is in operation, but specific property is disconnected or not in use, then the property cannot be an integral part of that unit, and therefore is not assessable.

The property is entitled to an exemption under section 298(1)(z) of the Act as machinery and equipment for which no assessment is to be prepared. It appears that this is the successor clause to what used to be under the Electric Power and Pipeline Act and Municipal Taxation Act for which no assessment is to be prepared and personal property was included under the old scheme. No assessment should be prepared because it falls under section 298(1)(z) and the only way to get it out of 298(1)(z) is if it can be put squarely within the definition of machinery and equipment under Regulation 365/94.

For economic reasons, the steam side of Wolf Lake #1 Plant had been shut in and mothballed since 1990 and the production side was shut in during the summer of 1994. To mothball the steam side, the system was first purged with nitrogen gas to inhibit corrosion and then the active lines off of the steam header were cut and capped. The feed water pumps were filled with glycol and the lines capped.

The production side was cleaned of sludge and because oil is a natural barrier to corrosion, no further protection is needed except to blind off the lines. This was done by installing a "pancake" where two flanges come together on pipes leading to and from the mothballed equipment. Clearly, the Wolf Lake #1 Plant was not operating on December 31, 1995, except for utility steam, raw water softening, instrument air and water disposal.

It would be very unlikely that the steam side of the plant would ever be restarted because of the distance to all of the new wells. The production side probably will be restarted when enough new wells come on stream to warrant the increase in production capacity. As of December 31, 1995, there was no indication that this would occur in the immediate future and the production and steam portions of the plant were clearly not an integral part of an operational unit.

<u>Wolf Lake #2 Plant</u>

*Non Assessable Allocation*

The Wolf Lake #2 Plant should have received an allocation of 15% to 25% for non-assessable items as the assessment was based on actual reported costs. There is no indication that there was any provision made for the non-assessable items.

A rendition letter is the document submitted by a company to the assessor for any changes to their annual assessment. This letter may be for additions or deletions or for a totally new facility or plant.

The rendition letter for the costs of Wolf Lake #2 Plant was put forward in evidence by the Respondent as a model to show how this reporting should be done. The Appellant suggested during the hearing that the letter contained no provision for non-assessable items and that only total costs had been reported. In this letter there are two columns of numbers, one which

designates the tag numbers of specific items and a corresponding column that reports the total cost of each tag number. Nowhere in the document is there any indication that there was any provision made to delete a percentage of the total cost for non-assessable items such as road costs, premium overtime or extra freight.

During cross examination there was an agreement by the assessor that construction costs in that area of the Province normally would include 15% to 25% for non-assessable items. The assessor further stated that on the face of the evidence, the non-assessables may not have been removed in this rendition letter, however some companies report only the actual costs with the non-assessables removed in their rendition letters.

In considering the facts in this case, the Appellant submitted it appears that the non-assessable costs have not been removed in the assessment under appeal and a downward adjustment of 15% to 25% should be made to the current assessment.

Wolf Lake #1 and 2 Plants (15 year/20 year age-life)

There are three petroleum companies involved in heavy oil production in the Bonnyville area. These companies are: Amoco, Koch, and Esso. Of the three, Amoco and Esso use a similar method of production i.e. the use of high pressure steam to warm the bitumen underground so it can be pumped and transported similar to conventional oil.

In the assessment year under appeal, the Esso facilities were based on a 15-year age life while the Koch and Amoco facilities were based on a 20-year age life. There was a different assessor responsible for the Esso facilities than the Amoco and Koch facilities for the 1996 taxation year under appeal. The Koch and Amoco facilities are roughly the same size, however Koch uses a different “cold” process for recovering the bitumen and may not warrant the same age life as the other two similar plants.

Esso’s operation is at least ten times the size of Amoco’s and may produce as much as 20 times the amount of bitumen. With the two similar type of operations assessed on a different age life basis, there is a question as to whether the much smaller Amoco facilities are assessed equitably with Esso.

The Appellant submitted that the Respondent argues the age life tables in the 1984 Assessment Manual (Alberta Regulation 397/85) direct the assessor to use a 20-year age; however, the Appellant contends that these tables are only a guide and it is the assessor’s discretion whether or not to use them. The Appellant submitted a letter dated March 15, 1992, which stated in the last paragraph that there would be a change in policy regarding heavy oil plants reducing the age life from 20 to 15 years. However, for the 1996 assessment year, this policy had not been implemented. In the Special Property Assessment Guide, presented as part of the Respondent’s evidence, there is a reference on page 1 that “Assessors must use rates provided by the manual to

the extent that they apply." The Appellant contends that this document is only an assessment guide and in effect has no legislative authority.

