The Honourable Cathy McGregor

Minister of Environment, Lands and Parks

Parliament Buildings

Victoria, British Columbia

V8V 1X4

The Honourable Penny Priddy

Minister of Health and Minister Responsible for Seniors

Parliament Buildings

Victoria, British Columbia

V8V 1X4

Dear Ministers:

I respectfully submit herewith the annual report of the Environmental Appeal Board for the period April 1, 1997 through March 31, 1998.

Yours truly,

Toby Vigod

Chair

Environmental Appeal Board

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Message from the Chair

A year has now passed since I became chair of the Environmental Appeal Board. It has been a time of challenge and change at the Board and I am pleased to submit the seventh Annual Report of the Board.

Significant amendments were made to the legislation under which the Board hears appeals. The Environment, Lands and Parks Statutes Amendment Act (Bill 14) was passed on July 28th, 1997. The Bill amends five of the six statutes from which the Board hears appeals. In its 1995/96 Annual Report, the Board made a number of recommendations to standardize its powers under the statutes from which it hears appeals. I am pleased to note that many of these recommendations have been adopted. These amendments are discussed in further detail later in this report.

As a result of these legislative amendments, the Board has revised its procedures and policies manual.

This past year also brought with it many challenging and interesting issues for the Board to grapple with. These included questions of standing, costs, and aboriginal rights.

Next year promises to bring with it further challenges. This was made evident by the recent Delgamuukw decision of the Supreme Court of Canada. It is yet to be seen what impact this decision will have on appeals brought before the Board.

Possibly the greatest changes this year occurred to the composition of the Board itself, as seven members have left. On behalf of the entire Board, I wish to thank Johnder Basran, David Brown, Jack Lapin, Laurie Nowakowski, David Perry, Joan Rysavy, and Elinor Turrill for their hard work and the significant contributions they have all made to the Board. Their time and dedication is greatly appreciated and I wish them well in their future endeavours.

With every ending comes a new beginning. Thus, I would like to welcome the seven new members to the Board: Robert Cameron, Richard Cannings, Don Cummings, Cindy Derkaz, Marilyn Kansky, Jane Luke, and Ken Maddox. These new members will bring additional knowledge and expertise in the areas of biology, engineering and law.

In closing, I look forward to working with these new Board members in the coming year.

## Introduction

The Environmental Appeal Board hears appeals from administrative decisions related to environmental issues. The information contained in this report covers the period of time between April 1, 1997 and March 31, 1998.

The report provides an overview of the structure and function of the Board and how the appeal process operates. It contains statistics on appeals filed, hearings held and decisions issued by the Board within the report period. It also contains recommendations, made by the Board, for legislative changes to the Acts and regulations which govern the administrative decisions that the Board hears appeals from. Finally, summaries of the decisions issued by the Board during the report period are provided and sections of the relevant Acts and regulations are reproduced.

Decisions of the Environmental Appeal Board are available for viewing at the Board office, on the Internet, and at the following libraries:

- Legislative Library
- Ministry of Environment, Lands and Parks Library
- University of British Columbia Law Library
- University of Victoria Law Library
- British Columbia Court House Library Society
- West Coast Environmental Law Library

Decisions are also available through the Quicklaw Data Base and some decisions are reported in the Environmental Law Digest.

Information about the Environmental Appeal Board is available from the Environmental Appeal Board Office and on the Board's website. Detailed information on the Board's policies and procedures can be found in the Environmental Appeal Board Procedure Manual. Pamphlets explaining the appeal procedure under each of the relevant Acts are also available. Please feel free to contact the office if you have any questions, or would like additional copies of this report. The Board can be reached at:

Environmental Appeal Board

Fourth Floor, 836 Yates Street

Victoria, British Columbia

V8W 1L8

Telephone: (250) 387-3464

Facsimile: (250) 356-9923

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PO Box 9425 Stn Prov Govt

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The Board

The Environmental Appeal Board was created when the Environment Management Act was passed in 1981. It is an independent agency which hears appeals from administrative decisions made under six statutes (the "Statutes"). Five of the Statutes are administered by the Ministry of Environment, Lands and Parks. They are the Pesticide Control Act, the Waste Management Act, the Water Act, the Wildlife Act and the Commercial River Rafting Safety Act. The sixth statute, the Health Act, is administered by the Ministry of Health.

## Board Membership

The Board members are appointed by the Lieutenant Governor in Council (Cabinet). The members are drawn from across the Province, representing diverse business and technical experience, and have a wide variety of perspectives. Board membership consists of a full-time chair, a part-time vice-chair and, a number of part-time members.

| The Board | From |
|---|---|
| Chair | |
| Toby Vigod | Victoria |
| Vice-chair | |
| Judith Lee | Vancouver |
| Members | |
| Johnder Basran (to August 27, 1997) | Lillooet |
| David Brown (to March 31, 1998) | Gabriola |
| Sheila Bull | Mission |
| Robert Cameron | Vancouver |
| Richard Cannings | Naramata |
| Don Cummings | Richmond |
| Cindy Derkaz | Salmon Arm |
| Harry Higgins | Salmon Arm |
| Katherine Hough | Nelson |
| Marilyn Kansky | Richmond |
| Elizabeth Keay | Victoria |

Helmut Klughammer Nakusp

Jack Lapin (to August 27, 1997) Barriere

Jane Luke Vancouver

Bill MacFarlane Revelstoke

Ken Maddox Prince George

Christie Mayall Williams Lake

Laurie Nowakowski (to October 27, 1997) Nelson

David Perry (to December 31, 1997) Victoria

Carol Quin Hornby Island

Bob Radloff Prince George

Gary Robinson Surrey

Joan Rysavy (to August 27, 1997) Smithers

Elinor Turrill (to August 27, 1997) Lumby

## The Board Office

The Environmental Appeal Board office staffs nine full-time employees reporting to an Executive Director. The office provides registry services, legal advice, research support, systems support, financial and administrative services, training, and communications strategies for the Board.

The Environmental Appeal Board shares its staff and its office space with the Forest Appeals Commission, Forest Appeal Board, and the Environmental Assessment Board.

The Forest Appeals Commission, set up under the Forest Practices Code of British Columbia Act, hears appeals from forestry-related administrative decisions made under that Act, in much the same way that the Board hears environmental appeals.

The Forest Appeal Board hears appeals from administrative decisions made under the Forest Act and the Range Act.

The Environmental Assessment Board is established under the Environmental Assessment Act. This Act establishes a formal method for the review and assessment of environmental, economic, social, cultural, heritage, and health effects of major projects. The Environmental Assessment Board may be required to conduct a public hearing as part of this process.

Supporting four tribunals through one administrative office gives each tribunal greater access to resources while, at the same time, cutting down on bureaucracy and operation costs. In this way, expertise can be shared and work can be done more efficiently.

## Policy on Freedom of Information

The appeal process is public in nature. Information provided by one party must also be provided to all other parties to the appeal. Further, the hearings are open to the public.

If information is requested by a member of the public regarding an appeal, that information may be disclosed. The Board is subject to the Freedom of Information and Protection of Privacy Act and the regulations under that Act.

Unless the information falls under one of the exceptions in the Freedom of Information and Protection of Privacy Act, it will be disclosed.

Parties to appeals should be aware that information supplied to the Board will be subject to public scrutiny and review.

## Legislative Amendments Affecting the Board

On July 28, 1997, Bill 14, the Environment, Lands and Parks Statutes Amendment Act, 1997, came into force. This Bill amends the Environment Management Act, Commercial River Rafting Safety Act, Pesticide Control Act, Waste Management Act, Water Act and Wildlife Act. These amendments will help to streamline the appeal process under these Acts and provide a more efficient and predictable appeal process for the parties involved.

The amendments make a number of important changes to the appeal process. Prior to the amendments, the appeal process, for most appeals, consisted of two levels of appeals. Appeals were first heard by a Ministry of Environment, Lands and Parks senior official whose decision could then be appealed to the Board. Now the original decision is appealed directly to the Board. This reduces the time it takes for an appeal to go through the process and the expense to both the parties and government.

The amendments also provide consistency between the environmental statutes under which the Board hears appeals. Prior to the amendments, only the Pesticide Control Act and the Water Act gave the Board the power to require an appellant to post a bond to cover the reasonable appeal expenses of the Board and the respondent. The Pesticide Control Act also provided the Board with the power to award costs. Bill 14 amends the Environment Management Act providing the Board with the general power to:

a. require an appellant post a bond (security for costs) to cover the anticipated costs of the respondent and the Board;

b. require a party to pay the costs of another party; and,

c. require a party to pay the expenses of the Board where the Board considers the conduct of a party to be vexatious, frivolous or abusive.

Finally, Bill 14:

n provides a standardized time limit of 30 days for filing an appeal with the Board;

n expressly authorizes the Board to hold a "new-hearing";

n provides, with the exception of the Health Act, the Board the power to stay a decision or an order pending an appeal;

n amends the standing provisions in the Water Act and in the Waste Management Act, clarifying who has standing to appeal to the Board; and,

n provides the Board with broad decision-making powers to send the matter back with directions; confirm, reverse or vary the decision; or, make any order that the person whose decision is appealed could have made and that the Board considers appropriate in the circumstances.

## The Appeal Process

The Environment Management Act and the Environmental Appeal Board Procedure Regulation (the "Regulation") set out the general powers and procedures of the Board. The Board's powers and procedures are further defined in each of the Statutes.

In order to ensure that the appeal process is open and understandable to the public, the Board has developed the Environmental Appeal Board Procedure Manual. The manual contains information about the Board itself, the legislated procedures the Board is required to follow, and the policies the Board has adopted to fill in the procedural gaps left by the legislation.

The following is a brief summary of the appeal process. For more detailed information, a copy of the Board's Procedure Manual may be obtained from the Environmental Appeal Board office, or form the Board's website.

## Commencing an Appeal

### Notice of Appeal

To commence an appeal, a person must deliver a Notice of Appeal to the Environmental Appeal Board office along with a cheque for $25 for each decision/order being appealed. The Notice of Appeal must contain:

i) the reasons the appellant believes that the decision being appealed is incorrect with particulars (the grounds for appeal);

ii) what she or he wants the Board to order; and,

iii) the name and mailing address of the government official responsible for the decision/order.

If the Board does not receive the Notice of Appeal within a specified time period (defined in each of the Statutes) it will be unable to consider it.

If the Notice of Appeal is missing any of the required information, the Board will notify the appellant of the deficiencies. The Board will not take any action on an appeal until the Notice of Appeal is complete and any deficiencies are corrected.

Once a completed Notice of Appeal is accepted by the Board, the Chair will:

i) decide whether the appeal will be decided by the Board as a whole or by a panel of its members;

ii) decide whether the appeal will be conducted by way of written submissions or an oral hearing; and,

iii) establish a submission schedule for a written hearing, or set the time, date and location for an oral hearing.

Once the date for a hearing or a submission schedule is set, the parties involved are notified.

## Written Hearing Procedure

If it is determined that the hearing will be by written submissions, the submissions will be made by all parties. The appellant will be given the opportunity to provide its submissions first. The other parties will have an opportunity to receive and comment on the appellant's submissions before submitting their own.

The appellant is then given an opportunity to comment on the submissions and evidence provided by the other parties.

Finally, all parties will be given the opportunity to provide closing submissions.

## Oral Hearing Procedure

If it is determined that the appeal will be conducted by oral hearing, the parties involved will be notified of the date, time and location of the hearing. If any of the parties to the appeal cannot attend the hearing on the date scheduled, a request may be made to the Board to change the date.

An oral hearing may be held in the locale closest to the affected parties, at the Board office in Victoria, a combination of both, or anywhere in the province. The Board will decide where the hearing will take place on a case by case basis.

Statement of Points and Disclosure of Documents

If an oral hearing is scheduled, the parties will be asked to provide certain materials to the Board.

To help identify the main issues to be addressed in an oral hearing and the arguments that will be presented in support of those issues, all parties to the appeal are requested to provide the Board, and each of the parties to the appeal, with a written Statement of Points. The Statement of Points is essentially an outline or summary of each party's case. The appellant must submit its Statement of Points at least 20 days prior to the commencement of the hearing. All other parties must submit their respective statement of points at least 10 days prior to the commencement hearing.

Disclosure of all relevant documents in advance of the hearing is also requested so that all parties will be prepared for the hearing. The Board encourages parties to cooperate with each other in this regard.

Pre-hearing Conferences

Either before or after the parties documents and Statements of Points have been exchanged, the Board, or any of the parties, may request a pre-hearing conference.

Pre-hearing conferences provide an opportunity for the parties to discuss any procedural issues or problems, the potential for resolution of the issues between the parties, and to deal with any preliminary concerns.

Security for Costs

On its own initiative or at the request of the respondent, the Board may order an appellant to deposit a sum of money the Board considers sufficient to cover all or part of the anticipated costs of the Board and the respondent in connection with an appeal. The Board will only order security for costs

in special circumstances and will give directions respecting the disposition of the money deposited at the completion of the appeal, or in its decision.

The Hearing

A hearing is more formal than a pre-hearing conference but less formal than proceedings before a court. It allows the Board to receive the evidence it uses in making a decision.

In an oral hearing, each party will have a chance to present evidence. They will have the opportunity to call witnesses and explain their case to the Board.

Although hearings before the Board are less formal than those before a court, some of the hearing procedures are similar to those of a court: parties are sworn or affirmed, evidence is presented and witnesses may be cross-examined.

Parties may have lawyers represent them in the appeal, but this is not required. The Board will make every effort to keep the process open and accessible to parties not represented by a lawyer.

All hearings of the Board are open to the public and are recorded.

## The Decision

In making its decisions, the Board is required to determine, on a balance of probabilities, what occurred and to decide the rights of the parties.

The Board will not normally make a decision at the end of the hearing. Instead, in the case of both an oral and written hearing, the final decision will be given in writing, within a reasonable time following the completion of the hearing.

Copies of the decision are mailed to the parties involved, to the Minister of Environment, Lands and Parks and in appeals under the Health Act, the Minister of Health.

