



Environmental Appeal Board

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DECISION NO. 2017-EMA-001(a)

In the matter of an appeal under section 100(1) of the *Environmental Management Act*, S.B.C. 2003, c. 53

BETWEEN:	Ermes Culos	APPELLANT
AND:	Director, <i>Environmental Management Act</i>	RESPONDENT
AND:	Belkorp Environmental Services Inc. and Village of Cache Creek	THIRD PARTIES
BEFORE:	A Panel of the Environmental Appeal Board Michael Tourigny, Panel Chair	
DATE:	Conducted by way of written submissions concluding on June 23, 2017	
APPEARING:	For the Appellant: For the Respondent: For the Third Parties: Belkorp Environmental Services Inc. Village of Cache Creek	Ermes Culos Meghan Butler, Counsel Cory Bargen, Counsel Stephen Fitterman, Counsel No submissions filed

APPEAL

[1] The Appellant, Ermes Culos, appeals the December 15, 2016 decision of A.J. Downie, authorized delegate for the Director (the "Director") under the *Environmental Management Act*, S.B.C. 2003, c. 53 (the "Act"), Ministry of Environment (the "Ministry")¹. The decision, made under section 28 of the *Act*, was to issue Operational Certificate MR-107189 (the "Operational Certificate") to the Village of Cache Creek (the "Village") and Belkorp Environmental Services Inc. ("Belkorp") respecting the Cache Creek Landfill Extension (the "Landfill Extension").

[2] In his Notice of Appeal, Mr. Culos summarizes his two main reasons for the appeal as follows:

¹ In July 2017, the name of the Ministry changed to the Ministry of Environment and Climate Change Strategy.

... first, because the initial posting of the intent to issue Operational Certificate 107189 was so flawed that it deterred instead of eliciting public comments; second, because the decision to issue the certificate itself was announced in a questionable manner, and, more importantly, because it gave the go ahead to an operation of doubtful environmental soundness.

[3] The Board has the authority to hear this appeal under section 100(1) of the *Act*. The Board's powers on an appeal are set out in section 103 of the *Act* which provides that, on an appeal, the 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 appeal board considers appropriate in the circumstances.

[4] Mr. Culos, requests that the Board either reverse the decision to issue the Operational Certificate, or send the matter back to the Director with directions regarding the process of public notice of both the Director's intention to issue the Operational Certificate, and notice of the decision itself.

[5] The Board has conducted this appeal by way of written submissions.

[6] The Director submits that the decision and related public notification process was reasonable, duly considerate of all material facts, procedurally fair, inclusive of the Crown's duty to consult First Nations, and in accordance with legislative requirements. While many of Mr. Culos' submissions, on their face, are advanced on behalf of the "public", the Director submits that Mr. Culos is not a representative appellant, and his standing is limited to how his individual interests are prejudicially affected by the decision. The Director submits that the appeal ought to be dismissed and the decision confirmed.

[7] Belkorp and the Village were added as Third Parties to the appeal. Belkorp submits that, for the most part, Mr. Culos' appeal speaks to matters that do not arise from the decision and in respect of which he does not have standing. In respect to the decision itself, Belkorp argues that Mr. Culos has not proven, on a balance of probabilities, that it should be reversed or varied. Belkorp also submits that the appeal ought to be dismissed and the decision confirmed.

[8] The Village did not provide any written submissions on the merits of Mr. Culos' appeal.

BACKGROUND

General Background of the Cache Creek Landfill and the History of Mr. Culos' Appeals

[9] In order to contextualize the issues raised in this appeal in relation to the decision to issue the Operational Certificate for the Landfill Extension, it is

important to first review some historical facts relating to the separately permitted Cache Creek Landfill ("CCLF"), and Mr. Culos' opposition thereto. The CCLF is located on Crown land approximately 1 kilometre south of Cache Creek. It occupies some 54 hectares of land bordered by Highway 1 to the east. The Bonaparte River is located approximately 400 to 500 metres east of Highway 1.

[10] The CCLF was first authorized in 1987 under a permit issued by the then Ministry of Environment and Parks to two parties: the Village and Wastech Services Limited ("Wastech"), a subsidiary of Belkorp. From the commencement of its operation until mid-2016, the CCLF received municipal solid waste principally from the Greater Vancouver Regional District (now Metro Vancouver), as well as from the Village and surrounding area.

[11] Wastech is in the process of closing the CCLF in accordance with the requirements and provisions of the CCLF Operational Certificate MR-7577 ("CCLF OC") and the CCLF closure plan, neither of which involves, or has any application to, the Landfill Extension.

[12] Mr. Culos is a resident of Ashcroft, which is approximately 12 kilometres from the CCLF and the Landfill Extension.

[13] Over the years, Mr. Culos has filed some four appeals concerning the CCLF and the CCLF OC, often claiming that leachate generated within the CCLF would contaminate, or is contaminating, local groundwater and the Bonaparte River. All of Mr. Culos' appeals have been dismissed.

[14] In 1987 Mr. Culos, and others, appealed the issuance of the CCLF's first waste management permit (now the CCLF OC). In its decision, *Ashcroft Ranchers Association et al. v. Director of Waste Management*, (Appeal No. 87/13 Waste, September 21, 1987) (unreported) [Ashcroft Ranchers], the Board dismissed the appeal subject to certain amendments to the permit.

[15] The permit was reissued in 1989, and Mr. Culos filed an appeal raising concerns about groundwater contamination and non-compliance with the permit. The Board dismissed his appeal in *E.P. Culos v. Director of Waste Management*, (Appeal No. 89/20 Waste, December 14, 1989) (unreported).

[16] In 2003, the Ministry amended the CCLF OC to increase the CCLF's allowable capacity by an estimated 618,000 m³. Mr. Culos appealed that decision. The potential for leachate in the groundwater to migrate in the direction of the Bonaparte River. The Board dismissed this appeal. While the Board found that there was leachate from the CCLF in the groundwater that was migrating beyond the facilities' property boundaries, it was satisfied that existing monitoring wells were located in optimal positions where they would provide advance warning of any potential adverse effects on downstream groundwater quality (see, *Culos v. British Columbia (Water, Land and Air Protection)*, [2004] B.C.E.A. No. 40).

[17] In March 2009, Wastech formally applied to amend the CCLF OC to authorize an expansion of the CCLF's footprint to include an additional 6.7 hectares (the "Annex").