The issue in this instance is the issue of fairness and equity. If a major facility in the municipality is assessed on a 15-year age life, then applying the principals of fairness and equity as established by the courts, the subject should be also assessed on a 15-year age life.

**SUMMARY OF RESPONDENT'S POSITION**

Satellite Pads

The Respondent submitted it is critical in this analysis to examine the exact wording of the Act. The provisions of the Act are paramount and must be the basis of any analysis of this issue. Section 284(1)(k) of the Act states:

*284(1) In this Part and Parts 10, 11 and 12,*

*(k) "linear property" means*

*(iii) pipelines, including*

*(A) any continuous string of pipe, including loops, by-passes, cleanouts, distribution meters, distribution regulators, remote telemetry units, valves, fittings and improvements used for the protection of pipelines intended for or used in gathering, distributing or transporting gas, oil, coal, salt, brine, wood or any combination, product or by-product of any of them, whether the string of pipe is used or not,*

*(B) any pipe for the conveyance or disposal of water, steam, salt water, glycol, gas or any other substance intended for or used in the production of gas or oil, or both,*

*(C) any pipe in a well intended for or used in*

*(I) obtaining oil or gas, or both, or any other mineral,*

*(II) injecting or disposing of water, steam, salt water, glycol, gas or any other substance to an underground formation,*

*(III) supplying water for injection to an underground formation, or*

*(IV) monitoring or observing performance of a pool, aquifer or an oil sands deposit,*

*(D) wellhead installations or other improvements located at a well site intended for or used for any of the purposes described in paragraph ( C) or for the protection of the wellhead installations,*

*but no including*

*(l) "machinery and equipment" has the meaning given to it in the regulations;*

Alberta Regulation 365/94 establishes the Standards of Assessment. Section 1(g) has defined machinery and equipment as follows:

1 In this Regulation,

*(g) "machinery and equipment" means materials, devices, fittings, installations, appliances, apparatus and tanks other than tanks used exclusively for storage, including supporting foundations and footings and any other thing prescribed by the Minister that forms an integral part of an operational unit intended for or used in*

*(i) manufacturing,*

*(ii) processing,*

*(iii) the production or transmission by pipeline of natural resources or products or byproducts of that production, but not including pipeline that fits within the definition of linear property in section 284(k)( iii) of the Act,*

Firstly, in the analysis, two questions must be asked: 1) Why are these satellites there and 2) what is their fundamental purpose? Evidence presented by the Appellant is that the product could be shipped directly to the main plant. One witness stated that the function of the satellites is not to get production from the ground, in fact, the evidence from several witnesses is that there is a requirement to meter the production for the purposes of AEUB records.

The Respondent submitted that to give justification to their interpretation of the legislation one must look at the history of the standardized rates. Standardization took a weighted average of different types of well sites and grouped them for linear assessment purposes. For example, status grouping 1 is crude oil flow and all wells of a similar depth in that group would be assessed the same. This saved the cost of an assessor inspecting each individual well to determine its assessment. The grouping that the subject satellite sites fits within its status group 5, crude bitumen. In this status group nothing was included for surface equipment, whereas in status group 2 crude oil pump, there is assigned $80.00 for a chemical injector. The chemical injector actually costs $1,900 but because only 10% of these wells have them, the costs were averaged down to $80. The subject satellite sites have considerable machinery and equipment as well as buildings. Because of the differences in the method of production between different oil companies, the satellite sites could not be grouped for assessment under the standardized rates and must be assessed by the Municipal Assessor on an individual basis as machinery and equipment and buildings.

The subject satellites are similar to conventional oil satellites; however, it is coincidental if a conventional oil satellite is located at a well site. In conventional oil, the satellites are located in the centre of the wells that are producing. Each individual well is piped through a flow line to the satellite where the production can be separated and metered. The production from all of the associated wells is combined and routed through a group line to the main plant. These types of satellites are assessed by the municipal assessor as machinery and equipment and buildings as they are not usually located at a well site. The subject satellites are located at a well site but perform

the same function as the conventional oil satellites and should be assessed the same as conventional satellites as machinery and equipment and buildings.

The Appellant and Respondent both agreed that the ordinary principles of interpretation of the Act should be used and that interpretation is most consistent with what the legislation intended. The difference between the parties is the interpretation of the facts as they apply to the legislation.