If a party disagrees with the decision of the Board, that party may wish to appeal the decision. Decisions of the Board are final and the Board may not reconsider or comment on a decision once it is issued.

There are two avenues of appeal to a person subject to a decision of the Board. They are:

1) Cabinet may, if it believes it to be in the public interest, change or overturn an order of the Board. This type of review is not automatic and Cabinet may choose whether or not to review a decision.

2) The B.C. Supreme Court may review a decision in accordance with the Judicial Review Procedure Act.

## Costs

The Board may require a party to pay all or part of the costs of another party in connection with the appeal. The Board will only consider an award of costs where a party has made a submission to the Board at the conclusion of the hearing and where special circumstances exist.

## Recommendations

The Board is not required by legislation to make recommendations for amendments to its Statutes in its annual report. However, it is hoped that making recommendations will lead to changes in the appeal process that promote fairness, accessibility and efficiency.

The Board makes the following recommendations:

## 1. Amend the Environment Management Act

The Board recommends that the Environment Management Act be amended to provide the Board with the power to order pre-hearing disclosure of documents.

Generally, it is the Board's policy to request that all documents relevant to an appeal be provided in advance of the hearing. Under section 15 of the Inquiry Act the Board has the power to order the disclosure of documents at the hearing but has no power to require that documents be disclosed prior to the hearing.

When documents are not provided in advance of the hearing the parties and the Board cannot properly prepare for the hearing. Situations have arisen where one party refuses to produce relevant documents before the hearing. This can lead to increased cost and reduced efficiencies due to delays and, in some cases adjournments.

Providing the Board with the power to order the disclosure of documents prior to the hearing would foster a more efficient and effective appeal process. This power could be part of a more general authority allowing the Board to make rules that govern practices and procedures before it. The Board recommends that a new section be added to the Act and read as follows: "an appeal to a hearing by the Environmental Appeal Board shall be governed by rules adopted by the Board".

Providing the Board with the authority to make its own rules ensures that policies and procedures of the Board are enforceable. It also provides those appealing with a clear set of guidelines and rules and thus, helps to ensure fairness.

## 2. Amend the Water Act

The Board recommends that the Water Act be amended to provide Ministry of Environment, Lands and Parks officials with the express power to consider and address the protection of water quality and habitat when issuing an approval, licence or order. The Board further recommends that the government consider proclaiming section 3 of the Water Act, which deals with groundwater.

There have been a number of appeals to the Board under the Water Act, where water quality, groundwater and habitat issues have been raised by the parties. These issues go beyond the jurisdiction of both the Board and Ministry officials in considering licencing questions. It is apparent from submissions made to the Board, that these are critical and important issues that need to be addressed.

The Water Act has not kept up with current state of knowledge of water issues. As the Act stands now, it only deals with water use and flow issues; considering quantity of water as oppose to quality. When issuing an approval, licence or order, Ministry officials are not required to take into consideration water quality, groundwater or habitat issues. The Board recommends that consideration of these issues be incorporated into the licencing provisions under the Act.

## 3. Amend the Sewage Disposal Regulation

In the Board's 1996/1997 Annual Report, the Board recommended amending the Sewage Disposal Regulation, B.C. Reg. 411/85, enacted pursuant to the Health Act, to better reflect advancements in sewage disposal system technology.

The Board continues to see the need for the amendment of the Sewage Disposal Regulation. Problems with the Regulation continue to be brought to the Board's attention in appeals before the Board. The Board would like to reiterate that the Regulation has not kept up with technological advancements in the area of sewage disposal. The standards for the construction and installation of sewage disposal systems found in the current Regulation are extremely outdated, and in some cases, are contrary to presently accepted public health practices.

## Statistics

The following tables provides information on the appeals filed with the Board during the report period.

Between April 1, 1997 and March 31, 1998 a total of 128 appeals were filed with the Board against 103 administrative decision.

April 1, 1997 Ð March 31, 1998

| | |
|---|---|
| Total appeals filed | 128 |
| Number of administrative decisions appealed | 103 |
| Appeals abandoned, withdrawn, or rejected | 42 |
| Total hearings held | 78 |
| Oral hearings held | 72 |
| Written hearings held | 6 |
| Total decisions issued | 61 |
| Final decisions | 46 |
| Appeals allowed | 12 |
| Appeals dismissed | 33 |
| Referred back to original decision-maker | 1 |

| | |
|---|---|
| Decisions on Preliminary matters | 15 |
| Decisions on Requests for Costs | 2 |
| Awarded | 0 |
| Denied | 2 |

Appeal Statistics by Act

| | | | | | |
|---|---|---|---|---|---|
| Appeals filed | 34 | 24 | 33 | 20 | 17 |
| Number of administrative decisions appealed | 31 | 9 | 26 | 20 | 17 |
| Appeals abandoned, withdrawn or rejected | 14 | 2 | 10 | 11 | 5 |
| Hearings held | 31 | 8 | 14 | 16 | 9 |
| Decisions issued | 21 | 4 | 24 | 8 | 4 |

This table provides a summary of the appeals filed, hearings held and decisions issued by the Board during the report period broken down by Act. There were no appeals filed, heard or decisions issued under the Commercial River Rafting and Safety Act during the report period.

Decisions Issued by the Board by Act

In an appeal the Board will decide whether to allow the appeal, dismiss the appeal or return the matter back to the original decision-maker with directions. The Board may also be required to deal with a number of preliminary matters such as requests for stays, applications for standing and questions regarding the Board's jurisdiction.

The following tables provide a summary of decisions issued by the Board, including any decisions regarding preliminary matters dealt with by the Board.

Health Act

Administrative Decision Appealed

| | | |
|---|---|---|
| Refusal to issue a permit | 1 | 10 |
| Issuance of a permit | 1 | 9 |

Pesticide Control Act

| Administrative Decision Appealed | | | |
|---|---|---|---|
| Issuance of a permit | | 1 | |
| Refusal to issue a permit | 1 | | |
| Conditions in a permit | 1 | 1 | |

Waste Management Act

| Administrative Decision Appealed | | | |
|---|---|---|---|
| Issuance of a permit | | | 1 |
| Refusal to issue a permit | | 1 | |
| Amendment of a permit | 8 | 3 | 2 |
| Issuance/amendment of a pollution abatement and/or pollution prevention order | 5 | | 1 |
| Conditions in a permit | 1 | | |
| Refusal to extend time to file an appeal | 2 | | |

Water Act

| Administrative Decision Appealed | | |
|---|---|---|
| Issuance of an order | 2 | 1* |
| Issuance of an approval | 1 | |
| Cancellation of licence | | 3 |
| Amendment of licence | 1 | |

*This is an interim decision. The full decision and reasons are to follow.

Wildlife Act

| Administrative Decision Appealed | | |
|---|---|---|
| Refusal to issue a licence | 1 | |
| Cancellation of a licence | 1 | 1* |
| Refusal to issue a permit | | 1 |

*The appeal was dismissed as abandoned when the appellant did not show at the hearing.

Summaries of Environmental Appeal Board Decisions

April 1, 1997 ~ March 31, 1998

The following are summaries of decisions reached by the Environmental Appeal Board between April 1, 1997 and March 31, 1998. They are organized by the Statute which the appeal was brought under. There are preliminary matters reported, for which the final decisions are pending.

Commercial River Rafting Safety Act

No appeals were heard under the Commercial River Rafting Safety Act during the report period.

Health Act

95/60 J. H. McKibbon v. Environmental Health Officer (David and Leann Wright, Permit Holder)

Decision Date: July 30, 1997

Panel: David Perry

Mr. McKibbon appealed a decision by the EHO to issue a sewage disposal permit to owners of a steeply sloping property adjacent to his property on Shuswap Lake. The permitted system had been constructed at the time of the appeal. It consisted of a holding tank, a pumping chamber and a drywell sewage disposal system over a minimum 12 inches of drainrock.

Mr. McKibbon argued that the EHO failed to consider the existence of a cutbank for his access road located within 50 feet of the original proposed drywell site, that an inadequate site investigation was performed, and that there is a bedrock formation cutting across the middle of the adjacent property which will divert effluent from the drywell onto Mr. McKibbon's property.

The Board found that the permit met Health Department policy regarding potential breakout points and given the conditions of this "difficult" property, that the EHO carried out sufficient investigation as required by the Regulation. The Board rejected the Appellant's evidence regarding the bedrock formation, but noted that the large amount of soil (9 feet) at the location of the drywell site and the 65 foot distance between the drywell and the Appellant's lot would treat any effluent.

The Board found the EHO adequately exercised his discretion to issue the permit. The appeal was dismissed.

96/22 Monica and Paul Matsi v. Environmental Health Officer (Garry Mission, Permit Holder)

Decision Date: April 2, 1997

Panel: Toby Vigod, Sheila Bull, Carol Martin

Monica and Paul Matsi appealed a decision of the EHO issuing a permit to Mr. Mission for a sand mound pressure distribution system and a package treatment plant. The Appellants, owners of the adjacent property, appealed on the grounds that the permit incorrectly states that there is city water; the property failed percolation tests in the past years; there is not 48 inches of dry soil above the water table; effluent may break out and contaminate their well; the plan does not show a final destination for the drainage pipe; and, the permit was not posted until two weeks after the permit had been issued.

The Board held that the primary issue for consideration is whether the proposed sewage disposal system complies with the Health Act and the Sewage Disposal Regulation and will safeguard public health. On the evidence presented, the Board was satisfied that the public health will be protected if Mr. Mission's system is installed as designed. The Board found that the Appellants were not prejudiced by the delay in the posting of the permit, and any failure to post the notice within the specified timeframe had been corrected by the appeal. The Board upheld the permit, with certain amendments. The appeal was dismissed.

96/24 Tom Campbell v. Environmental Health Officer (Blaire Duke, Permit Holder)

Decision Date: April 14, 1997

Panel: Carol Martin

Mr. Campbell appealed a decision of the EHO to approve a conventional sewage disposal permit on Mr. Duke's property to service two mobile homes and a shower and washroom facility. Mr. Campbell sought an order to set aside the permit due to the fact that storm water can flow across the disposal field onto properties with shallow drinking wells, and onto the beach below. By the January 6, 1997 hearing in Parksville, the field had been built.

On the evidence presented, the Board found that the disposal field's setback from wells, water bodies and break-out points met the requirements of the legislation. However, the Board found that the interceptor ditch, as built, failed to protect the drainage field from storm water. The Board upheld the permit, but added a condition that the interceptor ditch above the disposal field be retrenched and extended 50 feet further away from the field to ensure that no storm water flows back over the field. The appeal was dismissed.

96/28 Ken Sargent et. al. v. Environmental Health Officer (Eric McCook, Permit Holder)

Decision Date: August 22, 1997

Panel: David Brown

Mr. Sargent, on behalf of himself and 18 neighbouring property owners, appealed a sewage disposal permit for a 13 unit vacation cottage

development on the north shore of Shuswap Lake. The issues raised in the appeal were whether Mr. Sargent had standing to appeal, whether the Board should defer to the EHO's finding that the development be characterized as a motel/hotel for the purposes of determining the minimum rate of flow, and whether the system complied with the Sewage Disposal Regulation and would protect local wells and the Lake.

The Board found that Mr. Sargent had standing to appeal as he was a person that could be negatively impacted by the granting of the permit due to the proximity of his well. The Board did not defer to the EHO's characterization of the development as similar to a hotel/motel because the appeal was a fresh trial (trial de novo) and the EHO had no special knowledge that would make him better able to make this determination than would the Board. The Board found that the sewage disposal system met all the regulatory requirements, and there was no evidence to support Mr. Sargent's concerns regarding the rate of flow and contamination of well water and the Lake. However, a statutory covenant was ordered to ensure the property be limited to "vacation rental." The appeal was dismissed.

97-HEA-01 Ken Simons v. Environmental Health Officer

Decision Date: May 22, 1997

Panel: Bob Radloff

This was an appeal of the decision of the EHO refusing to issue a permit to construct a conventional sewage disposal system on the Appellant's property near Terrace. The site did not meet the requirement of a 30 metre setback from the high water mark of an adjacent creek. The Appellant sought a relaxation of the setback requirement, arguing that the hydrogeology of the site is such that the effluent from the disposal field will not reach the creek in 30 metres. In the alternative, he argued that an alternate sewage disposal system could be considered on this site.

The Board held that section 18 provides a minimum mandatory setback requirement and does not authorize any discretionary relaxation of the 30 metre limit. Nor can it be relaxed for an alternate disposal systems. In any event, the Board noted that there were other significant constraints in relation to the depth to an impervious layer which would prevent approval of an alternate system. The appeal was dismissed.

97-HEA-02 Sheila Lillis v. Environmental Health Officer

Decision Date: July 8, 1997

Panel: Carol Martin

The owner of an oceanfront lot in Parksville, located near a shellfish harvesting area, appealed the decision of the EHO denying a permit to install a conventional package treatment plant system. The permit was refused due to insufficient depth of percable native soil and the inability of the site to meet the required 100 foot setback from the high water mark of the sea, as set by the local Board of Health under section 8 of the Sewage Disposal Regulation.

The Panel found that the EHO could not relax the local Board of Health's 100 foot setback requirement. The Appellant required a variance from that Board. Further, the lack of 4 feet of suitable soil precluded approval of a conventional system. The Panel held that the EHO correctly refused to issue a permit for the property. The appeal was dismissed.

97-HEA-03 Al and Bridget Miguez et al. v. Environmental Health Officer (Shawnigan Lake Mobile Home Park, Permit Holder)

Decision Date: May 2, 1997

Panel: Carol Martin

The Appellants, neighbours of the permit holder, appealed the decision of the EHO to issue a permit for the repair of a malfunctioning sewage disposal system, initially approved in 1974. The existing system services a 72 unit mobile home park. The Appellants submit that the size of the disposal system (in excess of 5000 gallons) brings it within the jurisdiction of the Ministry of Environment, Lands and Parks, not the Ministry of Health; the disposal area does not conform to the current zoning and municipal bylaws and conflicts with a private covenant; and, the EHO failed to follow the Health Act and the Sewage Disposal Regulation.