[18] Coincidentally, on March 19, 2009, reports by International EcoGen Inc. ("EcoGen") and Summit Environmental Consultants Ltd. ("Summit") were released

on the environmental impacts from the CCLF. These reports were prepared on behalf of the Nlaka'pamx Tribal Council ("NNTC") in advance of judicial review proceedings brought by NNTC seeking to quash a procedural order (the "Procedural Order") made under section 11 of the *Environmental Assessment Act*, S.B.C. 2002, c. 43 ("EAA") pertaining to the then proposed Landfill Extension.

[19] The EcoGen and Summit reports conflicted in certain respects with the annual environmental reports by Golder Associates (the engineers of record for the CCLF), and resulted in significant public interest and concern. In response, the Ministry delayed processing the Annex amendment application and commissioned, with approval and financial support from Wastech, an independent third party expert review of the EcoGen and Summit reports, the previous work done by Golder Associates, and everything related to the design, operations and monitoring of the CCLF. This work was performed by AMEC Earth and Environmental ("AMEC"). AMEC's report was completed on June 23, 2009, and presented in public forums. AMEC's primary focus was on the existing landfill, but some of its findings and recommendations were relevant to the Annex proposal. [None of these reports addressed the separate proposed Landfill Extension.]

[20] Wastech agreed to all of the recommendations provided by AMEC that applied to the Annex proposal.

[21] On August 31, 2009, the Director authorized the amendments to the CCLF OC to accommodate the revised Annex proposal.

[22] In September 2009, Mr. Culos, and others, appealed the Director's decision. While Mr. Culos conceded that the design of the Annex was "state of the art", he argued that it was being joined with an environmentally unfriendly landfill such that "the problems of one are the problems of the other". He argued that the Annex ought to have been considered a "new" landfill and undergone an environmental assessment under the *EAA* with a proper consultation process. Mr. Culos further submitted that the Annex required an amendment to the Thompson-Nicola Regional District ("TNRD") Solid Waste Management Plan (the "SWMP").

[23] In its decision, the Board considered the EcoGen, Summit, and AMEC reports. With the recommendations made in the AMEC report respecting the design of the Annex accepted by Wastech, the Board confirmed the Director's decision to amend the CCLF OC, and dismissed Mr. Culos' appeal (see, *Lowe v. British Columbia (Ministry of Environment)*, [2011] B.C.E.A. No. 10).

[24] On June 30, 2016, the Director approved two plans related to the closure of the CCLF. The approval was issued to the Village and Wastech, and was subject to eight conditions. One of those conditions required Wastech and the Village to submit to the Director, within 90 business days of June 30, 2016, a "detailed design and construction plan outlining further detail of the works associated with the closure of the landfill, including the preferred groundwater treatment and disposal option ...".

[25] On July 29, 2016, the Greater Vancouver Sewerage and Drainage District ("GVSDD") filed an appeal with the Board against that closure plan approval decision on a number of grounds (the "GVSDD Appeal"). Two of the GVSDD's main concerns are with the definition of "closure" in the CCLF closure plans, and the

required collection and treatment of groundwater as proposed in the plans. The GVSDD asks for the June 30, 2016 approval decision to be set aside, withdrawn, or for the definition of closure, and the groundwater treatment sections, to be struck from the closure plans or sent back to the Director for reconsideration. The GVSDD Appeal does not relate to the Landfill Extension.

The Landfill Extension

[26] The Landfill Extension is a 31 hectare engineered municipal solid waste landfill to be developed on a 51 hectare parcel of land located within the TNRD. It is located approximately 1 kilometre south of the Village along Highway 1, and is immediately west of, and adjacent to, the CCLF that was set to close in December 2016. The land is leased from the Crown by the Village, but Belkorp is the owner/operator of the Landfill Extension due to Belkorp funding its design, construction and operation.

[27] The Landfill Extension is designed to provide 12.6 million tonnes of disposal capacity at a filling rate of up to 750,000 tonnes per year. Other than using some of the CCLF's existing ancillary infrastructure (e.g., scales, buildings) and operational approach, the design and operation of the Landfill Extension has no connection to, and is an independent facility from, the CCLF.

[28] In 2006, Belkorp began its initiative to develop the Landfill Extension by, among other things, retaining an engineering firm to develop a design concept for the Landfill Extension and negotiating participation, protocol, and benefit sharing agreements with certain local First Nations.

[29] In 2008, Belkorp carried out the following investigations/assessments of the project site: an Archaeological Impact Assessment; a Wildlife Habitat Assessment a Hydrogeological Characterization; and Terrestrial Ecosystem Mapping, Soil Surveys and Rare/Endangered Plant Surveys. In addition, Belkorp developed draft Terms of Reference for an Environmental Assessment Certificate application and held open houses to inform the public and receive comments regarding the project.

[30] In or around August 2008, Belkorp and the Village submitted a proposed project description to the Environmental Assessment Office ("EAO"). It was subsequently determined that the proposed project was reviewable under the *EAA* pursuant to Part 6 of the *Reviewable Projects Regulation*, B.C. Reg. 370/2002.

[31] Recognizing its duty to consult with First Nations, the EAO set out to establish a working group comprised of government agency and First Nations' representatives to participate in the environmental assessment of the proposed Landfill Extension project.

[32] In October 2008, the EAO issued the Procedural Order that defined, *inter alia*, the scope of the proposed project and the procedures for conducting its eventual environmental review. It also directed the proponents to conduct certain studies before the environmental assessment application could be submitted for formal review. The NNTC objected to the EAO's decision to include the Ashcroft Indian Band, but not it, in the Procedural Order by way of judicial review proceedings referred to above.

[33] In January 2009, Belkorp and the Village received approved Terms of Reference from the EAO, and submitted their application for an environmental assessment certificate.

[34] The proposal for the Landfill Extension underwent an environmental assessment between June and December 2009, in accordance with the *EAA* and the Procedural Order.

[35] On January 6, 2010, the Minister of Environment (the "Minister") and the Minister of Community and Rural Development issued Environmental Assessment Certificate #WD09-02 to Belkorp and the Village (the "EA Certificate"). The EA Certificate was issued after extensive review and consultation with the public, First Nations and other stakeholders. It authorized the Landfill Extension to be constructed on terms and conditions that require its proponents to comply with the design and mitigation measures as set out therein.

[36] The issuance of the EA Certificate was not challenged by any person. Therefore, the Landfill Extension, including its location, design and requisite mitigative measures, were duly authorized when the EA Certificate was issued on January 6, 2010.

[37] The EA Certificate stipulated that the project had to be substantially started by January 2015, and contained a table of some fifty commitments. In furtherance thereof, during the balance of 2010, and through 2012, Belkorp advanced the project by, among many other things, developing certain elements of the Landfill Extension Design, Operations and Closure Plan (the "DOCP").