The Respondent stated that none of the facilities fall within the definitions of the Act, section 284(k)(iii)(A) through (D). Everything, including items that fall within subsection (B) and (D) are subject to the exclusion under subsection (F) and (G). The Appellant argued that the Respondent took a very technical approach. The Respondent stated that they were merely following the clear language of the legislation.

The functions taking place at the satellites are more than just metering. There is separating for the purpose of metering and heating to aid in the separating. Also, there is a chemical injection process, again to aid in separating. The manifolds and rotary valves are also an integral part of the facility as periodically the flow from every well in production must be routed through the separator for testing purposes. Everything within the facility that is part of the production side of the facility is for the separating and metering of the product and falls within the not including sections of (F) and (G). It is between the inlet and outlet valves of a separating facility.

The Appellant argued that no permanent separating takes place. The argument that permanent separation of the product is required for it to be assessed as machinery and equipment has been argued several times before the Board and has been expressly rejected on several occasions. In Board Order MGB 127/97, the Board made a specific note of its previous decision, namely Board Order MGB 153/96 upon which the Appellant now relies. It stated in reference to that decision that: “The Board would also like to draw attention to one decision respecting the subject appeals and that is Board Order MGB 153/96. The Board is of the opinion that the evidence on the face of the Order did not fully address the primary function of a separating facility in accordance with the definition of the Act. The evidence appears to be solely directed to the recombination of the gas and liquid streams without substantive identification of the primary function of separators. Based on the depth of evidence presented by both the Appellant and Respondent in this appeal, the Board is of the opinion that once the initial separation process has occurred, clearly there is an option to route the liquids elsewhere. The separation function has been satisfied and in accordance with the Act the equipment is assessable.”

In the Respondent’s evidence, seven other Board decisions pertaining to separating facilities were presented, all of which determined that the equipment, regardless of its function, is within the inlet and outlet valve of a separating facility and therefore falls to the “not including” portion of the definition of linear property and was therefore assessable as machinery and equipment.

As to what valves are the inlet and outlet valves in the facility, the evidence presented by Mr. Milne, an engineer, identified the inlet valve to be the valve off the wellhead at the flow line, before the product enters the building. He also indicated that there would be as many inlet valves as there are wellheads. Mr. Milne also testified that in his opinion the outlet valve would be the valve which is located on the group production line outside the building which ultimately directs the flow to the plants. Even though the valve is an emergency shut down valve, Mr. Milne considers that for the purpose of the legislation, it should be considered as the facility's outlet value.

To answer the argument made by the Appellant, that as a compromise position the Board should consider the inlet and outlet valve of the actual separator to be the valves surrounding the actual separator, the Respondent stated that this is inconsistent with the legislation and most previous Board decisions. The Board decisions relied upon by the Appellant are the older line of cases and have been distinguished on many occasions by the Board in more recent cases. The trend in the recent cases is to interpret the legislation to include the whole facility as a separating facility. Thus the whole facility falls to the not including section 284(F) and (G).

The precedents relied upon by the Respondent may be summed up in Board Order MGB 127/97. "While each of the satellite test battery sites exists for the purpose of metering; separating does take place within each site therefore all equipment that is between the inlet and outlet valves of the separating facility falls to the excluded portion within the definition as provided in the legislation."

"In order to quality as linear property, the equipment must squarely fall within the legislated definition of liner property. The definition of linear property as it relates to separators is not qualified by whether or not the use falls to process or production, but simply, is not to be included?"

Although the wording in the several board orders pertaining to this issue may differ, the above quoted summarizes the intent of the reasons for the decision of the Board in these cases.

<u>Shut In Equipment at Wolf Lake #1 Plant</u>

Does the assessment of the Wolf Lake #1 Plant facilities property account for all shut in machinery and equipment?

The 50% obsolescence factor for shut in machinery and equipment at the Wolf Lake #1 Plant for the 1996 tax year is appropriate since the equipment is only temporarily shut down and is intended for use in processing heavy oil.

Standards of Assessment Regulation 365/94 defines “machinery and equipment” as follow:

“machinery and equipment” means materials, devices, fittings, installations, appliances, apparatus and tanks other than tanks used exclusively for storage, including supporting foundations and footings and any other thing prescribed by the Minister that forms an integral part of an operational unit intended for or used in

(i) manufacturing
(ii) processing
(iii) the production or transmission by pipeline of natural resources or products or byproducts of that production, but not including pipeline that fits within the definition of linear property in section 284(k)(iii) of the Act.

whether or not the materials, devices, fittings, installations appliances, apparatus, tanks, foundations, footings or other things are affixed to land in such a manner that they would be transferred without special mention by transfer of the land.”