The Board found that, as the original disposal system was approved by the Ministry of Health, it had jurisdiction to approve the application for repair. The Board held that the EHO is not restricted by local government zoning or internal covenants bearing on a property when considering an application for a sewage disposal system. Finally, the Board found that the EHO correctly applied the requirements of the Act and the Regulation when considering the application. The Board upheld the EHO's decision but ordered that certain conditions be added to the permit to avoid overloading the system. The appeal was dismissed.

97-HEA-04 Leonard and Jean Marie Huot v. Environmental Health Officer

Decision Date: June 19, 1997

Panel: Toby Vigod

This was an appeal against a decision of the EHO refusing to issue a permit for an on-site sewage disposal system to the Appellants. The Huots wished to build a summer cottage on their Cowichan Lake waterfront lot. They applied for a permit, under section 7 of the Sewage Disposal Regulation, to construct an alternate sewage disposal system consisting of a package treatment plant, a sand filter and a seepage pit. The EHO refused the

application because it did not meet requirements of the Innovative Design and Technologies Policy and did not adequately safeguard public health.

The Board found that this was not the sort of system to which the Policy was intended to apply. However, even if the Policy did apply, it did not have the force of law and could not be used as the sole reason to deny permits to applicants who demonstrated that their systems met the provisions of the Health Act and the Sewage Disposal Regulation. The Board also found that it was not appropriate to consider the system under section 7 of the Regulation, titled "Alternate Methods". Both innovative technologies and "unconventional" systems like the one proposed, are properly considered under the general permit section, section 3.

The Board found that the combination of components in the proposed system would adequately protect the neighbours' wells, Cowichan Lake and the public health. The Board therefore ordered that the EHO's decision be rescinded and a permit, with conditions, be issued to the Appellants. The appeal was allowed.

97-HEA-05 Dean Hodgson v. Environmental Health Officer

Decision date: July 16, 1997

Panel: Carol Martin

Mr. Hodgson wanted to build a manufacturing plant on a 9.66 acre property near Chilliwack, B.C. The EHO refused his application for a sewage disposal system under the Code of Good Practice on the basis that the Code only applies to properties used for residential purposes and that measure 10 acres or more. Mr. Hodgson appealed.

The Board upheld the decision of the EHO. It found that the Code established a mandatory minimum parcel size of 10 acres which cannot be reduced by the EHO and that there is no provision for "rounding up" the 9.66 acres to 10 acres. Further, the Board found that residential use of the property is a prerequisite for applying for a permit under the Code. The appeal was dismissed.

97-HEA-08 William Earl v. Environmental Health Officer

Decision date: November 12, 1997

Panel: Toby Vigod

Mr. Earl appealed the decision of the EHO refusing to issue a permit to construct and install a package treatment plant and a raised sand mound field for a proposed three-bedroom house on a small lot on Bowen Island. The EHO refused the permit because of concerns about a health hazard due to the high water table; a layer of compact, heavily saturated soils close to the surface; the small lot size; the presence of a drainage ditch immediately down slope from the proposed field; the inadequate capacity of the proposed absorption field; and, the failure to meet a 10 foot setback from the property line. Mr. Earl appealed on the grounds that the minimum amount of pipe could accommodate the treatment capacity of the system and that the proposed system complied with the minimum regulatory requirements provided that the distance to the property line from the proposed field was measured from the nearest trench wall inside the sand mound, not from the edge of the mound.

The Panel found that the capacity of the proposed absorption field may not accommodate the capacity of the treatment system and therefore more pipe was required. The Panel also found that the setback to the lot boundary should be measured from the edge of the mound. The Panel therefore found that all of the mandatory regulatory requirements had not been met, and that the EHO had no discretion to approve the system. The Panel also found that the severe limitations of the lot created a high probability that effluent would break out from the sand mound and that the effluent would either surface or enter the groundwater system. Therefore, the Panel was not satisfied that the proposed system would safeguard the public health. The appeal was dismissed.

97-HEA-11 Ken Rogers v. Environmental Health Officer (Robert Small, Permit Holder)

Decision Date: July 8, 1997

Panel: Carol Martin

Mr. Rogers, a neighbour of the Permit Holder, appealed the decision of the EHO to issue a permit for a sewage disposal system on a property located in Roberts Creek, near Sechelt. Mr. Rogers submitted that an insufficient number of test holes were dug at the proposed disposal field location; that percolation tests were not conducted; that the permit was not posted as required; and, that public health was at risk because the soil depth was inadequate and the disposal field distance from possible outbreak points was insufficient.

Mr. Rogers did not demonstrate to the Panel that a risk to public health would be created by the installation and use of the approved disposal system. The Panel found that the site plan was not posted as required, but held that this was not critical to the appeal. It further found that the requirement regarding distance from the proposed system to breakout points was met. The Panel agreed with Mr. Rogers however, that the regulatory requirements for test holes and percolation tests were not met, so the EHO could not properly determine whether soil conditions or depth was satisfactory. The Board therefore ordered that the Permit Holder provide satisfactory test results as required, that the EHO inspect the test holes, and that permit information be updated and corrected. Subject to satisfaction of the above, the permit was upheld and the appeal was dismissed.

97-HEA-12 Rodney Lidstone v. Environmental Health Officer

Decision Date: October 28, 1997

Panel: Toby Vigod

Mr. Lidstone appealed a decision of the EHO refusing to issue a permit for a "repair" to an on-site sewage disposal system servicing a one-bedroom house on Shawnigan Lake. Mr. Lidstone argued that the disposal system application was for a "repair" to a pre-1985 system, and as such, the EHO could relax some of the regulatory standards as long as the proposed system did not constitute a health hazard. Mr. Lidstone argued that the proposed system had sufficient safeguards to protect public health when the following factors were considered: the addition of extra fill on the lot, the average high water marks, and the high quality effluent produced by the proposed low rate sand filter.

The Panel found that the proposed sewage disposal system constituted a "repair", since it was not a change in the type of system, but a replacement of a water-based system. However, the Panel found that the proposed system could constitute a health hazard. The Panel stated that, even with the extra fill on the lot, the lake could at times completely cover the location of the proposed pump/septic tanks and sand filter. One malfunction of the septic/pump tanks or sand filter could result in sewage being directly introduced into Shawnigan Lake,

which is a source of domestic water. The Panel also found that the disposal field's inadequate setbacks from the lake, and high ground water levels related to the lake, could prevent the disposal field from treating effluent safely and properly. The Panel upheld the EHO's decision and dismissed the appeal.

97-HEA-13 George and Vicki Blogg v. Environmental Health Officer (Rick Woodland, Permit Holder)

Decision date: July 21, 1997

Panel: Toby Vigod

Mr. and Mrs. Blogg appealed the decision of the EHO issuing a permit, to Rick Woodland, for an on-site sewage disposal system consisting of a package treatment plant and a gravel-less trench for a three-bedroom house with a one-bedroom suite. Mr. and Mrs. Blogg appealed on the grounds that contaminated ground water was entering their property and that the proposed system would create a health hazard because of insufficient soil depth and insufficient area for the disposal site.

The Board found that even though there was conflicting evidence on the depth of soil at the site, the 4 foot soil depth requirement could not be met. Nevertheless, the Board found that public health was safeguarded with the additional conditions of adding soil and constructing an impermeable barrier at the site. The Board upheld the EHO's decision to issue the permit, and it upheld the conditions of the permit. The Board also added conditions to the permit to ensure compliance with the Regulation. The Board commented that some of the mandatory provisions of Schedule 2 and 3 had not kept pace with recent developments in disposal system design and needed to be updated.

97-HEA-15 Walter Collishaw and Petra Accipiter v. Environmental Health Officer

Decision Date: February 3, 1998

Panel: Christie Mayall

Walter Collishaw and Petra Accipiter appealed a decision of the EHO rejecting their application for a sewage disposal permit. The application was to construct an alternative sewage disposal system for a three-bedroom house they wished to build on a 0.54 acre lot on Thetis Island. The proposed system consisted of a 750 gallon septic tank, a 750 gallon dosing tank, an 18 by 20 foot low-rate intermittent sand filter, and a 50 foot drainage field. The application was rejected due to an inadequate depth of natural porous soil to the groundwater table and impervious clay soils.

The Board found that the proposed system did not comply with the Sewage Disposal Regulation or health policy because the depth of the water table at the lot falls far short of the provincial soil depth requirement of 45 centimetres. The Board also found that the heavy rainfall in the area, the small lot size, and the slope of the lot justified giving consideration to increasing the depth requirement. To accommodate these concerns, the Appellants proposed to build the house with two rather than three bedrooms and to increase the length of the drain field from 50 feet to 114 feet. The Board found that given the percolation rate of 27 minutes/inch and 250 GPD of sewage flow from a two-bedroom house, the system would require a drain field approximately 310 feet (95 metres) in length. The Board found that a field of this size could not be safely installed on the site because it would be located too close to a roadside ditch on the edge of the property. The Board dismissed the appeal.

97-HEA-21 Anthony Salway v. Environmental Health Officer (Richard DeJong, Permit Holder)

Decision Date: December 4, 1997

Panel: Christie Mayall

Dr. Salway appealed the decision of the EHO to issue a permit for construction of a sewage disposal system on Mr. DeJong's property on the west arm of Kootenay Lake. The grounds of the appeal were that the installation of an absorption field, as authorized by the permit, would have a negative impact on the water quality of two nearby perennial springs used by the Appellant and other area residents as their domestic water source.

The Panel found that the distance of the proposed septic field from the springs exceeded the minimum 100 feet (30.5 metres) required by the Regulation. There was no evidence to show that underground water courses flowing to the springs would be contaminated by the proposed septic field. Given the evidence considered, the Panel found that it was unlikely, on a balance of probabilities, that the springs would be impacted by the sewage treatment system authorized by the permit. The Panel also found that the water quality of the springs may vary from time to time, and that where the site had a slope in excess of 30%, it could be reconstructed to comply with the regulation. The Panel also found that one test hole in conjunction with other observed holes was sufficient to characterize the site under Schedule 1 of the Sewage Disposal Regulation. The appeal was dismissed.

97-HEA-25 Dave Ellenwood v. Environmental Health Officer

Decision Date: November 28, 1997

Panel: Carol Martin

The Appellant, Mr. Ellenwood, appealed a decision of the EHO denying a permit for a sewage disposal system for a low-lying 1.98 hectare (4.95 acres) lot in Surrey, B.C. The EHO's decision was based on his observations that the seasonal ground water table was too high and the configuration of the lot did not allow for adequate setback distances from the disposal mound to the breakout points, water courses or property lines. The Appellant argued that he could correct the high groundwater table and drainage problems through ditching and other means in the course of installing the system, and that the EHO could have issued a "provisional" permit to allow him to do this. The Appellant also alleged that the EHO's discretion was fettered by applying the set back requirements in the Health Unit's Policy on "Non-conforming Land Parcel Guidelines" too rigidly.

The Board found that the EHO's findings that the proposal did not meet regulatory setback requirements to a creek or the property lines were unsupported by the evidence. However, the Board agreed with the EHO that the site could not meet the requirements of the Sewage Disposal Regulation because the drainage and high ground water problems on the site were not adequately addressed. There were two potential breakout points, a ditch and a wetland area, located on either side of the proposed field. Having breakout points within 50 feet on both sides of the field created a health risk. The Board also found that the EHO was correct in not issuing a "provisional" permit, because there is no such thing mentioned in the Act or the Regulation. No permit should be issued until an EHO can be satisfied that the ultimate use of the system would not contravene the Act or the Regulation.

The Board was also satisfied that the EHO did not rigidly apply the "Non-conforming Parcel Guidelines" when considering the permit and therefore did not "fetter his discretion". He considered other matters besides that policy, including the Regulation and possible public health risk through contamination of ground and surface water. While the Guidelines appeared to fetter his discretion, the Board found that it is "how" an EHO applies

the policy that is the main issue, not what the policy says. However, the Board noted that the Guidelines required some amendment to delete all reference to the word "must".

The Board upheld the EHO's decision to refuse to issue a permit, and dismissed the appeal.

97-HEA-26 Eric Rose v. Environmental Health Officer (Jim Carmichael, Permit Holder)

Decision Date: February 3, 1998

Panel: Harry Higgins

Mr. Rose, a resident at a mobile home site in a motel and mobile home park property in Keremeos, B.C., appealed the EHO's decision to issue a permit to alter an existing septic system on the property. Due to the urgent nature of the health hazard, verbal permission was given by a representative of the Health Unit to build the new alternate disposal system before the permit was issued. The construction of the new "seepage bed" system involved digging up the Appellant's lawn area and removing a number of trees and shrubs from the area around the Appellant's home. The Appellant had concerns about health hazards due to sewage drainage fields running under the access road and under his alleged parking area, and felt that these concerns were ignored by the EHO in making a decision that contravened parts of the Regulation, impacted on the Appellant's quality of life, and showed bias against the Appellant.

The Panel found that, in an emergency involving a health hazard, it may be necessary for a remedy to be sought immediately, with the issuance of a permit to be obtained as soon as possible thereafter. The Panel was satisfied that the EHO's office carried out its duties in an appropriate manner. Based on the evidence, it found that the location of the seepage bed did not present an unreasonable risk of a health hazard occurring. The Appellant's concerns about the location of the seepage bed under an access road and under an area used or intended for the parking of motor vehicles were also dismissed upon examination of the facts of the case. The issues of quality of life relating to aesthetic

values and access to the entrance of the Appellant's home were found to be beyond the jurisdiction of the Board. The Panel dismissed the appeal.

97-HEA-27 John and Carolyn Klassen v. Environmental Health Officer (Cidalia Wensley, Permit Holder)

Decision Date: October 10, 1997

Panel: Toby Vigod

The Klassens, who are neighbours of the subject lot, appealed a decision of the EHO to issue a permit for a sand-mound absorption field and a package treatment plant to service a proposed three-bedroom house. The grounds for appeal were that the percolation rates for the field were too slow and did not comply with the Regulation; that the field setback distances from the property lines did not comply with the Regulation; that the field did not have adequate storm water drainage; and, that the system would not ensure protection of public health.