[38] The AMEC report made a number of recommendations to improve the management of the CCLF. Many of them were voluntarily adopted by Belkorp and the Village for the proposed Landfill Extension. These recommendations were set out in a July 9, 2009 letter from Golder Associates that is listed in Schedule A to the EA Certificate.

[39] Before the Landfill Extension could become operational as an authorized facility under the *Act*, it was required to be included as an authorized facility in a solid waste management plan approved by the Minister.

[40] Later in 2010, Belkorp submitted a letter to the TNRD requesting that the Regional District's SWMP be amended to include the Landfill Extension as an authorized disposal facility. Subsequently, Belkorp proposed a public consultation process that was approved by the TNRD and endorsed by the Ministry.

[41] Although significant public consultation was undertaken during the environmental assessment process between 2008 and 2010, further consultation was required to amend the TNRD's SWMP in regard to how the project would fit the overall strategies and goals of the SWMP. Upon favorable completion of a public consultation process, a recommendation to approve the amendment was passed by the TNRD Board of Directors.

[42] On December 21, 2012, the Minister informed the TNRD that its proposed amendment to the SWMP, submitted in accordance with section 24(1) of the *Act* was approved under section 24(5) of the *Act*. The Minister further advised:

The implementation of this amendment [to the SWMP] will require the development of an Operational Certificate that will establish the specific conditions and requirements under which the authorized discharge of waste to the [Landfill Extension] will be regulated.

Ministry staff in the Kamloops office will be preparing the Operational Certificate to ensure the operating and environmental protection requirements for this solid waste management facility are consistent with those established in the approved [SWMP], the [EA Certificate] resulting from the Environmental Assessment process and the applicable standards established by provincial landfill criteria. The approved [SWMP], together with the required Operational Certificate, will form the basis of the authority to operate the [Landfill Extension].

[43] Because the decision to approve the SWMP amendment under section 24(5) of the *Act* could only be made by the Minister, and not by a director, it was not appealable to the Board under the *Act*. The Minister's decision could have been judicially reviewed by petition to the BC Supreme Court, but was not.

[44] At a meeting on January 13, 2013, the TNRD Board of Directors ratified the amendment to its SWMP to include the Landfill Extension as an authorized facility, as approved by the Minister.

[45] Belkorp continued to fulfill the EA Certificate commitments throughout the balance of 2013 and 2014. In March 2015, the EAO determined that the Landfill Extension project had been substantially started, as required by the EA Certificate.

The Operational Certificate

[46] Having previously received a number of documents in support of Belkorp's application for the Operational Certificate, including the draft DOCP, water quality baseline studies for both surface water and groundwater, and other technical documents pertaining to the EA Certificate process, on March 15, 2016, the Ministry issued a letter to Belkorp and the Village seeking further information. The requested information included a Public Consultation Package that was to include the details of consultation conducted during both the EA Certificate process, and the TNRD SWMP amendment approval process, all of which was provided by Belkorp.

[47] The Operational Certificate was drafted by Ministry staff in consultation with the Village, Belkorp, and the Landfill Extension stakeholder group, which included the Bonaparte First Nation and Ashcroft First Nation. The Operational Certificate was drafted to reflect current Ministry standards, and exceeded best management practices occurring at the CCLF. The draft was finalized in July 2016.

[48] When a director intends to issue an operational certificate in accordance with section 28 of the *Act*, the director is required to give notice of his/her intent to do so under section 28(4) and (5) of the *Act* and the relevant provisions of the *Public Notification Regulation*, B.C. Reg. 202/94 (the "PNR").

[49] In a letter to Belkorp and the Village dated July 26, 2016, the Director gave notice of his intent to issue the Operational Certificate for the Landfill Extension (a draft copy of which was enclosed). In the letter, the Director provided instructions

on both the publication of the draft Operational Certificate, and the required form of public notification of the Director's intention to issue the Operational Certificate ("Notice of Intent"). The letter was copied to the TNRD and ten local First Nations.

[50] The Director required publication of the Notice of Intent in one issue of the Ashcroft/Cache Creek Journal local newspaper, which publication took place on August 4, 2016.

[51] The Notice of Intent, as published, stated that the Director intended, a minimum of 30 days after the date of that publication, to issue the Operational Certificate to the Village and Belkorp. The Notice of Intent stated that the terms of the draft Operational Certificate are consistent with the TNRD's approved SWMP, and established the minimum operating requirements for the facility. The Notice of Intent further provided information to the public as to how, where and when the draft Operational Certificate could be inspected. This included numerous locations in and around Cache Creek, and online.

[52] With respect to public comments the Notice of Intent stated:

Any comments regarding the draft Operational Certificate must be sent via mail to the Regional Director Environmental Protection, Ministry of Environment, 200, 10470-152 Street, Surrey, BC, V3R 0Y3 within 30 days of the date of this publication. A copy of any comments must also be sent to the Village of Cache Creek at P.O. Box 7, Cache Creek, BC V0K 1H0 and Belkorp Environmental Services Inc. at Suite 900 1508 West Broadway, Vancouver, BC V6J 1W8.

[53] On August 7, 2016, after having read the Notice of Intent published in the Ashcroft Journal, Mr. Culos emailed the Director requesting that comments be accepted via email, and asking how any such comments would be made available to the public. On August 8, 2016, the Ministry advised Mr. Culos that comments via email were acceptable and provided relevant email addresses to Mr. Culos. With respect to the enquiry concerning publication of comments, the Ministry made no commitment to do so, but indicated that, when all comments had been received, the Director would review them and determine further action, if any.

[54] On August 13, 2016, Mr. Culos responded by email suggesting that the Notice of Intent be publically modified to make reference to comments by email being acceptable, and that he be provided with copies of comments made by others. By reply email dated August 17, 2016, the Ministry advised Mr. Culos that, following completion of the 30-day comment period, the Director would determine whether additional communication was required, and the means by which additional feedback may be required.

[55] Public comments were received from four different parties during the 30-day comment period. Three parties submitted their concerns and/or opposition to the Landfill Extension: Mr. Culos (who made 5 submissions), the NNTC, and one other private citizen. The Ashcroft Indian Band submitted a letter to the Director supporting the proposed Landfill Extension.

[56] All public comments received were reviewed by Belkorp. Belkorp then prepared written responses dated October 6, 2016, and provided them to the

Ministry. The public comments and Belkorp's responses were reviewed by Ministry staff and the Director. The Director responded to each party who submitted their comments and concerns regarding the draft Operational Certificate and the Landfill Extension by letters dated November 7, 2016. The Ministry provided Mr. Culos with the November 7, 2016 letter that same day.