The test is not whether or not the equipment is being used. Even if the equipment is not being used, the equipment may still be an integral part of an operational unit. What is relevant in this determination is the degree of closure or shut down of the machinery and equipment as to whether or not the property remains an improvement. If the plant is capable of operating in the future, it remains assessable as machinery and equipment. There are a number of reasons for assessing the shut in equipment at Wolf Lake #1 Plant for the 1996 taxation year. At the 1995 inspection by the assessor of the plant, he was informed by representatives of Amoco that it was the intention of Amoco to put all of the equipment back on stream. His information was that both the process and the stream generators were going to be reactivated. It was always Amoco’s intention to start up Plant #1. Wolf Lake #3 Plant construction was going to be started and there was going to be an expansion of the Primrose Plant. In August of 1995, Amoco applied to the AEUB to increase production from 3,300 cubit metres per day to 9,100 cubic metres per day.

It is believed that this application was for both the Wabasca region and the Wolf Lake Plants. From the evidence of this application it is clear that the shut down of the Wolf Lake #1 Plant was not a permanent situation that rendered it as not part of an operational unit.

From evidence presented by the Appellant, it was concluded that there was no firm decision to restart the Wolf Lake #1 Plant; however, it also appears that there was also no decision that the plant would be forever shut down. It is probably fair to say that as of December 31, 1995, Amoco did not know what there were going to do with this plant.

In order to satisfy the clear meaning of the legislation “an integral part of an operational unit intended for or used in” (emphasis added), there must be some sort of permanent closure, something to indicate that the plant will never be restarted, like the removal of some of the equipment. The term mothballing was used by the Appellant but in looking at the steps Amoco

used to do this mothballing, there was nothing of a permanent nature performed in the process. There was no indication that the equipment was to be sold or removed for storage. A temporary blinding off of the equipment or a cessation of activities was all that took place and in addition there are still some activities taking place in the plant, like water softening and utility steam.

This is not in any way a permanent shut down of this plant, consequently it should be assessed under the "intended for" part of the definition in the regulation.

The Respondent made a further argument that if the shut in machinery and equipment is not assessable as machinery and equipment it could be properly assessable as a "structure" or something attached or secured to a structure that would be transferred without special mention by a transfer or sale of the structure under the provisions of the Act.

An "improvement" is defined in section 284(1)(j) of the Act and reads, in part, as follows:

*(j) "improvement means"*
- *(i) a structure*
- *(ii) any thing attached or secured to a structure, that would be transferred without special mention by a transfer or sale of the structure.*
- *(iv) machinery and equipment.*

A "structure" is defined in section 284(1)(u) of the Act as follows:

*(u) "structure" means a building or other thing created on or placed in, on, over or under land, whether or not it is so affixed to the land as to become transferred without special mention by a transfer or sale of the land.*

The machinery and equipment in question are structures, being something created on or placed in, over and under land in accordance with section 284(1)(u) of the Act.

The Courts have interpreted the meaning of "structure" and the leading definition is as follows: A structure is something of substantial size which is built up from component parts and intended to remain on a permanent foundation. A broader interpretation of "structure" has been used in a number of situations and the court cases have included a wide variety of items as structures. The items have ranged from tilting furnaces constructed of steel plate, bolted together and resting on their own weight, and gas and blast mains in the Cardiff Rating authority (supra) to the control console in a self service gasoline station in the Gulf Oil Canada Ltd. v. City of Red Deer, Assessment Appeal Board, June 26, 1977.

The Act specifically contemplates that an object can be both machinery and a structure. For example, tuns and tanks in a brewery have been considered both structures and machinery. The size of the property in question is not necessarily determinative of whether or not the property can

fall within the meaning of the term "structure" as demonstrated in the Superior Pre-Kast Septic Tanks Ltd. v. Her Majesty the Queen (1978) where regular septic tanks were given the term structure.

The factors to consider whether or not a property is placed on or over land such that it is assessable as an improvement, are the weight of the property, and whether or not the property is placed in one spot with the idea of remaining there as long as it is used for the purpose for which it is placed on the premises.

An improvement also includes fixtures and, fixtures are property which is attached or secured to a structure, that would be transferred without special mention by a transfer or sale of the structure, in accordance with section 298(1)(j)(ii) of the Act.

The articles that are not otherwise attached to the land by their own weight are not to be considered as part of the land unless circumstances show they were intended to be part of the land. In this case, most of the property has been shown to be bolted or attached. The articles are attached to the skids which are bolted to the piles which are attached to the land.