The Panel found that silt and clay existed in the area of the percolation tests and that the percolation test results for this marginal lot were not accurate since the percolation procedures, as described in the Regulation, were not properly followed. In terms of setback distances, the Panel found that when measuring the setbacks on a sand-

mound absorption field for the purposes of section 14 of Schedule 3, the distance to the property line must be measured from the outer edge of the sand on the sand-mound and not the trench walls. The Panel decided that the absorption field did not have adequate setbacks and needed to be moved further south and east on the lot to comply with the Regulation. The Panel also found that the proposed interceptor drain on the site did not adequately protect the field from storm water and that a new written design for a drainage system needed to be developed. The Panel was not satisfied that the proposed disposal system would safeguard public health given the percolation rates, the problems in percolation testing, the inadequate setbacks and the need for a new drainage system. The Panel allowed the appeal.

97-HEA-30 Ian Wright v. Environmental Health Officer

Decision Date: February 4, 1998

Panel: Carol Martin

Mr. Wright appealed the decision of the EHO to refuse to issue a permit for a sewage disposal system for a proposed residence on a 0.14 ha (~1/3 acre) waterfront lot in Irvines Landing, B.C. The permit was refused primarily because the application could not be approved as an alternate system. The lot was too small for an absorption field, and in fact no absorption field was proposed in the application. The Appellant sought an order that the sewage disposal permit be issued on the grounds that the EHO inappropriately refused to consider a high effluent quality "Glendon Biofilter" package treatment plant for the lot.

The Panel was not satisfied that the proposed system would protect the public's health. The system has had limited use in B.C. in conjunction with approved backup systems and is still considered experimental in this province. The Panel found that the lot is too small to sustain a conventional or alternate system and that if the proposed experimental system failed, there would be no alternatives available for an on-site system. It was also found that a failure of the proposed system would likely result in contamination of neighbouring properties and the adjacent waterfront. The appeal was dismissed.

97-HEA-31 Fred Lachapelle v. Environmental Health Officer

Decision Date: March 30, 1998

Panel: Carol Martin

This was an appeal against the decision of the EHO to refuse to issue a permit for a sewage disposal system for a 0.49 hectare ocean front residential lot in Pender Harbour. After an earlier rejection of a proposed septic tank and absorption field system, the Appellant re-applied for a system consisting of a "Klargester" package treatment plant with a private ocean outfall. The EHO refused the application on the grounds that the Appellant had failed to obtain approval from the Union Board of Health to vary its 100 foot setback to tidal water; that under the Regulation, he could only permit systems utilizing ground disposal of effluent, not ocean outfall; that he was not satisfied that a health hazard would not be created by the system; and, that the Appellant had not obtained a Crown foreshore lease or licence for the ocean discharge pipe.

The Panel found that it did not need to decide whether the Regulation precluded the EHO from approving an ocean outfall, as the ultimate test is whether the EHO is satisfied that the system will not present a risk to public health. In this case, the Panel found that there was insufficient evidence to show that the system would adequately safeguard the public health and prevent human pathogens from entering public waters and becoming

a risk to public health. While the Panel found that the Union Board of Health's setback requirement did not apply to this application, it found that the site investigation tests under Schedule 1 of the Regulation were required. The Panel noted that there was no back-up system available in the event of system failure and that a restrictive covenant would not ensure that adequate treatment, monitoring and maintenance standards would be met if the system were allowed. The Panel also stated that access to the Crown foreshore should have been arranged prior to the consideration of the application by the EHO. The Panel upheld the decision of the EHO and the appeal was dismissed.

97-HEA-32 Gordon Clarke v. Environmental Health Officer (David Ullman, Third Party)

Decision Date: February 10, 1998

Panel: Toby Vigod

Mr. Clarke appealed the decision of the EHO to refuse to issue a permit for a sewage disposal system for a waterfront property near Campbell River, B.C. The EHO found that a cistern located on a neighbouring property also functioned as a well and as a source of domestic water, and that the proposed site of the absorption field for the Appellant's property was, at a distance of 50 feet, too close to the cistern. The Appellant submitted that the 100 foot minimum distance required by the Regulation should not have applied. He argued that the cistern was not a well or a "source of domestic water" itself, but rather a reservoir for water from the true source, a creek located about 300 feet from the proposed absorption field.

The Board found that the cistern did operate like a shallow well in that water infiltrated from the sub-surface into the cistern. The fact that the "primary" source of water may have been the creek did not detract from the fact that water was also entering the cistern from the sub-surface and that it provided water when the creek was dry in the summer. There was therefore a real concern that effluent from a septic field at the proposed location could contaminate the water in the cistern and thereby have a negative impact on public health. The appeal was dismissed.

Mr. Ullman, the owner of the neighbouring property and the Third Party to the appeal, asked that he be awarded costs of the proceeding. The Board found that there was nothing extraordinary in Mr. Clarke filing the application for the sewage disposal system or in carrying the conduct of the appeal, and that no action of Mr. Clarke's had resulted in any prejudice to Mr. Ullman. The Board therefore declined to award costs.

Pesticide Control Act

96/02(b) John Ward v. Deputy Administrator Pesticide Control Act (Hauer Bros. Lumber Ltd., Third Party)

Decision date: May 15, 1997

Panel: Christie Mayall, Johnder Basran, Helmut Klughammer

This was an appeal against the issuance of a pesticide use permit authorizing the use of VISION[a] herbicide for the purpose of retarding growth of early successional species on two clearcuts in the Robson Valley. Mr. Ward's grounds for appeal were that the use of VISION[a] would create an unreasonable adverse effect on the environment; that inadequate care was taken to ensure that habitat, wildlife and other environmental concerns were evaluated in developing the permit; that permit procedures favour industry; and, that the proposed signage would not protect public health.

The Board noted that Hauer Bros., the Permit Holder, is required to renew cutblocks to "free-to-grow" status and that the initial effect of logging changed the habitat much more dramatically than brushing could do. The Board found that VISION™ would affect habitat in the treated area, but the effects were not unreasonable. Further, the Panel found that permit procedures had not compromised the public interest, that the precautions taken to advise the public of the spraying were adequate, that aerial application could be carried out safely on the sites, and that alternative methods of pesticide application for these sites were unsatisfactory. The appeal was dismissed.

96/26 B.C. Rail v. Deputy Administrator Pesticide Control Act

Decision Date: May 30, 1997

Panel: David Brown

This was an appeal against the Pesticide Administrator's decision to deny a permit to treat brush on the BC Rail right-of-way between Garibaldi (Mileboard 59) and Marne (Mileboard 131), using the herbicides Garlon 4 and Roundup. The decision was based on the inability of the Administrator to determine whether or not the use of the herbicides in the intended manner would result in the contamination of ground and/or surface waters used for potable purposes.

The Panel noted that it can assume that a federally registered pesticide is generally safe and should not re-evaluate the validity of the warnings and restrictions on the label. The Panel then applied the 2-step test approved by the Court of Appeal in the Canadian Earthcare case: is there an "adverse effect" and if so, is it reasonable or unreasonable. It held that the evidentiary standard required to establish an adverse effect "should not be all that high".

The Panel found on the facts that the application of the proposed herbicides would have an unreasonable adverse effect if used between Mile 114 and Mile 117 due to the proximity of a number of domestic water sources that are susceptible to contamination, and the availability of alternative methods to get rid of the unwanted vegetation. The risks to the public in the area far outweighed the cost benefit to the Appellant. However, this was not the case for the rest of the right-of-way, provided that the treatment was carried out in accordance with the label directions and with other directions set out in the Panel's decision. B.C. Rail was accordingly allowed to conduct the treatment except for the section of right-of-way between Mile 114 and Mile 117 (near Birken). The appeal was allowed in part.

97-PES-01/02 Tamihi Logging Co. Ltd. v. Deputy Administrator, Pesticide Control Act

Decision date: July 10, 1997

Panel: Toby Vigod, Elizabeth Keay, Gary Robinson

Tamihi Logging appealed a decision of the Deputy Administrator to add a condition to two of Tamihi's pesticide use permits. The condition required the hiring of an independent consultant to monitor compliance with permit terms. The condition was added in response to a September, 1996 accident in which Tamihi's service contractor sprayed a hunter with the herbicide glyphosate during an aerial application.

The Panel found that the condition to hire an independent monitor was not warranted since Tamihi was already required to have a project supervisor on-site, and the condition may not have prevented similar spraying

accidents in the future. There was no evidence that the Appellant was in breach of its existing permit, and the Panel held that less burdensome measures could properly address the problem. The Panel replaced the appealed condition with requirements for: road barriers to prevent entry to treatment areas during application, the posting of signage prior to spraying, and the development of a protocol to eliminate the potential for exposure to bystanders. The Panel allowed the appeal.

97-PES-09 Merrill & Ring Timber & Land Management v. Deputy Administrator, Pesticide Control Act

Decision Date: February 11, 1998

Panel: Toby Vigod, Cindy Derkaz, Jane Luke

This was an appeal of four conditions in a pesticide use permit for several small cutblocks in a community watershed at Menzies Bay, just north of Campbell River. The conditions prohibited the application of herbicides within prescribed distances from water intakes, wells, neighbouring houses, and a trail, and removed from the permit entirely, one proposed treatment block adjacent to a community water intake. The Appellant sought an order decreasing the size of the no-treatment zones specified in two of the conditions and rescinding the conditions removing the block and applying standards from the Forest Practices Code of British Columbia Act (the "Code") and its regulations to forest management operations on the Appellant's private lands.

The Board found that it was reasonable in this case to take guidance from the requirements for water intake buffers in community watersheds found in the regulations and guidebooks of the Code and to apply buffer zones such as are common in other permits. The Board held that the public should be entitled to the same level of protection of their water sources regardless of whether the application of herbicides is to take place on private land or Crown land. The removal of the one block from the permit was also found to be reasonable in light of the exceptionally small size of the community watershed, community concerns, the availability of mechanical control, and the importance of protecting the purity of the water supply. The requirement for the 15 metre no-treatment zone along a trail through the Appellant's land was also upheld because the public had historically been allowed to use the trail, and posting was found to be an inadequate safety measure as young children used the trail. The appeal of the four conditions was denied.

Waste Management Act

96/01(d) City of Penticton v. Lorna and Steven Boultbee and Deputy Director of Waste Management

Decision date: August 21, 1997

Panel: David Brown

The City of Penticton applied for an amendment to a condition ordered by the Board in decision 96/01(c) Ð Waste that "on or before July 1, 1997, the permittee shall introduce a temperature control". This condition was contained in a permit issued to the City for its solid waste composting operations. The City asked the Board to extend the date for compliance to October 1, 1997.

Based on the submission by the City that the amendment would permit the City sufficient time to assess whether or not the site would be moved to a more remote location where the temperature control equipment would not be required, the Panel granted the requested amendment to the permit.

96/01(e) City of Penticton v. Lorna and Steven Boultbee and Deputy Director of Waste Management

Decision date: October 24, 1997

Panel: David Brown

The City of Penticton applied for an amendment to extend two of the deadlines for compliance set out in its solid waste composting permit. The City asked that the deadlines for introducing temperature control and for establishing an Odour Control Committee be extended from October 1, 1997 (see Board decision 96/01(d) Ð Waste) and January 1, 1997, respectively, to January 1, 1998, because it was planning on moving the site of the compost operation in the spring of 1998 and should not be required to expend the monies necessary to comply with the permit.

The Panel found that the City should not be put to unnecessary expense when it is in the process of moving the site of the compost operation. The Panel granted the requested amendments.

96/17(b) Metalex Products Ltd. v. Deputy Director of Waste Management (Gerry Wilkin, on behalf of the Friends of the Similkameen Valley, Applicant)

Decision Date: April 24, 1997

Panel: Toby Vigod

The Deputy Director of Waste Management stayed part of a Pollution Prevention Order issued to Metalex which required Metalex to remove, by September 15, 1996, a slag pile at an abandoned mine site near Cawston, B.C., pending a risk assessment which was to be completed May 9, 1997. Metalex appealed this decision to the Board and Mr. Wilkin, on behalf of himself and Friends of the Similkameen Valley ("FSV"), applied to the Board for an extension of time so that he and FSV may also appeal the decision.

The Board noted that there was a substantial delay between the Deputy Director's decision and the Applicant's notice of appeal, no reason was given for this delay, and Metalex opposed the extension. The Board found that the environmental risk assessment would address the issue of environmental impact. The Applicant would continue to have the right to appeal any decision made by the Regional Waste Manager based on the assessment and, therefore, will not be prejudiced if an extension is denied. The Board further held that Mr. Wilkin was not an "aggrieved person" under the Waste Management Act, as he resides 75 kilometres from the mine site and has no rights or interests which may be prejudicially affected by the Deputy Director's decision. However, acknowledging that other members of FSV may be affected, the Board invited any aggrieved member of the FSV to be a party in the Metalex appeal on behalf of the FSV. The application was denied.

96/23 Nick Kootnikoff on behalf of Krestova Residents for Pure Water v. Deputy Director of Waste Management (Celgar Pulp Company and Mark Hatlen, Approval Holders)

Decision Date: April 7, 1997

Panel: Judith Lee

Nick Kootnikoff, on behalf of Krestova Residents for Pure Water, appealed a decision of the Deputy Director of Waste Management refusing to grant an extension of time to file an appeal of an approval authorizing the discharge of treated pulp mill sludge to Mr. Hatlen's property. The Appellants appealed on the grounds that the Deputy Director erred in refusing to grant the extension; the Approval Holders did not give Mr. Hatlen's neighbours adequate notice of the approval; the sludge is polluting or will pollute the environment and should be removed from the site; and the deposit was contrary to a federal regulation prohibiting release of any effluent that contains unacceptable levels of certain chemicals.