[57] In the letter, the Director thanked Mr. Culos for his various comments and provided him with a copy of the October 6, 2016 written responses prepared by Belkorp. The Director further advised Mr. Culos that Belkorp had agreed to provide any individual or party, if requested, with copies of the reports, plans and/or assessments that had already been submitted to the Ministry, and that Mr. Culos was free to contact Belkorp for a copy of the DOCP that he had requested in his submissions (the DOCP had been finalized by Belkorp in accordance with section 2.1 of the Operational Certificate in October 2016).

[58] In the November 7, 2016 letter to Mr. Culos, the Director also confirmed that the Landfill Extension had already received general regulatory approvals in the form of the EA Certificate and the TNRD SWMP amendment approval of December 21, 2012. The Director went on to point out that:

The Operational Certificate is a supporting document to the [TNRD SWMP] and must not conflict with any conditions imposed by the EA certificate. With respect to the SWMP, the approval of the plan amendment, dated December 21, 2012 specifically focused on and authorized the proposed [Landfill Extension] project as a new disposal facility within the TNRD. The Operational Certificate is an administrative document that outlines site specific operating, monitoring, reporting and closure requirements for the subject facility including the requirement for financial security.

[59] Mr. Ashley Smith, in his capacity as Environmental Protection Officer with the Ministry, prepared a memorandum to the Director dated December 14, 2016 regarding the issuance of the Operational Certificate. The memorandum outlined the steps previously taken by the proponents and the Ministry on the file, described concerns communicated about the project and the responses to those concerns, and concluded by recommending that the Operational Certificate be issued.

[60] Based on his personal knowledge and involvement in the Landfill Extension application process, and his review of the file, including Mr. Smith's December 14, 2016 memorandum, the Director issued the Operational Certificate for the Landfill Extension on December 15, 2016.

[61] The Operational Certificate is entirely distinct from the CCLF OC.

[62] The Operational Certificate contains numerous provisions that promote the protection of the environment and human health. These provisions include sections 1.1.3, 2.1, 2.3, 2.4, 2.8, 2.10, 2.11, 3.9, 4.1, 4.1.1, 4.7, 5.1, 6, 6.4 and 6.5. It is noteworthy that most of the assessments and plans required by the Operational Certificate are not static, and must be reviewed and updated every 1-5 years.

[63] Mr. Culos states that on December 15, 2016, the Ashcroft Journal reported that the Director had issued the Operational Certificate and set out the relevant appeal period.

[64] On December 22, 2016, the Ministry sent an email notification to the three parties whom had submitted concerns during the 30-day comment period under the Notice of Intent, including Mr. Culos. In that email, the Ministry confirmed that the Operational Certificate had been issued, and provided a website link where it could be viewed and downloaded. The Director did not take any further measures to publically announce the issuance of the Operational Certificate.

[65] By Notice of Appeal dated January 9, 2017, Mr. Culos commenced this appeal.

ISSUES

[66] In deciding this appeal, the Panel has considered the following issues:

1. What is Mr. Culos' standing in this appeal? Can he be heard by the Panel as a representative of "the public"?
2. Was the public notification process adopted by the Director relating to his intention to issue the Operational Certificate, and/or the decision itself, either procedurally unfair or otherwise in error?
3. Is the Landfill Extension and the CCLF so inextricably "linked" to one another that evidence concerning the CCLF and the CCLF closure plans should have been considered by the Director when making the decision under appeal?
4. Based upon the evidence submitted, is the decision reasonable, fair and in accordance with the *Act*? Is there any principled basis for the Panel to reverse, vary, or send the decision back to the Director for reconsideration?

RELEVANT LEGISLATION

[67] The relevant sections of the *Act* and the *PNR* are reproduced where they are referred to in the body of this decision.

DISCUSSION AND ANALYSIS

1. What is Mr. Culos' standing in this appeal? Can he be heard by the Panel as a representative of "the public"?

[68] Not every decision made by an official within the Ministry is appealable to the Board. Section 99 of the *Act* defines what a "decision" is for purposes of appeals to the Board and includes the following:

Definition of "decision"

99 For the purpose of this Division, "decision" means

...

(d) issuing, amending, renewing, suspending, refusing, cancelling or refusing to amend a permit, approval or operational certificate,

...

[Emphasis added]

[69] The Panel finds that the Director's decision to issue the Operational Certificate is a "decision" as defined in section 99(d) of the *Act* and, accordingly, the Board has jurisdiction to hear an appeal from that decision. However, the jurisdiction of the Board on this appeal is limited to issues relevant to that decision. The Board's jurisdiction does not include the basis upon which any earlier decisions or Ministerial approvals related to the Landfill Extension, or the CCLF, may or may not have been made.

[70] Section 100 of the *Act* sets out who may appeal a decision (i.e., who has standing to appeal), as follows:

Appeals to Environmental Appeal Board

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

(2) For certainty, a decision under this Act of the Lieutenant Governor in Council or the minister is not appealable to the appeal board.

[Emphasis added]

[71] Neither the Director, nor Belkorp, take the position that Mr. Culos does not have standing to appeal the decision *per se*. The record shows that Mr. Culos is a resident of Ashcroft, which is located approximately 12 kilometres from the Landfill Extension site. The Landfill Extension site is in the vicinity of the Bonaparte River. According to Mr. Culos, Ashcroft is located downstream of the Bonaparte River and the river forms part of the Ashcroft water supply. Mr. Culos has had standing to appeal numerous other decisions relating to the CCLF, wherein he raised concerns about potential adverse effects of leachate from the CCLF on the Bonaparte River. Mr. Culos now raises his concerns about potential future effects from the Landfill Extension on the Bonaparte River.

[72] Both the Director and Belkorp submit, in essence, that Mr. Culos' standing on this appeal should be limited to how the decision impacts him as an individual, as opposed to how the decision may or may not have impacted "the public" generally. The Director submits:

7. Mr. Culos' submissions are replete with references to what the public would have liked to have known, or what the public was or was not able to comprehend from the notice published in accordance with the *PNR*. However, the respondent maintains Mr. Culos is not a representative appellant, and his standing is limited to how his individual interests are prejudicially affected by the Decision.

[Underlining in original]

[73] In response, Mr. Culos submits:

I do not claim to be representing the public. However, the notice of intent to issue an operational certificate (Notice) was made to the public and I was responding as a member of the public. Did I have personal interests? Of course I do, but so has, and would have had, any member of the public who responded to the public notice. Also, any adverse effects of the CCL [Cache Creek Landfill] complex on the Bonaparte River would affect not just me but also my neighbours and indeed all Ashcroft residents who live downstream of the CCL. (page 10)

[74] To resolve the question of the scope or nature of Mr. Culos' standing in this case, the Panel must consider the meaning of "A person aggrieved by a decision" as used in section 100(1) of the *Act*.