A reasonable view of the property in question would be that this property, all of the major pieces of equipment that were idle, and if they do not fall within the definition of machinery and equipment, certainly fall within the definition of improvement or structure or something attached to a structure that would fall within the definition of a fixture. If the Appellant is correct that the property is not machinery and equipment, then it become assessable as structures and fixtures.

Wolf Lake #2 Plant - Non Assessable Allocation

The issue of non assessable costs was raised by the Appellant in the hearing after the rendition letter of costs for the Wolf Lake #2 Plant was put into evidence. It is the Respondent's position that Amoco's pursuit of this issue is at best speculative and at worst frivolous. In order for this argument to have any merit, one must assume that the tax representative or a series of tax representatives did not know what they were doing. What is suggested is that years after the fact, if the non assessables were not reported, that there was no allowance given. There is no indication whether or not there was or was not any calculation relating to non assessables. If Amoco is to raise this issue there is an onus on them to show that in fact the non assessable allowance was not given.

A close inspection of the rendition letter reveals that the non assessable items were not reported. What is reported is a long list of equipment, its tag numbers, and its cost. What is not reported are the things that would typically be deducted as non assessable items such as premium overtime, inclement weather, mobile equipment, etc. What is in the rendition letter is a long list of equipment with specific dollar amounts beside them relating to what Amoco paid for it plus a list

of other costs which, if anything, indicates that the non assessable costs have been taken into account.

When Amoco submitted its costs to the assessor of the Primrose Steam generation plant, they listed the machinery and the costs but they took out what they understood to be the non assessable items and only reported the net costs. Only after the Assessor's request did they submit the rendition letter of the non assessable costs. It is reasonable to assume that if this approach was used for the Primrose plant that, in a prior time, when the Wolf Lake #2 Plant was built the same method of reporting costs was used.

There is no justification for suggesting that there should be an additional allowance for non assessable costs. It is contrary to logic and is not supported by the evidence. The onus is on the Appellant to prove their case and in this instance they have not.

Wolf Lake #1 and #2 Plants (15-year/20-year age life)

The age life tables in the 1984 assessment manual prescribe that oil sands processing plants have a 20 year age life. This table is the prescribed part of the manual and is governed by Alberta Regulation 397/85. The age life prescribed in the 1984 manual is not a matter the assessor has any discretion over as the age life tables are governed by the regulation and the regulation says to use 20 years.

The issue raised by the Appellant is that this assessment is not fair and equitable with the Imperial Oil plants which receive a 15-year age life. The court cases dealing with this issue have been ones, generally speaking, where there was some discretion on the part of the assessor or the tribunal and the obvious example is the argument over abnormal depreciation.

The Shell and Strathcona case, which does not deal with prescribed requirements, says that an assessment cannot be higher than fair actual value and also has to be fair and equitable to the assessments of similar properties in the municipality. Even if the assessment is at the correct value but is inequitable, the tribunal can reduce it to make it equitable. The Shell and Strathcona case relies heavily on the Bramalea case out of British Columbia and quotes from the Bramalea case for the annunciation of the general principals of fairness and equity. There are several cases in British Columbia that pre date the Bramalea case. One in particular was argued in the Bramalea case, this was the Simpson-Sears (Sears) case involving the assessments of a shopping centre. The Sears argument was that the assessment on their portion of the shopping centre was inequitable with the balance of the shopping centre. The court agreed with Sears that the two assessments were inequitable but went on to say that one cannot look at just the two properties but must compare generally with similar properties in the municipality. The assessment of Sears was not changed.

In this case, there is a mandatory requirement in the legislation to use the 20-year age life. The Koch and Amoco plants are assessed on the 20-year age life and the Imperial Oil plants are assessed, at least for one year, on 15-year age life. The Board cannot reduce the Amoco assessment based on a one year aberration of the Imperial Oil assessment. The situation is clearly analogous with the Sears case where, in some instances, the assessment was equitable and in other instances, it was inequitable, which when coupled with the fact that the age life is legally correct, the Board has no alternative but to uphold the age life that is on the assessment roll.

## FINDINGS OF FACT

Upon hearing and considering the representations and the evidence of the parties shown on Appendix A and upon having read and considered the documents shown on Appendix B attached hereto, the Board finds the facts in the matter to be as follows:

Satellite Pads

1. The purpose of the subject equipment is to heat, treat, and separate the product produced at the wellhead for metering purposes.