On the evidence presented, the Board found that the Appellants were not given notice of the approval, and once they were aware of the approval and the sludge deposit, they appealed promptly. The Board was satisfied that the Appellants established an adequate reason for their delay in filing an appeal. However, the Board found that the approval has been fully exercised and had expired. Therefore, there was nothing for the Deputy Director or the Board to confirm, vary or rescind. Further, the Board found that, on the evidence presented, the environmental impact of a single application of deposited sludge was minimal and its removal may cause a greater environmental impact than leaving it in place. The Board varied the Deputy Director's decision by requiring monitoring results, from areas where the sludge was deposited, to be given to Mr. Hatlen and his neighbours within 30 days of such tests. The appeal was dismissed.

96/30 Louisiana Pacific Canada Ltd. and Peace Country Environmental Protection Association v. Deputy Director of Waste Management

Decision date: December 23, 1997

Panel: David Perry, Harry Higgins, Elizabeth Keay

Louisiana Pacific Canada Ltd. and the Peace Country Environmental Protection Association ("PCEPA") appealed a decision of the Deputy Director allowing an appeal against an amended permit. The amended permit, issued by the Regional Waste Manager, imposed lower emissions standards following the installation of more stringent environmental controls at Louisiana Pacific's oriented strand board plant near Dawson Creek, B.C. On review, the Deputy Director held that the plant produced harmful levels of pollutants; that there were demonstrable health problems arising from the plant; that the presence of odours constituted a nuisance to some persons; and, that only the best available control technology should be used to monitor fine particulate emissions. The Deputy Director imposed ambient monitoring and odour detection programs and ordered an evaluation of the costs and benefits of a base-line health study.

Louisiana Pacific appealed the review decision on the basis that the findings of fact were unreasonable and that the use of a Ministry air quality objective policy in making changes to their original permit amounted to a fettering of the Regional Waste Manager's discretion. PCEPA appealed on the basis that, given the findings of fact made in the decision, much more stringent monitoring requirements were required. The Ministry of Environment, Lands and Parks ("MELP"), on behalf of the Respondent, developed a modified monitoring program which it asked the Board to uphold.

The Panel found that there was insufficient evidence to determine that there was a harmful level of pollutants from the plant. The Panel also found there was insufficient medical evidence to demonstrate a link between health problems among some members of the community and emissions from the plant. The Panel further found that the odours detected were not a nuisance because the reported effect was temporary or transitory and

not an ongoing, continuous phenomenon affecting the enjoyment of property. The Panel upheld the Deputy Director's finding that the current emissions control on the plant are the most suitable given the level of emissions expected from the plant. On the issue of fettered discretion, the Panel found that the Regional Waste Manager, and subsequently the Deputy Director, had not fettered their discretion when setting permit levels or monitoring requirements. The Panel set aside the directions in the Deputy Director's decision but held that more effective monitoring was justified to protect the environment, adopting the monitoring program submitted by MELP. The Panel allowed the appeal in part and substituted its own decision accordingly.

97-WAS-03(b) Little River Environmental Protection Society and Little River Enhancement Society v. Deputy Director of Waste Management (King Coho Resort Ltd., Permit Holder)

Decision date: August 12, 1997

Panel: Toby Vigod, Harry Higgins, Elizabeth Keay

The Little River Environmental Protection Society ("LREPS") appealed the issuance of a permit for King Coho Resort's sewage outfall into the ocean. LREPS appealed on the grounds that the Deputy Director failed to do the following: restrict influent; reduce the maximum discharge; require a reassessment of the environmental impact of the proposed effluent; provide conditions necessary to establish enforceable limits on the rate and discharge characteristics of effluent; and, require sufficient conditions for protection of the environment. LREPS sought to have the permit set aside or, in the alternative, to have it amended.

In terms of restricting influent, which is the raw waste coming into the treatment plant, the Board agreed with the Deputy Director's requirement for a grease trap for the restaurant and for education material to customers on what should be disposed of in the sewage system. As for sewage effluent, the Board upheld the Deputy Director's decision to have the Regional Waste Manager recalculate the maximum discharge limits. The Board further required median values for the sewage discharge and a multiport diffuser for the outfall pipe to dilute the effluent. The Board found that sufficient data existed to assess the environmental impact of the effluent, and it supported the Deputy Director's requirement to ensure monitoring and reporting of the disposal system. The Board also found that there should be sufficient storage capacity for effluent during repairs and upsets of the system and that there should be alarms for identifying upsets. The Board determined that the environment would be adequately protected by the system. However, it required King Coho Resort to give a security bond to the Regional Waste Manager, the amount of which would increase as the volume of effluent increased with the growth of the development. In order that the environment be further protected, the Board also required King Coho Resort to provide adequate information and facilities for the proper disposal of chemicals; to investigate effluent reuse options; to install water saving devices; and, to perform a study of shellfish and bioconcentration at the outfall site. Ultimately, the Board upheld the decision of the Deputy Director, except in regard to the security issue. The Board ordered a number of conditions to be attached to the permit and referred the amended permit back to the Regional Waste Manager for approval.

97-WAS-04(a) Alpha Manufacturing Inc. et al. v. Deputy Director of Waste Management (BC Gas Utility Ltd., Third Party)

Decision date: August 5, 1997

Panel: Toby Vigod

Alpha Manufacturing Inc. requested a stay of a Pollution Prevention Order issued by the Deputy Director of Waste Management, pending its appeal. Alpha had operated a land reclamation site in the Burns Bog area of Delta under a waste permit from 1987 until early 1996 when the permit was cancelled. The Order required Alpha to monitor the site to prevent possible pollution, to prepare and submit a Site Closure Plan by March 31, 1997, and, if Alpha intended to develop the site, to prepare a Site Development Plan by July 31, 1997.

The Board found that there was a serious issue to be tried but that Alpha did not show that it would suffer irreparable harm if the stay was refused. The Board noted that the terms of the Order were only a continuation and expansion of the monitoring and Site Closure requirements contained in Alpha's cancelled permit and that these costs would have to be incurred at some point in any event.

The Board found that the threat of prosecution for non-compliance with the Order does not constitute irreparable harm. The Board also found that the threat of toxic leachate and of slope failure, which could result in damage to two natural gas pipelines which cross the site, created a significant risk to the environment. The Board held that the risk to the environment if a stay was granted far outweighed the harm to Alpha if one was denied. The application was dismissed.

97-WAS-04(b) Alpha Manufacturing Inc. et al. v. Deputy Director of Waste Management (BC Gas Utility Ltd., Third Party)

Decision date: December 12, 1997

Panel: Toby Vigod, Christie Mayall, William MacFarlane

Alpha Manufacturing Inc. and the other Appellant companies appealed a Pollution Prevention Order issued by the Deputy Director of Waste Management in relation to a property situated in a peat bog in North Delta, B.C. The Appellants were issued a permit to landfill the site with the intention of developing an industrial park once landfilling was completed. The Ministry cancelled their permit and subsequently issued the Order which required the Appellants to monitor the site and prepare certain plans. Alpha appealed on the grounds that the Deputy Director had acted without jurisdiction in issuing the Order and that some of the terms of the Order, such as the deadlines, were unreasonable.

The Panel found that the Deputy Director acted within his jurisdiction because there were reasonable grounds to find that an "activity" had been performed by a person, in a manner likely to "release" a substance, that would, if released, cause pollution of the environment. The Panel found that, if the landfill were left in its present condition, toxic leachate would likely be released into the environment and that the possibility of soil movement in the landfill created a risk that two BC Gas pipelines traversing the property would rupture. Further, the Panel found that there was a risk of fire at the site and if one occurred there would likely be a release of contaminants to the air which would not be insignificant or transitory. The Panel found that the terms of the Order were reasonable but should be amended to reflect the fact that the original deadlines for compliance with the Order had passed. The Panel therefore varied certain parts of the Order accordingly and dismissed the appeal.

97-WAS-05(a) North Fraser Harbour Commission et al. v. Deputy Director of Waste Management (B.C. Lands, Canadian Pacific Railway and CBR Cement, Third Parties)

Decision date: June 5, 1997

Panel: Judith Lee

The Appellant landowners applied for a stay of a Pollution Abatement and Pollution Prevention Order pending their appeals. The Deputy Director of Waste Management made the Order to address coal tar contamination of lands adjacent to the Fraser River in Vancouver. It required the landowners to conduct a site investigation, submit a technical report of their results within three months of the Order, and to submit a plan for remediation within five months.

The Board held that there were serious issues in the appeal and that financial damages that would be incurred by the Appellants if they complied with the Order constituted irreparable harm because of the uncertainty of recovery. However, the Board also found that there was clear potential for irreparable harm to fish and other species from the coal tar pollution. The Board weighed the burden to the Appellants of compliance against the public interest represented by the Order and concluded that the balance of convenience favoured compliance with the site investigation and technical report requirements. The deadline for completion of the investigation report was extended however, and the part of the Order which required a remediation plan to be submitted was stayed until a decision was reached on the appeal.

97-WAS-06 BC Rail Ltd. v. Deputy Director of Waste Management

Decision date: February 24, 1998

Panel: Toby Vigod, Robert Cameron, Marilyn Kansky

This decision was on the preliminary issue of the Board's jurisdiction in an appeal by BC Rail Ltd. against a decision refusing to grant it a permit to dispose of 2070 tonnes of sulphur near Mileboard 573 of the BC Rail Mainline. After the appeal was filed, the sulphur in question was taken to a landfill in Alberta. Thus, BC Rail no longer needed the permit. BC Rail asked the Board to hear its appeal anyway and make certain findings.

The Board found that its jurisdiction with respect to the remedies it may order is defined by section 46(3) of the Waste Management Act and that BC Rail was not seeking a remedy that can be found in that section. The Board found that it does not have a separate declaratory power as other tribunals have been given in their originating statutes. The Board held that the relief sought was in the nature of a declaration. The appeal was therefore dismissed.

97-WAS-08 Kathryn and Wayne Zorn v. Deputy Director of Waste Management (City of Cranbrook, Third Party)

Decision date: October 9, 1997

Panel: Toby Vigod

The Zorns appealed the decision of the Deputy Director of Waste Management refusing to grant them an extension of time to file an appeal. The Zorns argued that their appeal was against a decision contained in a May 22, 1997 letter, which allowed the City of Cranbrook to burn wood waste at the landfill. They argued that their appeal was within the 21 day time limit to file an appeal; that the proposed burning would violate provisions of the Waste Management Act; that well water was being threatened due to the generation of leachate at the site; that the burning would negatively affect the local air quality; and, that the burning could not be safely carried out because the landfill is now "completely full."

The Board decided that a 1979 permit authorized the City to burn the wood waste. The 1997 letter discussing the burning was not a "decision" as defined in the Act, and it did not authorize the burning. Since the City had been exercising its rights under the permit for 16 years, the Board did not grant an extension of the time to appeal the issuance of the permit. The Board noted that the 21 day time limit to appeal gives those potentially affected sufficient time to challenge the permit, while acknowledging that the permittee should be able to plan its affairs with some certainty. Although the Zorns raised serious issues that ought to be addressed, the Board found that the appeal process was not an appropriate avenue for them. The Board refused to grant an extension of time and dismissed the appeal.

97-WAS-09(a) Gurmeet Brar v. Deputy Director of Waste Management (District of Invermere, Third Party)

Decision date: October 17, 1997

Panel: Toby Vigod

Gurmeet Brar applied for a stay pending the appeal of a Deputy Director's decision amending a waste permit and upholding the increase in the District of Invermere's effluent discharge. The amended permit authorized an increase in the allowable discharge of effluent to the ground and to Toby Creek from a waste water treatment plant operated by the District. Mr. Brar argued that there was no compelling urgency for the District to expand its sewer facility and that other work could be done to improve the quality and quantity of effluent discharges if a stay was granted. He claimed that refusing the stay and allowing the increase in discharge would result in irreparable environmental harm. It could also lead to a waste in public funds if the appeal was ultimately successful and the District was denied its expansion.

The Board found that serious issues existed and that irreparable harm to the environment could occur if a stay was not granted. On a balance of convenience, the Board determined that a stay should be granted.

97-WAS-09(b) Gurmeet Brar v. Deputy Director Waste Management (District of Invermere, Third Party)

Decision date: January 6, 1998

Panel: Toby Vigod

The District of Invermere challenged Mr. Brar's right of standing in his appeal against the District's amended waste permit. The District submitted that Mr. Brar was not a "person aggrieved" by the decision, and asked the Board to dismiss his appeal accordingly.

The Panel found that Mr. Brar had an ownership interest in two properties adjacent to the treatment plant site. Given the proximity of the properties to the site, it was reasonable to believe that the subject decision may prejudicially affect the Appellant's rights or interests. The Panel therefore found that Mr. Brar was a "person aggrieved" under section 44(1) of the Act and had standing to appeal the amended permit and the decision of the Deputy Director. The application for dismissal based on lack of standing was denied.

97-WAS-09(c) Gurmeet Brar v. Deputy Director of Waste Management (District of Invermere, Third Party)

97-WAS-12(a) District of Invermere v. Deputy Director of Waste Management (Gurmeet Brar, Third Party)

Decision date: March 11, 1998

Panel: Toby Vigod

In a separate appeal to Mr. Brar's appeal of the Deputy Director's decision to amend the District of Invermere's waste permit, the District appealed the conditions in the amended permit. The Board offered Mr. Brar third party status in that appeal, which he accepted. The District subsequently applied to the Board requesting a determination on whether Mr. Brar had standing for his appeal, arguing that his ownership interest in the properties adjacent to the treatment plant did not exist at the time he filed his appeal, and that therefore he was not properly a "person aggrieved". The District also requested that he be removed as a third party to the District's appeal and asked for its costs for the hearing and for all costs related to addressing the issue of standing.

The Board found that the threshold for standing to appeal had been raised by the amendment of section 44 of the Waste Management Act, from a "person that considers himself aggrieved" to a "person aggrieved". The Board also found that during the 30-day appeal filing period, Mr. Brar did not have an interest that could reasonably be prejudiced by the Deputy Director's decision. However, Mr. Brar was allowed by the Board to retain his third-party status in the District's appeal, because the test for this status was found to be considerably broader than the test for standing to launch an appeal. The Board declined to award costs due to the fact that Mr. Brar would have had standing to appeal but for the legislation being amended just three days before the issuance of the Deputy Director's decision. Further, the District itself did not challenge his standing until almost three months after Mr. Brar's appeal was filed and subsequent to a stay of the permit being granted.