[75] In *Harder v. British Columbia (Ministry of Environment)*, [2015] B.C.E.A. No. 6 [*Harder*], the Board interpreted the phrase "person aggrieved" in section 100(1) of the *Act* to mean that an appellant must establish that he or she "has a genuine grievance because an order has been made which prejudicially affects his interests." The Board in *Harder* went on to find in paragraph 16 that:

In *Gagne v. Sharpe*, 2014 BCSC 2077 [*Gagne*], the BC Supreme Court confirmed the Board's interpretation of "person aggrieved" in the context of the *Act*. The Court also held that a person seeking to appeal a decision under the *Act* need only demonstrate, on a *prima facie* evidentiary standard, that the person is "a person aggrieved". This means that an appellant is obliged to provide some evidence that, on its face, goes beyond a mere allegation that the appealed decision will prejudicially affect his or her interests, as distinct from the interests of the general public.

[76] When addressing the standard of proof required to establish a person's standing to appeal, the Court in *Gagne* held at paragraph 56:

The task of the Board when determining who has standing is to screen out the mere busy-body without losing the benefit of contending points of view. In this matter, the Board is providing a gatekeeper function. In this role, the Board has significant power to dismiss a claim. In my view it must wield it with great caution and attention to process. This is especially true because, as pointed out by the respondents, the Board is a statutory decision-maker that does not have any inherent jurisdiction and as such must act in a manner that ensures it stays within the bounds of its statutory power and does not hear from those who it is not authorized to hear from.

[77] When setting out the test for a "person aggrieved", the Court in *Gagne* held at paragraph 74:

I agree that it is clear the legislation intended to remove the subjective element from the test and for the Board to employ an objective standard. I also agree with the respondents when they say that the

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

[78] The Panel agrees with, and adopts, these findings from both *Harder* and *Gagne*. In particular, the Panel finds that, for purposes of establishing standing under section 100(1) of the *Act*, an appellant must demonstrate some form of prejudice, on a *prima facie* basis, to his or her individual interests, as distinct from the interests of the general public. The Panel does not accept the submission of Mr. Culos to the effect that the Court in *Gagne*, when finding that "a person aggrieved must demonstrate some form of prejudice to their individual interest," could be referring to a "group", as well as an individual. Such an interpretation is inconsistent with a plain reading of the sentence. The Court referred to the "individual interest" of "a person", not some "group".

[79] The evidence before the Panel establishes a *prima facie* basis for Mr. Culos to assert that he is a person aggrieved by the decision, as it may prejudice his personal interests as a resident of Ashcroft downstream of the Landfill Extension and the Bonaparte River, but no more. There is no evidence before the Panel to suggest Mr. Culos is either authorized by, or appealing on behalf of, anyone else. As stated in *Gagne*, the Board is a statutory decision-maker that does not have any inherent jurisdiction. As such, the Board must act in a manner that ensures that it stays within the bounds of its statutory power, and does not hear from those who it is not authorized to hear from. Insofar as how the decision may or may not have impacted the general public, or anyone other than himself, Mr. Culos is no more than "a mere busy-body" as that term is used in *Gagne*.

[80] For the foregoing reasons, the Panel finds, that Mr. Culos' standing in this appeal is limited to submissions as to how the decision impacts him personally, as distinct from how it may or may not have impacted the public. Mr. Culos has no standing as a representative of "the public".

2. Was the public notification process adopted by the Director relating to his intention to issue the Operational Certificate, and/or the decision itself, either procedurally unfair or otherwise in error?

The Legislative Context

[81] Section 1 of the *Act* defines "operational certificate" as follows:

"operational certificate" means a certificate issued under section 28 for the design, operation, maintenance, performance and closure of sites or facilities used for the storage, treatment or disposal of waste or recyclable material;

[82] Section 28 of the *Act* governs the issuance of an operational certificate by a director. It provides as follows:

Operational certificates

28(1) If a waste management plan is approved by the minister, a director may, in accordance with the regulations, issue an operational certificate, with or without conditions, to the municipality or to any person who is the owner of a site or facility covered by the waste management plan.

(2) An operational certificate issued under subsection (1) forms part of and must not conflict with the approved waste management plan.

(3) A director may exercise a power or authority in relation to an operational certificate in the same manner and to the same extent as provided by this Act with respect to a permit.

(4) At least 14 days before issuing an operational certificate, a director must give notice of his or her intention to issue the operational certificate

- (a) in writing to the person named in the operational certificate, and
- (b) to the public in accordance with the regulations.

(5) A director who gives notice under subsection (4) must allow any person who has been given notice under that subsection to

- (a) inspect the proposed operational certificate, and
- (b) provide comments to the director respecting the requirements or conditions of the proposed operational certificate.

[83] According to section 28(1), the Director has the discretionary authority to issue an operational certificate to the owner(s) of a site or facility covered by a waste management plan that has been approved by the Minister: i.e., the Director "may" issue an operational certificate.

[84] Facilities in British Columbia that manage or dispose of solid waste under a solid waste management plan, as the Landfill Extension does, receive authorization to discharge waste into the environment from the municipal solid waste management plan that applies to it. On December 21, 2012, the Minister approved an amendment to the TNRD SWMP under section 24 of the *Act*, which added the Landfill Extension as an authorized disposal facility. The Minister advised in the SWMP amendment approval decision that the Landfill Extension was permitted to operate once an Operational Certificate was developed and issued. He stated as follows:

The implementation of this amendment [to the SWMP] will require the development of an Operational Certificate that will establish the specific conditions and requirements under which the authorized discharge of waste to the [Landfill Extension] will be regulated.

[85] The Director submits that the Landfill Extension did not require the Operational Certificate "as a matter of process" in order to operate, but for practical purposes, an operational certificate was required as signaled by the Minister.

[86] As submitted by the Director, the purpose of the Operational Certificate is to regulate the operation of the Landfill Extension and, in so doing, ensures enhanced monitoring of its activities and reporting requirements that are protective of the environment and human health. Importantly, the Operational Certificate provides a

basis upon which the Ministry may take enforcement measures against Belkorp and the Village if they do not comply with the terms of the Operational Certificate. Neither the EA Certificate nor the TNRD SWMP provide for this enhanced level of oversight by the Ministry.