2. The subject equipment is between the inlet valve and the outlet value of a separating, heating or treating facility.

3. The equipment and buildings are not captured in the linear assessments of either the pipeline or the wellhead.

Wolf Lake #1 Plant - Shut in Equipment

1. As of December 31, 1995, the shut in equipment was not operating and there was no clear intent to restart it.

2. The shut in equipment is not an integral part of the facility.

Wolf Lake #1 and #2 Plants (15-year/20-year age life)

1. The age life tables in the 1984 assessment manual are to be used as a guide.

2. Imperial Oil is the dominant producer of heavy oil in the municipality and is assessed on a 15-year age life.

Wolf Lake #2 Plant (non-assessable costs)

1. Non assessable costs were not reported as part of the rendition letter.

In consideration of the above and having regard to the provisions of the Municipal Government Act, the Board makes the following decision, for the reasons set out below.

**DECISION**

Satellite Pads

The appeal is denied and the assessment confirmed at the revised amounts agreed upon by both parties for the 37 satellite pads, the three satellite pads included in the Primrose facility and the one referenced as the Marguerite Lake facility, totalling 41 satellite pads.

Wolf Lake #1 Plant - Shut in equipment and 15-year/20-year age life

The appeal is allowed. The shut in machinery and equipment is not assessable and the remaining machinery and equipment is to be assessed on a 15 year age life. The assessment is as follows:

Machinery and Equipment: $1,157,700
Buildings and Structures: $1,811,200

Wolf Lake #2 Plant - 15-year/20-year age life

The appeal is allowed and the assessment to be reduced as follows:

Machinery and Equipment: $30,718,510
Buildings and Structures: $4,682,980

Wolf Lake #2 Plant - non-assessable costs

The appeal is denied and the assessment set as follows:

Machinery and Equipment: $30,718,510
Buildings and Structures: $4,682,980

It is so ordered.

## REASONS

Satellite Pads

In deciding the issue of the assessment of the satellite pads, it must be determined if the installations at issue fall to assessment under section 292 or section 293 of the Act. To make that determination, regard must be given to section 284 of the Act. If these installations are not linear property they fall to the definitions of "improvements" under section (1)(j) and are liable to assessment under section 293. If these installations fall to the definition of "linear property" under section 284(1)(k) they are liable to assessment under section 292 of the Act.

The Appellant argued all of the installations, if not wellhead installations, are surely other improvements which are used for obtaining oil or gas or both and therefore must be pipeline pursuant to the definition of "linear property" under section 284(1)(k)(iii) of the Act.

The Respondent took the position that, when given regard to section 284(1)(k))(iii)(F) and (G) of the linear property definition, all of the installations fall to the "but not including" provision.

The wording in the definition of linear property must be scrutinized. The applicable words are linear property means pipelines, including wellhead installations or other improvements at a well site used for obtaining oil and gas or both, injecting or disposing of water/salt water, or monitoring or observing performance of a pool, or for the protection of the wellhead installations. It is noted that "protection" is for the wellhead installations rather than both the wellhead installations and other improvements.

There was no evidence to show the installations are part of any refining, manufacturing, marketing, transmission line pumping or storage facilities. The evidence is that in order to meter the raw feed stock, it must be firstly separated. Even though the separated products, once metered, are co-mingled with other raw feedstock and transferred to the main plant. It is obvious this qualifies as "any separating" and therefore falls to the "but not including" part of the linear property definition. The chemical injection is required to aid in the separation of the products and even though the separated products are co-mingled for transporting, the chemicals remain in the feedstock for the main plant and is an aid in that separation. This clearly is "any treating" and falls within the "but not including" part of the linear definition. The heaters are installations used to keep the raw bitumen at a high enough temperature to be separated and is included in the "but not including" clause where it states "any ... heating…."

Heating, treating, separating, metering are all associated and found at processing and refining oil and gas facilities. The subject installation performs the same functions that are found in a processing or refining facility, but are located "in the field" at well sites.

There was considerable evidence and argument as to which valves should be considered to be the inlet and outlet valves. Evidence from one witness was that the inlet valves would be at the wellheads and there would be as many inlet valves as there are wellheads. Written evidence later on in the hearing is that there is a linear assessment of the flow lines from each of the wellheads to the separating facility. From the schematic diagram submitted as evidence followed by the site inspection carried out by the Board, it was determined that the valves the flow lines are connected to in the separating facility are the rotary valves. These valves direct the flow of bitumen either to the heater and separator or to the header that gathers the production from all of the wells and starts the flow into the group line going to the main plant. The Board determined that the rotary valves are the only valves that could be the inlet valves of these separating facilities. Evidence is that the outlet valve of this facility is the emergency shut down valve located outside the building on the group line. The Board determined that this indeed is the appropriate valve to be considered the outlet valve for the purpose of the legislation as this is the only value outside the building that connects the facility to the pipeline going to the main plant.