The Board dismissed Mr. Brar's appeal for lack of standing. His third party status in the District's appeal was upheld. The Board denied the District's request for costs.

97-WAS-10(a) John Keays and Paddy Goggins v. Assistant Regional Waste Manager (MB Paper Limited, Third Party)

Decision date: November 17, 1997

Panel: Toby Vigod

Mr. Goggins and Mr. Keays filed separate appeals against an amended permit issued by the Assistant Regional Waste Manager authorizing an additional discharge of contaminants to the air from a new boiler at MB Paper Limited's (the "Permit Holder") pulp and paper mill in Powell River. The Permit Holder challenged the Appellants' individual right of standing to bring an appeal against the amended permit, arguing that neither Appellant had provided sufficient evidence to show "how" he was actually "aggrieved" by the decision. Mr. Goggins argued that he had a personal interest in the environmental consequences of the discharge of emissions that would be allowed by the amended permit because of the proximity of his family's home and school to the facility. He asserted that this personal interest qualified him as a "person aggrieved" under Section 44 (1) of the Waste Management Act. Mr. Keays argued that he merited legal standing in that he represented the public interest and the interests of the unborn and of the local natural fauna that could not otherwise represent themselves.

In Mr. Goggins' case the Panel took the view that residency and proximity to the discharge site are highly relevant to an assessment of the reasonableness of a person's belief that a decision has been made which prejudicially affects his or her interests. The Panel accepted that Mr. Goggins was a "person aggrieved" under the Act, and that his appeal would therefore proceed. However, the Panel held that Mr. Keays' argument was

insufficient to give him standing under the Act. Mr. Keays was therefore not granted standing and his appeal was dismissed.

97-WAS-10(b) Paddy Goggins v. Assistant Regional Waste Manager (MB Paper Limited, Third Party)

Decision date: December 4, 1997

Panel: Toby Vigod

Mr. Goggins requested an interim stay of MB Paper Limited's amended permit, authorizing the discharge of certain contaminants to the air, pending the outcome of his appeal. Mr. Goggins argued that a stay should be granted in order to protect the environment and the health of himself, his family, and the general community.

The Panel found that the issues raised by the Appellant were neither frivolous nor vexatious because the Permit allowed more woodwaste to be burned at the site, used a different process for handling the materials prior to discharge, and that these issues merited further consideration. The Panel also found that it would err on the side of caution in assessing "irreparable harm" and that if the boiler became operational before the appeal was completed there may reasonably be some irreparable harm to the environment. Finally, the Board weighed the potential for irreparable harm to the environment if the stay were not granted against the financial burden to MacMillan Bloedel if the stay were granted, and found that based on the evidence before it, any financial loss or prejudice to MacMillan Bloedel from staying the operation of the amended permit would be relatively minor. The Board also noted that the hearing of the appeal had been scheduled less than one month after the expected start-up of the new boiler. A stay would not prevent MB from continuing its mill operation at normal capacity. The Board, therefore, found that, on a balance of convenience, the factors weighed in favour of staying the operation of the new boiler pending the outcome of the appeal. The stay application was granted.

This decision has been varied by Cabinet in OIC 1370. In the OIC cabinet orders that the Board's decision be reversed and the stay denied.

97-WAS-10(c) John Keays v. Assistant Regional Waste Manager (MB Paper Limited, Third Party)

Decision date: January 6, 1998

Panel: Toby Vigod

MacMillan Bloedel Paper Limited challenged Mr. Keays' right of standing to bring an appeal under the Waste Management Act. In a previous appeal decision (97-WAS-10(a)), the Board denied standing to Mr. Keays because there was no indication that he lived close enough to the mill site to be considered a "person aggrieved". Mr. Keays then requested that the Board reconsider its decision to deny him standing, submitting new information that he lived 10 kilometres downwind from the mill site and that his children attended a school approximately 1 kilometre from the site.

The Board concluded that it was appropriate to reconsider the issue of Mr. Keays' standing. The Panel found that proximity to a source of contamination or pollution is a valid consideration for assessing whether a person is a "person aggrieved" for the purpose of determining standing under the Act. The Panel held that in light of the new information, Mr. Keays had standing to appeal the amended permit. Mr. Keay's appeal was allowed and the earlier decision on standing was reversed.

97-WAS-11(a) Philip Fleischer and Paddy Goggins v. Assistant Regional Waste Manager (MacMillan Bloedel Limited, Third Party)

Decision date: November 17, 1997

Panel: Toby Vigod

Mr. Goggins and Mr. Fleischer filed separate appeals against a permit amended by the Deputy Director of Waste Management. The permit authorizes the discharge of mill residuals, specifically "grate ash" and "green liquor dregs", to certain lands in Powell River. Counsel for MacMillan Bloedel (the "Permit Holder") challenged the Appellants' individual right of standing to bring an appeal against the permit. This issue of standing is the same as that considered by the Board in Appeal No. 97-WAS-10(a) John Keays and Paddy Goggins v. Assistant Regional Waste Manager (MB Paper Ltd., Third Party), issued concurrently with this decision. Mr. Goggins argued that he was an Appellant to the original permit before the Deputy Director where his standing to appeal was not challenged. He submitted that any mishap in the handling of the wastes under the authorization of the permit would prejudice him, his children, and his property, and that he was therefore a "person aggrieved" under the Act. Mr. Fleischer submitted a similar argument.

The Board found that, in challenging the legal standing of the Appellants, the Permit Holder took an overly narrow approach to the question of standing. To require lay people to essentially "prove" their standing by showing how they will or will likely be affected is to impose an unreasonable burden on them. Proof of their cases comes at the hearing stage when the merits of the case are addressed. The Board also found that the proximity to the discharge sites of the residences and regular activities of the Appellants and their families indicated that the Appellants were persons with genuine grievances. The Board found that both Mr. Goggins and Mr. Fleischer had standing to appeal the permit and that their appeals should proceed.

97-WAS-11(b) Philip Fleischer and Paddy Goggins v. Assistant Regional Waste Manager (MacMillan Bloedel Limited, Third Party)

Decision date: November 24, 1997

Panel: Toby Vigod

The Appellants, Mr. Fleischer and Mr. Goggins, filed separate appeals against a waste permit issued to (the "Permit Holder") for beneficial reuse. Mr. Goggins applied for an interim stay of MacMillan Bloedel's permit, authorizing the discharge of mill residuals to certain lands in Powell River, B.C., pending the outcome of the appeal.

The Board found that there was a serious issue to be tried. However, Mr. Goggins did not provide any information to indicate there would be irreparable harm to himself or to the environment if the stay of the operation of the Permit was not granted. Given this finding, the Board did not deal with the issue of balance of convenience. Mr. Goggins' request for a stay was denied.

98-WAS-02 International Forest Products Limited and Hammond Cedar Division v. Assistant Regional Waste Manager (Cloverdale Fuels Limited et al., Third Parties)

Decision date: February 3, 1998

Panel: Toby Vigod

This is the decision on a stay request from International Forest Products Limited, Hammond Cedar Division, with regard to an Amended Pollution Abatement and Prevention Order issued on January 23, 1998. The Order had been amended to include the Appellant and the other parties because the Respondent had reasonable grounds to believe that pollution of Burrows Ditch and related tributaries in Surrey, B.C., was occurring as a result of the unauthorized dumping of wood waste at two properties in the area. One of the requirements listed in the Amended Order was that the named parties submit within seven days, a written plan prepared by a qualified person to prevent and abate the pollution. The Appellant requested an expedited stay of this requirement as it related to Interfor.

The Board accepted the Appellant's arguments that the 7-day time frame for developing the plan was problematic. The Board found that if there was no consultation with the Appellant prior to the issuance of the Amended Order, no specifics were provided on the environmental concerns, and the Order provided no right of access to the properties. Moreover, a failure to comply with the deadline would have placed the Appellant in violation of the Waste Management Act and subject to legal action.

Due to time constraints, the Board chose to deal with the stay application on an ex parte basis rather than taking the time to provide all the other relevant parties with an opportunity to make submissions. The Board therefore authorized a short interim stay of two weeks during which time the parties would have the opportunity to make submissions on the appropriateness of extending the stay. The stay application was granted on a short-term, ex parte basis.

98-WAS-02(a) International Forest Products Limited and Hammond Cedar Division v. Assistant Regional Waste Manager (Cloverdale Fuels Limited et. al., Third Parties)

Decision date: February 18, 1998

Panel: Toby Vigod

The Board issued an interim stay of an Amended Pollution Abatement and Prevention Order on February 3, 1998 on an ex parte basis, pending further submissions from the parties to the appeal of the Order (see 98-WAS-02). This summary is of the final stay decision, made with the consideration of those submissions.

The Board was satisfied that there was a serious issue to be tried and that the stay application was neither frivolous nor vexatious. The Respondent provided no information to indicate that irreparable harm could result to either the government or the environment if the stay were granted. Conversely, the Appellant raised a concern that it might be held liable for fines or charges if, for some reason, it were determined that it continued to be responsible for filing a plan and failed to do so. The Board found that such charges could constitute irreparable harm. The Board also found it unfair to require that the Appellant prepare a plan when it had not been given access to the subject property. Finally, the Board noted that a prevention and abatement plan had been supplied by one of the other parties and the Respondent was satisfied that the Order had been complied with. The Board therefore held that the balance of convenience favoured the granting of a stay pending a final decision on the merits of the appeal.

Water Act

94/46 Elkink Ranch Ltd. v. the Deputy Comptroller of Water Rights (Christine J. Smith, Third Party)

Decision Date: May 15, 1997

Panel: Judith Lee, Helmut Klughammer, Laurie Nowakowski

This was an appeal against a decision of the Deputy Comptroller of Water Rights requiring Elkink Ranch Ltd. to remove an obstruction placed in a channel of Swartz Creek without authority, and to restore the channel flow to its "natural course" towards the swamp. The Appellant, holder of water licences on Swartz Creek and Richter Lake, submitted that the obstruction was placed in the creek to allow it to flow in its "present natural direction" towards Richter Lake. It sought a determination from the Board that the natural surface water flow is towards Richter Lake and an order that the flow be allowed to proceed in that direction.

The Board found that the Appellant required approval for its actions and that the Respondent had acted within its authority in making the order. However, the Board found that the creek's natural flow varies, so rescinded that part of the order requiring the Appellant to redirect the creek towards the swamp. The Board determined that the Appellant was the only "beneficial user" of the water from Swartz Creek and ordered the Respondent to either amend Elkink's current licence or issue the appropriate authorization to allow the Appellant to divert 50% of the flow toward Richter Lake. The appeal was allowed.

95/59 Department of Indian Affairs and Northern Development and Westbank First Nation v. Deputy Comptroller of Water Rights (William Berscheid, Third Party)

Decision Date: June 5, 1997

Panel: David Perry, Gary Robinson, Helmut Klughammer

This was an appeal of a decision by the Deputy Comptroller of Water Rights to cancel a final and two conditional water licences held by the Appellants. The licences permitted diversion of water from Marshall Brook for irrigation purposes. Cancellation in both cases was for failure to make beneficial use of the water for 3 successive years.

The Appellants argued that they did not use the licences because they were under the mistaken impression that part of the works were on Mr. Berscheid's property and, due to threats from him, they did not rehabilitate the works. They further argued that there was a duty on the Water Branch to advise them of their error and, alternatively, that they had an aboriginal right to water outside of the structure of the Water Act.

The Board found that neither Appellant took any care to make beneficial use of the licences. It rejected the argument that the Water Branch was under a positive obligation to inform the Appellants of facts regarding neighbouring landowners and found that, even if there was such an obligation, the Water Branch had met it by providing detailed maps and aerial photos in the course of a previous EAB hearing. The Board held that it had no jurisdiction in this case to make findings as to aboriginal rights, and found that the "Minutes of Decision" which created Reserve No. 9 were of no assistance. The Board upheld the cancellation of the licences. The appeal was dismissed.

96/27 Hamid Saatchi v. Comptroller of Water Rights

Decision Date: July 30, 1997

Panel: Katherine L. Hough, William MacFarlane, Elinor Turrill

Mr. Saatchi, owner of a dairy farm near Salmon Arm, appealed the May 23, 1996 cancellation of two final water licences by the Comptroller of Water Rights. Cancellation was for failure to pay the annual rental which had been due for three years. Mr. Saatchi argued that no notice was sent to him about the pending cancellation or, alternatively, that the notice given was defective and insufficient. He also argued that the rules of natural justice obliged the Board to reinstate his licences in their entirety, with the same priority that he enjoyed before.

The Board found that the Ministry complied with the notice requirements of the Water Act when it sent a Notice of Proposed Cancellation to Mr. Saatchi by registered mail, and that the notice was sufficient. The Board further found that the 60 day objection period was not suspended because the mail was left unclaimed and that the extra steps taken to advise Mr. Saatchi of the pending cancellation did not bind the actions of the Comptroller or start a new appeal period. At the suggestion of the Respondent, the Board ordered Mr. Saatchi to pay all arrears within 30 days and ordered the Comptroller, upon receipt of these monies, to reinstate the licences with an amended priority date later than all other licences on the creek. The appeal was dismissed.

96/29 Skuppah Indian Band v. Comptroller of Water Rights (Helmut and Gerda Fandrich, Third Party)

Decision Date: September 2, 1997

Panel: Katherine Hough, Sheila Bull, Helmut Klughammer

The Skuppah Indian Band appealed the November 13, 1996 decision of the Comptroller of Water Rights upholding the decision of the Regional Water Manager to amend a Final Water Licence. The amendment resulted in the issuance of a new Conditional Water Licence. The Band's grounds for appeal were that no notice of the amendment was sent to it and that the Regional Water Manager failed to hold a hearing once the Band objected to the amendment.