[87] As set out in section 28(2) of the *Act*, an operational certificate issued under subsection (1) forms part of, and must not conflict with, the approved waste management plan, in this case the TNRD SWMP as amended to include the Landfill Extension.

[88] Section 28(4) of the *Act* requires the Director, at least 14 days before issuing an operational certificate, to give written notice of his or her intention to issue the operational certificate to the person(s) named in the operational certificate, and to the public in accordance with the "regulations".

[89] The "regulations" referred to in section 28(4) of the *Act* are the *PNR*. The *PNR* prescribes the public notification requirements for the issuance or amendment of an "approval", "permit", or "operational certificate", all of which are separately defined in section 1 of the *Act*.

[90] The notification obligations imposed on a director under the *PNR* respecting operational certificates, as distinct from the director's duties relating to permits or approvals, are set out in section 4(6) of the *PNR* which states as follows:

- (6) A director must, at least 14 days before an operational certificate or amended operational certificate is issued,
 - (a) give written notice to the person to be named in the operational certificate or amended operational certificate of the director's intention to issue the operational certificate or amended operational certificate, and
 - (b) do one or more of the following:
 - (i) serve a copy of the notice given under paragraph (a) on every person who, in the opinion of the director, may be adversely affected by the discharge, emission or storage of recyclable material or waste;
 - (ii) post a copy of the notice given under paragraph (a) in one or more post offices serving the area affected by the discharge, emission or storage of recyclable material or waste;
 - (iii) publish a copy of the notice given under paragraph (a) in one or more local newspapers.

[91] Section 28(5) of the *Act* requires the director who gives notice under subsection 28(4) of the *Act* to allow any person who has been given such notice to both inspect the proposed operational certificate, and provide comments to the director "respecting the requirements or conditions of the proposed operational certificate."

[92] On July 26, 2016, the Director gave written notice of his intention to issue the Operational Certificate to the Village and Belkorp, as required by section 28(4)(a) of the *Act* and section 4(6)(a) of the *PNR*.

[93] The Notice of Intent published on August 4, 2016 in the local newspaper, the Ashcroft/Cache Creek Journal, established a 30-day notice and public comment period. This exceeded the 14-day notice and comment periods set out in section 28(4)(b) and (5) of the *Act*, and section 4(6)(b)(iii) of the *PNR*.

Mr. Culos' submissions

[94] Mr. Culos submits that the Notice of Intent was so unfair and flawed that it deterred, instead of elicited, the public's comments as contemplated in section 28(5)(b) of the *Act*. In support of his assertion that the public was not given adequate notice, Mr. Culos relies upon the following, among other things:

1. The Notice of Intent did not include an email address for submissions.
2. The Director did not make comments received from members of the public available to other commenters, or the public generally.
3. While the draft Operational Certificate was made available for public viewing, other documents referred to therein, such as the DOCP, were not made available to the public generally.
4. The Notice of Intent did not include any information about the GVSDD Appeal relating to the CCLF closure plan.

[95] Mr. Culos further submits that it was unfair to the public that the Director did not give public notice of his December 15, 2016 decision to issue the Operational Certificate.

The Director's submissions

[96] The Director submits that Mr. Culos' individual interests were not prejudicially affected by what Mr. Culos characterizes as inadequate public notification. The Director's responses are summarized below, in subparagraphs 1-4, numbered to correspond to Mr. Culos' criticisms:

1. Mr. Culos' request to be able to make submissions by email was granted by the Director. Mr. Culos was not deterred from making submissions and he presents no evidence to support his assertion that others were.
2. There is no legal requirement for the Director to make the comments that he receives available to other commenters, or to the public generally. Any comments received are for the Director to consider before making a decision, they are not for the general public to consume. Mr. Culos' assertion that the public had an interest in these comments is unsupported by any evidence.
3. In the 5 separate written submissions made by Mr. Culos during the comment period, the only extrinsic document referred to in the draft Operational Certificate that he requested a copy of was the DOCP. The Director provided a written response to Mr. Culos' on November 7, 2016, in which the Director, among other things, communicated Belkorp's willingness to provide, on request by any person, copies of the reports,

plans and/or assessments already submitted to the Ministry in support of its application, and provided the relevant contact information. Mr. Culos received a copy of the DOCP after the end of the comment period. If, after receiving the DOCP, Mr. Culos still had concerns about the proposed terms and conditions of the draft Operational Certificate, he could have raised them – either in writing to the Director (notwithstanding that the comment period had closed) or, more appropriately, in this appeal. He has not done so, ostensibly because his objection is not with any perceived shortcoming of the draft Operational Certificate, but rather with the existence of the Landfill Extension as a whole. Moreover, any person requesting additional information would have been given the same access. There is no evidence before the Panel to suggest that any person, other than Mr. Culos, either desired to see, or requested, additional documents.

4. The Director submits that he was under no legal duty to notify the public about the GVSDD Appeal. The Director submits that the GVSDD Appeal and the CCLF closure plan have nothing to do with the decision under appeal; the former concerns the closure of a 30-year old landfill site, while the latter addresses how a newly constructed, legally distinct landfill is to be operated. Mr. Culos' assertion that the public would be interested in the basis for the GVSDD Appeal is, again, unsupported by any evidence.

[97] The Director submits, therefore, that the Notice of Intent, including the 30-day comment period, were in compliance with, in fact exceeded, the requirements of the *PNR*. Accordingly, this ground for appeal should be dismissed.

[98] In response to Mr. Culos' submission that it was unfair to the public that the Director did not give public notice that the decision itself had been made on December 15, 2016, the Director asserts that there is no legal requirement for him to notify the general public once a decision is made. The Director notes that section 4(4) of the *PNR* requires a director to give notice of his or her decision to issue or amend a permit or approval in accordance with Schedule A, which, for the most part, includes giving notice to all persons who submitted written notification of concerns – not the general public. However, this requirement in section 4(4) of the *PNR* does not apply to a director's decision respecting an operational certificate. For an operational certificate, the only *PNR* notice requirement is set out in section 4(6), as previously described.

[99] The Director submits that, notwithstanding there being no legal requirement to do so, on December 22, 2016, he did, in fact, directly notify Mr. Culos, and the other parties who provided comments in opposition, that the Operational Certificate had been issued. Accordingly, Mr. Culos' concern that members of the general public only became aware of the decision when it was reported in the local paper does not amount to an appealable error. The Director submits that this ground for appeal should also be dismissed.