The Appellant argued that as a compromise position it could be considered that only the inlet and outlet valves of the separator are the valves surrounding the separating facility. From the evidence, it is clear that if there was no requirement to meter the products there would be no reason for this facility. Aside from injection of steam, the satellite pads performs only one basic function and that is to meter the products. The heating and treating are only to aid in the separating of the products for the purpose of metering. If there was no requirement to meter the products there would be no need for the separating facility and the production from the group of wells could be piped directly to the main plant.

While any processing, refining, manufacturing facility, may have an analogous meaning, certainly any marketing facility could be considered as being coupled. The words are not to be read conjunctively, but rather any separating, any refining, any treating facility, etc. between the inlet and outlet valve is to be independently considered based on its use or function.

Buildings other than for the protection of the wellhead installation are also specifically listed under the “but not including” where it states or (G) land and buildings. There was no evidence presented to show any of the buildings were intended or used for the protection of wellhead installations.

The Board is satisfied the installation under appeal, known as building and structures and machinery and equipment, clearly fall to the “but not including” part of linear property and as such are properly assessed as improvements by the municipal assessor pursuant to section 293 of the Act.

Shut in Equipment - Wolf Lake #1 Plant

What is and what is not assessable is dependent upon the definition found in the regulations as they pertain to section 284(1)(z) of the Act. Section 1(g) of Alberta Regulation 365/94 states

"machinery and equipment" means materials, devices, fittings, installations, appliances, apparatus and tanks other than tanks used exclusively for storage, including supporting foundations and footings and any other thing prescribed by the Minister that forms an integral part of an operational unit intended for or used in (i) manufacturing, (ii) processing.

The phrase that is important in this instance is “an integral part of an operational unit intended for or used in". In interpreting this definition, the Board has gone outside of the Regulation and looked at other sources for definitions of the key words:

“Integral” is defined in the Shorter English Dictionary as: 1. of or pertaining to a whole, said of a part of parts: belonging to or making up an integral whole and constituent, component: spec. necessary to the completeness of the whole.

“Operation” is defined in the same dictionary as 1. action, performance, word: 2. working; exerting the force, energy, or influence; 4. particular form or kind of activity; an active process.

The fact that the subject equipment was not used makes it abundantly clear that it is not necessary to the completeness of the whole, particular form or kind of activity. It can only be concluded, therefore, the subject equipment is not an “integral” part of an “operational” unit. This conclusion is supported in the case of Commissioner of Northwest Territories v. Pine Point Mines Ltd. (1981) 5. W.W.R. ap.p. 428. Greschuk J. in summarizing said “the meaning of “integral” which I prefer is “of relating to or belonging as a part of the whole, or serving to form a whole” and the meaning of “operational” which I would adopt and accept is of relating to the performance of a work or business”.

As to the “intended for or used in” part of the definition, it is clear from the evidence that the subject machinery and equipment is not used and if it is not used it cannot form an integral part. It is certain that the equipment at one time was intended for the production of steam and the processing of bitumen but because of management decisions of Amoco the equipment has been “mothballed” and isolated from the ongoing process. Even though the equipment was intended for the production of steam and the processing of bitumen, it cannot be considered an integral part of an operational unit as long as it is in a mothballed condition. As to what Amoco intends to do with this equipment is not clear and as was stated by the Respondent’s counsel, in summary “Amoco as of December 31, 1995, just did not know what they were going to do with this plant”.

Evidence of the representatives of Amoco is that an extensive program of blinding off and preserving the equipment was undertaken. It may be that when circumstances warrant, the plant will be restarted; however, at the time of the assessment, December 31, 1995, the equipment was not integral because of being disconnected, blind welded and mothballed.

There was evidence of the Respondent that Amoco's intention was to restart the plant but this evidence, it appears, was only available in 1996 and was not available at the assessment date. The exception to this is the AEUB application made in August of 1995. It is not clear as to what part of Amoco's operation this application applies to. Is it for the Wabasca region or the expansion to the Primrose Plant? Without anything specific to the Wolf Lake #1, Plant the Board can give little weight to this evidence.

What is important is the circumstances and the use of the machinery and equipment as at the assessment date, December 31, 1996, and at that time the compelling evidence is that the equipment was shut in. It was not operational and not an integral part of an operational unit and therefore not assessable. The Respondent made a further argument that if the Appellant is right and the shut in equipment is not assessable as machinery and equipment it could properly be assessed as structures and fixtures.