The Board determined that it had jurisdiction to hear evidence on the issue of water licence priority under the Water Act and that the Skuppah Indian Band had first priority on George Creek. Because of its first priority and because of section 18 of the Water Act, which requires notice to all persons whose rights may be affected by a water licence amendment, the Board found that the Band should have received notice of the amendment. The Water Branch was required to consider the objection to the amendment and then to notify the objectors before amending the licence. The Board concluded by making the following orders: that the Band was authorized to construct works to divert water further upstream than the amended licence in question; that the priority dates on three of the Band's licences be changed to September 26, 1888; and, that the error in the naming of the watercourse (George Creek) be corrected by the appropriate official. The Board allowed the appeal.

97-WAT-02 Cominco Ltd. v. Deputy Comptroller of Water Rights

Decision Date: December 10, 1997

Panel: David Brown

Cominco Ltd. appealed a decision of the Deputy Comptroller of Water Rights concerning the calculation of certain water licence rentals and late payment penalties included in an Account Statement. The disagreement

over the charges arose in relation to the sale by Cominco of its Brilliant Dam to the Brilliant Power Funding Corporation ("BPFC") on May 22, 1996. It was the position of the Comptroller that Cominco was responsible for paying the water licence rentals for the dam for the whole of 1996, and that the 1997 water bills for Cominco's other dam (the "Waneta Dam") should be based, in part, on Cominco's power generation from the Brilliant Dam from January 1 to May 22, 1996. Further, the Comptroller argued that Cominco and the BPFC were jointly responsible for payment of the outstanding 1996 calendar year and 1997 calendar year accounts in respect of the Brilliant Plant.

The Panel found that the Water Regulation imposes an obligation to pay water licence rentals on a yearly basis in advance of the "rental due date". The Panel also found that the "rental due date" was determinative of responsibility to pay the royalties Ð not ownership as of January 1st. Therefore, Cominco was the licensee responsible for payment because it owned the dam on the rental due date. However, the Panel accepted Cominco's submission that its 1997 water rates for the Waneta Dam should not be based on the 1996 Brilliant water licences because Cominco no longer held those licences in 1997. The Panel rejected the Comptroller's proposition that there was either joint or joint and several liability for the payment of water rates, finding that there is nothing in the legislation that imposes such an arrangement on the parties.

The Panel confirmed the billing sent to Cominco for 1996 water rentals and set aside the portion of the billing sent to Cominco for 1997 water rentals that related to water used in connection with the Brilliant Dam from January 1 to May 22, 1996. The late payment penalties assessed on the 1996 billing were upheld and the penalties assessed on the 1997 billing were set aside. The Panel allowed the appeal in part.

97-WAT-03 Mike O'Neill v. Deputy Comptroller of Water Rights

Decision Date: February 19, 1998

Panel: Katherine L. Hough, Helmut Klughammer, Harry Higgins

Mike O'Neill appealed the decision of the Deputy Comptroller of Water Rights to cancel the industrial portion of Conditional Water Licence ("CWL") 72693 Biggs Creek. The industrial portion of the CWL was cancelled because Mr. O'Neill failed to construct the fish-salvage works authorized under the licence, and to make beneficial use of the water under the industrial portion of the licence within the time period specified in the licence. The grounds for his appeal were that he had used the water beneficially but that there was insufficient water in the creek to make the original industrial use plan feasible. He maintained that the issuance of four additional domestic water licences for the creek, plus the removal of water by two unlicensed users, adversely affected the supply. He also argued that he had paid all necessary fees and abided by the laws and guidelines.

The Board found that there was no evidence that the salvaging of fish was taking place or that the existing works, in the form of a single pond, were suitable for that purpose. It also found that the industrial portion of the licence greatly exceeded the total average daily flow of Biggs Creek, a fact that was not established until other potential water users requested domestic licences for water from the creek. Furthermore, the Board found that no permits had been obtained under sections 55 and 56 of the Fisheries Act either to possess live fish or discharge the waste produced by harbouring them, and that he was therefore not in a position to use the industrial portion of his licence. Based on this finding and on the finding that Mr. O'Neill did not comply with the terms for the construction of works in the industrial portion of the CWL, the Board upheld the cancellation of that portion of the licence. The appeal was dismissed.

97-WAT-06(a) Albert Petersen v. Regional Water Manager (Alpex Development Corp. Ltd., Third Party)

Decision Date: September 11, 1997

Panel: Judith Lee

Albert Petersen requested a stay of a Regional Water Manager's decision authorizing Alpex Development Corp. Ltd. to construct a dam and water control works pending an appeal of the decision. The works are designed to address stormwater flows for a proposed 397 home subdivision for lands immediately west of Mill Bay. Mr. Petersen owns property on the northern boundary of the proposed development and is holder of a water licence on Handysen Creek, which runs through both properties. Mr. Petersen's reasons for requesting a stay were that a number of unresolved issues existed, such as the protection of drinking water downstream, creek channels, his log bridge and fish and wildlife habitat. He was also concerned about potential contamination of Mill Bay's acquifer and inadequate data and design information for the water works.

The Board found that although serious issues existed, there was no evidence indicating that the concerns for the acquifer, natural features, property or water rights would be realised if a stay was not granted. The Board held that the presence of unresolved issues did not constitute irreparable harm. The Board determined that the balance of convenience did not favour granting a stay since there was no evidence demonstrating that Mr. Petersen or the public interest in the environment would suffer irreparable harm if the stay was denied. The Board also noted that the permitted activity was substantially completed and the stay would therefore have little or no affect. The Board denied the stay application.

97-WAT-06(b) Albert Petersen and Mill Bay Waterworks District v. Regional Water Manager (Alpex Development Corp. Ltd., Third Party)

Decision date: December 19, 1997

Panel: Judith Lee, Don Cummings, Sheila Bull

This was an interim decision by the Board on two appeals against the decision of the Regional Water Manager (the "RWM") to allow Alpex Development Corporation Ltd. to construct certain works. The works were designed to address storm water flows from a large residential development proposed for lands immediately west of Mill Bay. As certain necessary approvals for the development were being held up until the Board's decision was rendered, the Board issued the interim decision with a full decision and detailed reasons to follow.

The Board upheld the RWM's decision authorizing the works because neither Appellant had requested a rescission of the decision. However, the Board noted that it would, in the full decision to follow, add certain terms and conditions to the original terms and conditions imposed by the RWM. Accordingly, the Board held that the terms and conditions contained in the RWM's initial decision would remain in full force and effect until such time as the Board's full decision was issued.

Wildlife Act

96/25 Dennis Dunn v. Deputy Director of Wildlife

Decision Date: April 25, 1997

Panel: David Perry

Mr. Dunn appealed a decision of the Deputy Director of Wildlife upholding a refusal by the Regional Manager to return a thinhorn mountain sheep head. Mr. Dunn was acquitted in December, 1994 by a Provincial Court Judge of killing a sheep which did not meet the definition of a full curl thinhorn ram, the trial judge finding that there was reasonable doubt as to whether the ram was undersize at the date of killing. The head was held by the Wildlife Branch as property of the Crown. Mr. Dunn appealed to the Board on the grounds that the definition of a full curl thinhorn sheep is flawed, that the definitions found in the field guide and the regulations are inconsistent and misleading, and that therefore the head should be returned to him.

The Board found that the definition of "full curl" contained in the field guide is an adequate reflection of the regulation. Based on the definition in the regulation, the Board found on a balance of probabilities that the ram's head was not of legal size. The Board applies a different standard than criminal courts, therefore there is no conflict between Mr. Dunn's acquittal and the Branch's refusal to return the head. The Board noted, however, that the regulation definition of a legal thinhorn sheep is extremely difficult to apply and urged the Wildlife Branch to adopt a more flexible definition. The appeal was dismissed.

97-WIL-01 Phillip Leroy and Deputy Director of Wildlife

Decision Date: June 12, 1997

Panel: Toby Vigod

Mr. Leroy and another trapper decided to trade registered traplines. The procedure involved relinquishment of their traplines and then re-registration of the traded trapline. The Regional Manager (the "RM") refused to register the trapline transferred to Mr. Leroy on the basis that Mr. Leroy had two recent convictions and two recent warnings under the Wildlife Act, the Firearm Act and firearms regulations of the Criminal Code. He also stated that Mr. Leroy wasn't eligible to hold a registered trapline for 5 years. On appeal to the Deputy Director the refusal to register was upheld, although the eligibility condition was reduced to 3 years. Mr. Leroy appealed to the Board.

The Panel found that the decisions below were unreasonable, arbitrary and based on irrelevant considerations. It found that registration of traplines were granted in perpetuity and that the provisions of the Act dealing with licence cancellation and reapplication did not apply to registration of traplines. Registration can only be cancelled for non-use which was not the case here. The Panel also found that the Regional Manager had not provided Mr. Leroy with an opportunity to be heard when he should have done so. Mr. Leroy's convictions were not related to his trapline activities, and the Panel found that depriving Mr. Leroy of his livelihood for attempting to trade his trapline registration in these circumstances was unreasonable. The Panel sent the matter back to the Deputy Director with the direction that the trapline be issued to Mr. Leroy forthwith. The appeal was allowed.

97-WIL-02 Joseph Kanka v. Deputy Director of Wildlife

Decision Date: January 6, 1998

Panel: Katherine Hough

Josef Kanka appealed a decision of the Deputy Director of Wildlife cancelling Mr. Kanka's hunting licence and prohibiting him from obtaining a hunting licence for two years. Mr. Kanka advised the Board that he would be available for a hearing on a certain date and was served with a Notice of Hearing.

The Hearing was called to order on the scheduled date. Mr. Kanka was not there. After waiting for one hour and finding that there were no messages from Mr. Kanka at the hotel where the hearing was situate, the Panel declared the appeal dismissed as abandoned.

97-WIL-03 Vito Carnovale v. Deputy Director of Wildlife

Decision Date: February 4, 1998

Panel: Christie Mayall

The Appellant had been convicted of killing a doe mule deer out of season and was fined $200. The Deputy Director of Wildlife subsequently cancelled the Appellant's hunting licence for a period of three years. This was an appeal from that decision. The Appellant submitted that the licence suspension was unreasonable under the circumstances.

After examining the evidence, the Panel decided that the shooting of the doe had been unintentional and that there was little evidence to show that the Appellant did not intend to report the incident. There was therefore a difference between the magnitude of the violation in this case and another case cited in the appeal in which a three-year licence suspension had also been imposed. The Panel found that the length of a licence suspension should reflect the seriousness of the offence, and that in this case the three year penalty was arbitrary.

The Panel returned the matter to the Respondent and directed him to reconsider the length of the licence suspension. The other part of the Respondent's decision, ordering that the Appellant successfully complete the Conservation and Outdoor Recreation Education examination, was upheld. The appeal was allowed.

Summaries of Court Decisions Related to the Board

Deputy Director of Wildlife v. Environmental Appeal Board and Lynn Ross

Decision Date: June 13, 1997

Court: S.C.B.C., Mr. Justice Taylor

The Deputy Director of Wildlife suspended Mr. Ross' guide outfitter licence and cancelled his certificate effective two weeks after the date of his decision. The Deputy Director stated that it would not be proper to consider a transfer of the licence within that two weeks. Mr. Ross appealed the suspension and cancellation to the Board. The Board upheld the cancellation and suspension but found that the Deputy Director erred when he, effectively, prevented a transfer of the licence within that two week period (see EAB Appeal No. 93/25).

The Board found that the Deputy Director decided a matter not properly before him (transfer) and fettered the ability of the Regional Manager to exercise an independent discretion. The Board ordered that the licence be renewed for 90 days so Mr. Ross could apply for a transfer of the licence. The Deputy Director applied for judicial review.

The Court found that, under the Wildlife Act, the Board's jurisdiction was limited and it does not have special expertise on questions of law. The Board's decision was therefore assessed on a standard of correctness. The Court found that the Deputy Director's comments regarding the transfer of Mr. Ross' licence were not part of an order and, therefore, were not properly a matter before the Board. The Court also noted that the cancellation and suspension of a licence is punitive and the Board's order to allow time to transfer the licence would undermine the Deputy Director's sanction. The Court confirmed the Deputy Director's decision and quashed the Board's order.

This Supreme Court decision was upheld by the Court of Appeal on April 26, 1998. However the Court of Appeal held that the board should be recognized as having special expertise in environmental matters.

## Summaries of Cabinet Decisions Related to the Board

### Order in Council No. 1370 Varying Decision 97-WAS-10(b) Paddy Goggins and Assistant Regional Waste Manager (MB Paper Limited, Third Party)

Date: December 12, 1997

Pursuant to the authority of section 12 of the Environment Management Act, Cabinet varied the Environmental Appeal Board's decision in Appeal No. 97-WAS-10(b) dated December 4, 1997 (see summary on page 37 of this Annual Report). The Board had granted a stay of MacMillan Bloedel's amended permit which authorized the additional discharge of contaminants to the air from a new boiler at its pulp and paper mill in Powell River.

Cabinet varied the Board's decision and permitted "the operation of boiler 19 pending the hearing of the appeal on its merits."

## APPENDIX I

### Legislation and Regulations

The Environmental Appeal Board is established under section 11 of the Environment Management Act. The Act defines the structure of the Board and provides the Board with the statutory authority to hear appeals of administrative decisions made under six statutes; five are administered by the Ministry of Environment, Lands and Parks and the sixth is administered by the Ministry of Health.

On April 21, 1997, the Revised Statutes of British Columbia, 1996 came into force. Relevant excerpts from the Environment Management Act, the Environmental Appeal Board Procedure Regulation, and each of the Acts from which the Board entertains appeals are provided.

On July 28, 1997, Bill 14, the Environment, Lands and Parks Statutes Amendment Act, 1997, came into force. The excerpts from the Acts and the Regulation produced below reflect these amendments.

Environment Management Act

Environmental Appeal Board

11. (1) The Lieutenant Governor in Council must establish an Environmental Appeal Board to hear appeals that under the provisions of any other enactment are to be heard by the board.

(2) In relation to an appeal under another enactment the board has the powers given to it by that other enactment.