Belkorp's submissions

[100] Belkorp submits that the Notice of Intent complied with the relevant provisions of the Act and the PNR. In summary, it is Belkorp's position that there was no mishandling of the Notice of Intent. The Notice of Intent was issued in the normal course and there is no reason for the Board to conclude that Mr. Culos, or other members of the public, were in any manner left uninformed and/or did not have an appropriate opportunity to provide the Director with their comments.

[101] In response to Mr. Culos' submissions that it was improper for the Director not to give public notice of the decision itself on December 15, 2016, Belkorp states that this too is an issue for the Director to address. However, it is Belkorp's position that the Board should not interfere with the decision based solely on Mr. Culos' complaint that the Director did not separately advertise the decision given that the decision had been made after the public was notified of his intention to issue the Operational Certificate and after giving the public a month-long period to provide comments (and considering the extensive public consultation concerning the Landfill Extension which had already occurred).

The Panel's findings

[102] The Panel has already held that Mr. Culos' standing in this appeal is limited to submissions as to how the decision impacts him personally, as distinct from how it may or may not impact the public. Mr. Culos is not a representative of "the public". Rather, the Panel will consider the issues of fairness raised by Mr. Culos in relation to the Notice of Intent, and the decision itself, from the perspective of Mr. Culos as an individual.

[103] Even if Mr. Culos had standing to make submissions on behalf of the public (which the Panel has found he does not have), Mr. Culos has failed to present any probative evidence in support of his assertions concerning the public's "state of mind" in relation to the public notification process adopted by the Director concerning either his intention to issue the Operational Certificate, or his decision itself. Such assertions, unsupported by any probative evidence are given no weight by the Panel.

[104] The "comments" from the public under section 28(5)(b) of the Act are expressly required to be "respecting the requirements or conditions of the proposed operational certificate", not with respect to the CCLF, its closure plan, or earlier decisions concerning the Landfill Extension.

[105] Both the EA Certificate of January 6, 2010, and the Minister's TNRD SWMP amendment dated December 21, 2012, were the subject of lengthy and comprehensive First Nations and public consultation processes prior to being granted. As stated by Mr. Smith in his December 14, 2016 memorandum to the Director recommending approval of the Operational Certificate:

These extensive consultations are expected to meet the consultation requirements for a major amendment so no further consultation was deemed to be required for the purpose of this application. Thus, the OC [Operational Certificate] may be issued after the completion of the

required notice period as specified in the PNR as the issuance of the OC is an extension of the SWMP approval process. The OC is an administrative document that typically outlines site specific operating, monitoring and reporting requirements for the subject facility. (page 3)

[106] The Panel finds that the purpose of the section 28(5)(b) comments provision, is to increase the likelihood that a decision-maker has all of the relevant information from local interested parties to assist him/her in making an informed decision on whether to issue the proposed operational certificate. The decision-maker may then respond to concerns raised by commenters. In the present case, the purpose of the provision is not for the Director to engage in another consultation process for the Landfill Extension project, as it seems Mr. Culos would have preferred.

[107] Based upon the evidence before the Panel, all comments submitted as part of this process, including those made by Mr. Culos were considered by the Director. Substantive responses to the comments made by Mr. Culos were given to him, in writing, on November 7, 2016.

[108] The Panel further notes that the Director granted all requests from Mr. Culos that related to his personal ability to make substantive comments. Mr. Culos chose, for his own reasons, not to actually comment on the "requirements or conditions of the proposed operational certificate"; rather, he focused on his ongoing efforts to oppose any landfill whatsoever.

[109] Contrary to Mr. Culos' assertions, the Panel finds that the Notice of Intent, including the 30-day comment period were not inadequate; rather, they complied with, even exceeded, the legal requirements set out in section 28 of the *Act* and the *PNR*. The Panel finds that there was no procedural unfairness suffered by Mr. Culos in the process. Accordingly, the ground for appeal relating to the Notice of Intent is dismissed.

[110] Regarding Mr. Culos' assertion that the process was flawed because the Director did not give notice of the decision itself, the Panel agrees with the Director that there is no legal requirement for him to notify the general public once a decision is made. Nevertheless, Mr. Culos was given personal notice of the decision from the Director on December 22, 2016. Again, the Panel finds that there was no procedural unfairness suffered by Mr. Culos in the process. Accordingly, this ground for appeal is dismissed.

[111] Based upon a careful review of the legislation, the parties' evidence and their arguments, the Panel finds that the public notification process adopted by the Director, relating both to his intention to issue the Operational Certificate, and the decision itself, were neither procedurally unfair nor otherwise in error.

3. Is the Landfill Extension and the CCLF so inextricably “linked” to one another that evidence concerning the CCLF and the CCLF closure plans should have been considered by the Director when making the decision under appeal?

[112] Mr. Culos has not only challenged the public notification process adopted by the Director, but he has also asked the Board to reverse the decision to issue the Operational Certificate on the basis that it gives “the go ahead to an operation of doubtful environmental soundness”. In support of this assertion, Mr. Culos submits that the Landfill Extension and the CCLF are inextricably “linked”, and that “the problems of one are the problems of the other”.

[113] Given this linkage, Mr. Culos submits that his concerns relating to leachate migrating to the groundwater from the CCLF, and the outstanding issues concerning the CCLF closure plans addressed in the GVSDD Appeal, should have been considered by the Director when making his decision. In failing to take such matters into consideration, the decision is flawed and should be reversed.

[114] As summarized in the Director’s submissions, the main bases upon which Mr. Culos asserts that the Landfill Extension and the CCLF are inextricably linked are as follows:

1. The name itself implies the Landfill Extension is part of the CCLF.
2. The EA Certificate makes reference to a July 9, 2009 letter from Golder to the proponent respecting the CCLF.
3. The requirement to “[c]ontinue to evaluate dust suppressant options with the goal of eliminating chloride based products” in Schedule B of the EA Certificate is also reflected in the CCLF OC.
4. The EAO review that led to the EA Certificate was influenced by the AMEC report, which Mr. Culos characterizes as “specious”, so all decisions made following the EA Certificate – including the decision under appeal – are wrong.

[115] Both the Director and Belkorp submit that Mr. Culos’ submissions demonstrate an attempt to conflate past decisions made on matters related to the CCLF, with the decision respecting the Landfill Extension Operational Certificate. However, they submit that only the latter is properly before the Board in this appeal. The Panel agrees.

[116] Belkorp further submits that the Landfill Extension and the CCLF are, in fact, separate facilities, having no common infrastructure, overlap, influence or operations. They are distinct in their respective designs, were separately assessed and approved, and are subject to their own respective operational certificates.