The Board is not convinced that the subject machinery and equipment can be assessed as structures and fixtures. Section 284 (1) of the Act contains the definition for part 9 to 12 of the Act. Section 284(u) states "structure" means a building or other thing erected or placed in, on, over or under land, whether or not it is so affixed to the land as to become transferred without special mention by a transfer or sale of the land".

In this case, there is no evidence to show these installation would transfer without special mention, therefore they do not fall within the meaning of structures. There is no dispute that these installation were intended for processing oil/gas and as such are initially considered machinery and equipment. Since these installation are no longer an integral part of an operational unit, no assessment is to be prepared pursuant to Section 298(1)(2).

<u>Wolf Lake #2 Plant (non assessable costs)</u>

The issue of the non assessable cost was not an issue raised by the Appellant in their technical data or Brief of Law and Authorities. The issue arose during the hearing from a rendition letter, entered into evidence, of the Wolf Lake #2 Plant's costs.

The Board agrees with the Respondent that the pursuit of this is at best speculative. There is no clear indication that the non assessable costs were reported and, from what was reported in the rendition letter, it suggests that they were not. It appears that only assessable costs were reported and that Amoco had omitted the non assessable costs. The onus is on the Appellant to show that there was no allowance made for the non assessable costs, if they were reported, and in the Board's opinion, they have not. With insufficient evidence to support the claim that there should be a reduction granted, the Board rejects the claim and confirms the present assessment as related to this issue.

Wolf Lake #1 and 2 Plant (15-year/20-year age life)

The Board agrees with the Appellant that the age life tables contained in the 1984 assessment manual are indeed to be used as a guide and have no legislative authority.

After establishing this fact, the issue then becomes one of fairness and equity. In looking at the evidence and court decisions, there is certainly a valid claim made, that the subject plants should be assessed equitably with other similar plants. The other plant in the municipality that uses a similar method of production is Imperial Oil. Imperial Oil is much larger than the subject plants and is assessed on a 15-year age life. The claim of fairness and equity with the dominant facility in the municipality seems to be valid, considering the court decisions that have concluded that assessments of similar properties in the same municipality be assessed similarly. The major facility in the municipality is assessed on a 15-year age life and applying the principle of fairness and equity established by the courts, then the subject plants are also to be assessed on a 15-year age life.

No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 18th day of August, 1999.

MUNICIPAL GOVERNMENT BOARD

J. Church, Presiding Officer

**APPENDIX "A"**

APPEARANCES

| **NAME** | **CAPACITY** |
|---|---|
| For the Appellant | |
| Gil Ludwig | Counsel |
| Brian Wittmach | Operations Supervisor |
| Jack Averil | Plant Operations Manager |
| Bill Nelson | Bryce Kipp Nelson |
| Keith Olstad | Tax Manager |
| Darcy Zimmer | Senior Tax Analyst |
| For The Respondent | |
| Leo Burgess | Counsel |
| Barb Mason | Counsel |
| Cliff Zeiner | Shaske Zeiner |
| Kevin Milne | Design Engineer Consultant |
| Randy Affolder | Consultant |

**APPENDIX "B"**

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE BOARD:

| **NO.** | **ITEM** |
|---|---|
| Exhibit 1(A) | Appellant Brief of Law and Authorities |
| Exhibit 2(A) | Technical Data of the Appellant |
| Exhibit 3(R) | Respondent submission of Accurate Assessment Group |
| Exhibit 4(R) | Submission of the Respondent |
| Exhibit 5(A) | Appellant submission titled Authorization for Expenditure |
| Exhibit 6(R) | Respondent letter from BP Canada dated February 8, 1991 |
| Exhibit 7(R) | Respondent sheets indicating Conventional Oil Satellite and Heavy Oil Satellite Plant Systems |
| Exhibit 8(A) | Appellant sheet titled Well and Flowline Assessment Listing by Assessee/Municipality for Assessment Year 1995 |
| Exhibit 9(A) | Appellant Heavy Oil-Enhanced Oil Recovery Working Committee Report |

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| Exhibit 10(A) | Appellant letter from the Minister of Municipal Affairs dated March 5, 1992 |
| Exhibit 11(R) | Respondent argument on 20-Year Age Life on behalf of Municipal District of Bonnyville |
| Exhibit 12(A) | Appellant submission titled The Alberta Gazette, January 12, 1986 |
| Exhibit 13(A) | Appellant copy of photographs |
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| Information Sheet No. 1 | Titled Primrose Engineering Costs |
| Information Sheet No. 2 | Titled Colt Engineering Corp. |
| Information Sheet No. 3 | Titled Primrose-Phase 1 |