(3) The board consists of a chair, one or more vice chairs and other members the Lieutenant Governor in Council appoints.

(4) The Lieutenant Governor in Council may

(a) appoint persons as temporary members to deal with a matter before the board, or for a period or during circumstances the Lieutenant Governor in Council specifies, and

(b) designate a temporary member to act as chair or as a vice chair.

(5) A temporary member has, during the period or under the circumstances or for the purpose for which the person is appointed as a temporary member, all the powers of and may perform all the duties of a member of the board.

(6) The Lieutenant Governor in Council may determine the remuneration and expenses payable to the members of the board.

(7) The chair may organize the board into panels, each comprised of one or more members.

(8) The members of the board are to sit

(a) as a board, or

(b) as a panel of the board.

(9) If members sit as a panel,

(a) 2 or more panels may sit at the same time,

(b) the panel has all the jurisdiction of and may exercise and perform the powers and duties of the board, and

(c) an order, decision or action of the panel is an order, decision or action of the board.

(10) The number of members that constitute a quorum of the board or a panel may be set by regulation of the Lieutenant Governor in Council.

(11) The board, a panel and each member have all the powers, protection and privileges of a commissioner under sections 12, 15 and 16 of the Inquiry Act.

(12) In an appeal, the board or a panel

(a) may hear any person, including a person the board or a panel invites to appear before it, and

(b) on request of

(i) the person,

(ii) a member of the body, or

(iii) a representative of the person or body,

whose decision is the subject of the appeal or review, must give that person or body full party status.

(13) A person or body that is given full party status under subsection (12) may

(a) be represented by counsel,

(b) present evidence,

(c) where there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(14) A person who gives oral evidence may be questioned by the board, a panel or the parties to the appeal.

(14.1) The appeal board may require the appellant to deposit with it an amount of money it considers sufficient to cover all or part of the anticipated costs of the respondent and the anticipated expenses of the appeal board in connection with the appeal.

(14.2) In addition to the powers referred to in subsection (2) but subject to the regulations, the appeal board may make orders for payment as follows:

(a) requiring a party to pay all or part of the costs of another party in

connection with the appeal, as determined by the appeal board;

(b) if the appeal board considers that the conduct of a party has been vexatious, frivolous or abusive, requiring the party to pay all or part of the expenses of the appeal board in connection with the appeal.

(14.3) An order under subsection (14.2) may include directions respecting the disposition of money deposited under subsection (14.1).

(14.4) If a person or body given full party status under subsection (12) is an agent or representative of the government,

(a) an order under subsection (14.2) must not be made for or against the person or body, and

(b) an order under subsection (14.2) (a) may instead be made for or against the government.

(14.5) The costs required to be paid by the government under an order under subsection (14.4) (b) must be paid out of the consolidated revenue fund.

(15) If the board or a panel makes an order or decision with respect to an appeal the chair must send a copy of the order or decision to the minister and to the parties.

Varying and rescinding orders of board

12. The Lieutenant Governor in Council may, in the public interest, vary or rescind an order or decision of the board.

Environmental Appeal Board Procedure Regulation

Interpretation

1. In this regulation

"Act" means the Environment Management Act;

"Board" means the Environmental Appeal Board established under the Act;

"chairman" means the chairman of the board;

"objector" in relation to an appeal to the board means a person who, under an express provision in another enactment, had the status of an objector in the matter from which the appeal is taken.

Application

2. This regulation applies to all appeals to the board.

Appeal practice and procedure

3. (1) Every appeal to the board shall be taken within the time allowed by the enactment that authorizes the appeal.

(2) Unless otherwise directed under the enactment that authorizes the appeal, an appellant shall give notice of the appeal by mailing a notice of appeal by registered mail to the chairman, or leaving it for him during business hours, at the address of the board.

(3) A notice of appeal shall contain the name and address of the appellant, the name of counsel or agent, if any, for the appellant, the address for service upon the appellant, grounds for appeal, particulars relative to the appeal and a statement of the nature of the order requested.

(4) The notice of appeal shall be signed by the appellant, or on his behalf by his counsel or agent, for each action, decision or order appealed against and the notice shall be accompanied by a fee of $25, payable to the Minister of Finance and Corporate Relations.

(5) Where a notice of appeal does not conform to subsections (3) and (4), the chairman may by mail or another method of delivery return the notice of appeal to the appellant together with written notice

(a) stating the deficiencies and requiring them to be corrected, and

(b) informing the appellant that under this section the board shall not be obliged to proceed with the appeal until a notice or amended notice of appeal, with the deficiencies corrected, is submitted to the chairman.

(6) Where a notice of appeal is returned under subsection (5) the board shall not be obliged to proceed with the appeal until the chairman receives an amended notice of appeal with the deficiencies corrected.

Procedure following receipt of notice of appeal

4. (1) On receipt of a notice of appeal, or, in a case where a notice of appeal is returned under section 3(5), on receipt of an amended notice of appeal with the deficiencies corrected, the chairman shall immediately acknowledge receipt by mailing or otherwise delivering an acknowledgement of receipt together with a copy of the notice of appeal or of the amended notice of appeal, as the case may be, to the appellant, the minister's office, the Minister of Health if the matter relates to a matter under the Health Act, the official from whose decision the appeal is taken, the applicant, if he is a person other than the appellant, and any objectors.

(2) The chairman shall within 60 days of receipt of the notice of appeal or of the amended notice of appeal, as the case may be, determine whether the appeal is to be decided by members of the board sitting as a board or by members of the board sitting as a panel of the board and the chairman shall determine whether the board or the panel, as the case may be, will decide the appeal on the basis of a full hearing or from written submissions.

(3) Where the chairman determines that the appeal is to be decided by a panel of the board, he shall, within the time limited in subsection (2), designate the panel members and,

(a) if he is on the panel, he shall be its chairman,

(b) if he is not only the panel but a vice chairman of the board is, the vice chairman shall be its chairman, or

(c) if neither the chairman nor a vice chairman of the board is on the panel, the chairman shall designate one of the panel members to be the panel chairman.

(4) Within the time limited in subsection (2) the chairman shall, where he has determined that a full hearing shall be held, set the date, time and location of the hearing of the appeal and he shall notify the appellant, the minister's office, the Minister of Health if the appeal relates to a matter under the Health Act, the official from whose decision the appeal is taken, the applicant, if he is a person other than the appellant, and any objectors.

(5) Repealed. {B.C. Reg. 118/87, s.2.}

Quorum

5. (1) Where the members of the board sit as a board, 3 members, one of whom must be the chairman or vice chairman, constitute a quorum.

(2) Where members of the board sit as a panel of one, 3 or 5 members, then the panel chairman constitutes a quorum for the panel of one, the panel chairman plus one other member constitutes the quorum for a panel of 3 and the panel chairman plus 2 other members constitutes the quorum for a panel of 5.

Order of decision of the board or a panel

6. Where the board or a panel makes an order or decision with respect to an appeal, written reasons shall be given for the order or decision and the chairman shall, as soon as practical, send a copy of the order or decision accompanied by the written reasons to the minister, the Minister of Health if the appeal relates to a matter under the Health Act, and to the parties.

Written briefs

7. Where the chairman has decided that a full hearing shall be held, the chairman in an appeal before the board, or the panel chairman in an appeal before a panel, may require the parties to submit written briefs in addition to giving oral evidence.

Public hearings

8. Hearings before the board or a panel of the board shall be open to the public.

Recording the proceedings

9. (1) Where a full hearing is held, the proceedings before the board or a panel of the board shall be taken using shorthand or a recorder, by a stenographer appointed by the chairman, for a hearing before the board, or by the panel chairman, for a hearing before the panel.

(2) Before acting, a stenographer who takes the proceedings before the board or a panel shall make oath that he shall truly and faithfully report the evidence.

(3) Where proceedings are taken as provided in this section by a stenographer so sworn, then it is not necessary that the evidence be read over to, or be signed by, the witness, but

it is sufficient that the transcript of the

proceedings be

(a) signed by the chairman or a member of the board, in the case of a hearing before the board, or by the panel chairman or a member of the panel, in the case of a hearing before the panel, and

(b) be accompanied by an affidavit of the stenographer that the transcript is a true report of the evidence.

Transcripts

10. On application to the chairman or panel chairman, as the case may be, a transcript of the proceedings, if any, before the board or the panel of the board shall be prepared at the cost of the person requesting it or, where there is more than one applicant for the transcript, by all of the applicants on a pro rata basis.

Representation before the board

11. Parties appearing before the board or a panel of the board may represent themselves personally or be represented by counsel or agent.

Commercial River Rafting Safety Act

Appeals

6. (1) If the registrar suspends or cancels a registration, licence or permit or refuses to register or issue a licence, the person may appeal to the Environmental Appeal Board established under the Environment Management Act.

(2) Section 40 (2) to (7) of the Water Act applies to an appeal under subsection (1).

Health Act

Power to make regulations

8. (2) In addition to the matters set out in

subsection (1), the Lieutenant Governor in Council may make regulations with respect to the following matters:

(m) the inspection, regulation and control, for the purposes of health protection provided in this Act, of

(ii) the location, design, installation, construction, operation and maintenance of

(C) sewage disposal systems,

and requiring a permit for them and requiring compliance with the conditions of the permit and authorizing inspections for that purposeÉ

(4) If a person is aggrieved by the issue or the refusal of a permit for a sewage disposal system under a regulation made under subsection (2) (m), the person may appeal that ruling to the Environmental Appeal Board established under section 11 of the Environment Management Act within 30 days of the ruling.

(5) On hearing an appeal under subsection (4), the Environmental Appeal Board may confirm, vary or rescind the ruling under appeal.

Pesticide Control Act

Appeals to Environmental Appeal Board

15. (1) For the purpose of this section, "decision" means an action, decision or order.

(2) Any person may appeal a decision of the administrator under this Act, or of any other person under this Act, to the appeal board.

(3) The time limit for commencing an appeal is the time limit prescribed by regulation.

(4) An appeal under this section

(a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the Environment Management Act, and

(b) subject to this Act, must be conducted in accordance with the Environment Management Act and the regulations under that Act.

(5) For the purposes of an appeal under this section, if a notice under this Act is sent by registered mail to the last known address of a person, the notice is conclusively deemed to be served on the person to whom it is addressed on

(a) the 14th day after the notice was deposited with Canada Post, or

(b) the date on which the notice was actually received by the person, whether by mail or otherwise, whichever is earlier.

(6) The appeal board may conduct an appeal by way of a new hearing.

(7) On an appeal, the appeal board may

(a) send the matter back to the person who made the decision being appealed, with directions,

(b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

(8) An appeal does not act as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

Waste Management Act

Definition of "decision"

43. For the purpose of this Part, "decision" means

(a) the making of an order,

(b) the imposition of a requirement,

(c) an exercise of a power,

(d) the issue, amendment, renewal, suspension, refusal or cancellation of a permit, approval or operational certificate, and

(e) the inclusion in any order, permit, approval or operational certificate of any requirement or condition.

Appeals to Environmental Appeal Board

44. (1) Subject to this Part, a person aggrieved by a decision of a manager, director or district director may appeal the decision to the appeal board.

(2) Nothing in this section is to be construed as applying in respect of a decision made by the minister under this Act or by the Lieutenant Governor in Council.

Time limit for commencing appeal

45. The time limit for commencing an appeal is 30 days after notice of the decision being appealed is given

(a) to the person subject to the decision, or

(b) in accordance with the regulations.

Procedure on appeals

46. (1) An appeal under this Part

(a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the Environment Management Act, and

(b) subject to this Act, must be conducted in accordance with the Environment Management Act and the regulations under that Act.

(2) The appeal board may conduct an appeal by way of a new hearing.

Powers of appeal board in deciding appeal

47. On an appeal, the appeal board may

(a) send the matter back to the person who made the decision, with

directions,

(b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

Appeal does not operate as stay

48. An appeal taken under this Act does not operate as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

Water Act

Appeals to Environmental Appeal Board

40. (1) An order of the comptroller, the regional water manager or an engineer may be appealed to the Environmental Appeal Board established under the Environment Management Act by

(a) the person who is subject to the order,

(b) an owner whose land is or is likely to be physically affected by the order, or

(c) a licensee, riparian owner or applicant for a licence who considers that their rights are or will be prejudiced by the order.

(2) The time limit for commencing an appeal is 30 days after notice of the order being appealed is given

(a) to the person subject to the order, or

(b) in accordance with the regulations.

(3) For the purposes of an appeal, if a notice under this Act is sent by registered mail to the last known address of a person, the notice is conclusively deemed to be served on the

person to whom it is addressed on

(a) the 14th day after the notice was deposited with Canada Post, or

(b) the date on which the notice was actually received by the person, whether by mail or otherwise, whichever is earlier.

(4) An appeal under this section

(a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the Environment Management Act, and

(b) subject to this Act, must be conducted in accordance with the Environment Management Act and the regulations under that Act.

(5) The appeal board may conduct an appeal by way of a new hearing.

(6) On an appeal, the appeal board may

(a) send the matter back to the comptroller, regional water manager or engineer, with directions,

(b) confirm, reverse or vary the order being appealed, or

(c) make any order that the person whose order is appealed could have made, and that the board considers appropriate in the circumstances.

(7) An appeal does not act as a stay or suspend the operation of the order being appealed unless the appeal board orders otherwise.

Wildlife Act

Appeals to Environmental Appeal Board

101.1 (1) The affected person referred to in section 101 (2) may appeal the decision to the Environmental Appeal Board established under the Environment Management Act.

(2) The time limit for commencing an appeal is 30 days after notice is given

(a) to the affected person under section 101 (2), or

(b) in accordance with the regulations.

(3) An appeal under this section

(a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the Environment Management Act, and

(b) subject to this Act, must be conducted in accordance with the Environment Management Act and the regulations under that Act.

(4) The appeal board may conduct an appeal by way of a new hearing.

(5) On an appeal, the appeal board may

(a) send the matter back to the regional manager or director, with directions,

(b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

(6) An appeal taken under this Act does not operate as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.