[117] Regarding the GVSDD Appeal, Belkorp submits that the subject matter of that appeal has no bearing upon, or relevance to, the Landfill Extension or its Operational Certificate, nor does the AMEC report that dealt with the performance of the CCLF have any relevance to the Operational Certificate.

[118] The Director submits that, irrespective of its name, the Landfill Extension is a new, legally distinct, landfill site with its own operational certificate, and that it has been treated as such since inception. He submits that the Landfill Extension's approved design is an objective improvement over how landfills were designed 30 years ago. Indeed, the only discernable links between it and the CCLF are the proponents - the Village and Belkorp, of which Wastech is a subsidiary - and the use of some very limited infrastructure. The Director submits that it is, therefore, inappropriate, and beyond this Board's jurisdiction, to give any consideration to Mr. Culos' allegations respecting the CCLF, including any reports prepared by the independent qualified professionals as they address possible issues that are exclusive to the CCLF.

[119] The Director submits that one cannot simply jump to the conclusion that, because there may be, for example, leachate concerns stemming from the CCLF, which is a separate and distinct landfill in all material respects, that the Director's decision respecting a new landfill operated by related entities is necessarily flawed. Nor can one jump to the conclusion that any concerns respecting the CCLF generally, which is a 30 year old facility at its capacity, are reasonably imported to the newly designed and constructed Landfill Extension. The Panel agrees with, and adopts, this analysis.

[120] In his submissions, Mr. Culos questions the underlying bases upon which the decisions to issue the EA Certificate and the TNRD SWMP amendment authorizing the Landfill Extension were made. He also goes to great lengths to criticize the AMEC report. The Director correctly submits that the Board does not have the jurisdiction to rescind the EA Certificate or the Minister's subsequent approval of the TNRD SWMP amendment, which were decided more than 7 and 4 years ago, respectively.

[121] The Director further submits that the evidence makes it clear that the AMEC report was not relied upon by the Director when he exercised his discretion to issue the Operational Certificate. Therefore, Mr. Culos' criticisms of it are irrelevant to the Director's decision under appeal. The Panel agrees.

[122] The Panel agrees with the Director and Belkorp that the Landfill Extension and the CCLF are not "linked" as submitted by Mr. Culos. They are legally distinct in their respective designs, were separately assessed and approved, and are subject to their own respective operational certificates. Any actual or perceived problems with the CCLF are not the problems of the Landfill Extension.

[123] The Panel finds that it is, therefore, inappropriate, and beyond its jurisdiction on this appeal, to give any consideration to Mr. Culos' allegations respecting alleged environmental problems with the CCLF, including any reports prepared by the independent qualified professionals, such as the AMEC report, the CCLF closure plans, or the GVSDD Appeal in relation thereto. Such matters address possible issues that are exclusive to the CCLF, and are irrelevant to the Operational Certificate at issue in this appeal. The Director made no appealable error by not considering such evidence.

[124] This ground for appeal is dismissed.

4. Based upon the evidence submitted, is the decision reasonable, fair and in accordance with the *Act*? Is there any principled basis for the Panel to reverse, vary or send the decision back to the Director for reconsideration?

[125] As was the case in his earlier appeals to the Board in relation to the CCLF, Mr. Culos' main concern with the Operational Certificate relates to the potential for leachate from the Landfill Extension to contaminate groundwater and, ultimately, the Bonaparte River. As pointed out in the Director's submissions, the Operational Certificate does not permit groundwater contamination. On the contrary, significant mitigative measures have been imposed by both the EA Certificate and the Operational Certificate to ensure such contamination does not occur. In the event that contamination does occur, however unlikely that may be, the contamination would be a matter of future compliance and enforcement; it is not a reason for the Operational Certificate to be rescinded at this juncture (*Harder*).

[126] Further, clause 2.1 of the Operational Certificate requires the facility to operate in accordance with the DOCP. As pointed out in Belkorp's submissions, sections 5.1 to 5.3 of the DOCP, describe those elements of the Landfill Extension that Mr. Culos has identified as being of particular concern to him: groundwater control and leachate containment. Section 5.2 describes the liner system as "extremely robust" and "offers more redundancy than is typically required for municipal solid waste landfills". The leachate collection system is described in section 5.3 of the DOCP. In answer to the question posed by Mr. Culos at the end of his submission about upwelling groundwater, Belkorp states that section 5.1 of the DOCP considers, and addresses, the possible impact of upwelling groundwater in the Landfill Extension design.

[127] On a review of the admissible evidence, the Panel finds that Mr. Culos has not identified any shortcomings in the Operational Certificate in addressing the design, operation, maintenance, performance or closure of the Landfill Extension. Mr. Culos has presented no evidence to establish that the specific operation, monitoring and reporting requirements of the subject facility are inadequate.

[128] As submitted by the Director, and as the Board acknowledged at page 8 of *Ashcroft Ranchers*: "[the Board] must make its decisions only on the evidence placed before it at the hearing, and the onus is on the appellants to prove to the Board that the Waste Management Branch has made an error, either in judgement or law." The Panel agrees with the Director that there simply is no evidence before it to substantiate Mr. Culos' concerns about leachate from the Landfill Extension, or that proves, on a balance of probabilities, that the Director made any error of judgment or law in making his decision.

[129] Further, considering all of the admissible evidence before it, the Panel finds that the Operational Certificate is protective of the environment and human health, consistent with the requirements of the *Act*, the EA Certificate and the TNRD SWMP.

[130] The Panel finds that the Director's discretion to issue the Operational Certificate under section 28(1) of the *Act* was exercised reasonably, fairly, and in accordance with his duties under the *Act* and the *PNR*. Moreover, based upon the

admissible evidence before the Panel, there is no principled basis to reverse or vary the decision, or to send it back to the Director for reconsideration.

[131] Finally, the Panel notes that Mr. Culos made submissions that could be interpreted as questioning whether the Crown discharged its duties to consult and accommodate the NNTC in relation to the decision. Mr. Culos has presented no basis upon which he could have standing to make any such submissions on behalf of the NNTC, or any other First Nation. The Panel finds that he does not have such standing.

[132] In any event, the NNTC had separately appealed the Director's decision and raised the adequacy of consultation as a ground for its appeal. Its appeal was initially joined with Mr. Culos' appeal but, subsequently, the NNTC made no written submissions and abandoned its appeal (Appeal No. 2017-EMA-003).

DECISION

[133] In making this decision, the Panel has considered all of the relevant evidence and submissions of the parties, whether or not specifically reiterated in this decision.

[134] For the reasons set out above, the Panel confirms the decision of the Director and dismisses the appeal.

"Michael Tourigny"

Michael Tourigny, Panel Chair
August 16, 2017