Province of British Columbia

Environmental Appeal Board

Fourth Floor 747 Fort Street
Victoria British Columbia
Telephone: (250) 387-3464
Facsimile: (250) 356-9923

Mailing Address:
PO Box 9425 Stn Prov Govt
Victoria BC V8W 9V1

APPEAL NOS. 99-WAS-06(c), 08(c), and 11(c)-13(c)

In the matter of five appeals under section 44 of the *Waste Management Act*, R.S.B.C. 1996, c. 482.

BETWEEN:	Houston Forest Products Co. Northwood Inc. Laurie Mutschke and Emily Dodd Dave Stevens Dr. Elizabeth Bastian	**APPELLANTS**
AND:	Assistant Regional Waste Manager	**RESPONDENT**
AND:	West Fraser Mills Ltd.	**THIRD PARTY**
AND:	British Columbia Lung Association	**PARTICIPANT**
BEFORE:	A Panel of the Environmental Appeal Board Toby Vigod, Chair	
DATE:	Conducted by way of written submissions concluding on January 7, 2000	

APPEARING:

For the Appellants:	
Houston Forest Products Co.	Nils Daugulis, Counsel
Northwood Inc.	Peter Voith, Counsel
Laurie Mutschke	Tim Howard, Counsel
Dave Stevens	Tim Howard, Counsel
Dr. Elizabeth Bastian	Tim Howard, Counsel
For the Respondent:	Dennis Doyle, Counsel
For the Third Party:	Paul Cassidy, Counsel

APPLICATION TO DISMISS THE APPEALS OF LAURIE MUTSCHKE AND EMILY DODD, DAVE STEVENS AND DR. ELIZABETH BASTIAN

This is an application by Houston Forest Products Company ("Houston") to dismiss the appeals of Dr. Elizabeth Bastian, Dave Stevens, and Laurie Mutschke, on behalf of herself and the infant, Emily Dodd, (collectively, the "Individual Appellants"). The appeals were filed against the January 26, 1999 decision of the Assistant Regional Waste Manager (the "Assistant Manger") to amend Houston's waste permit. Houston argues that the Individual Appellants lack standing to bring the

appeals and that the appeals are outside of the jurisdiction of the Board as set out in the *Waste Management Act*.

This application was conducted by way of written submissions.

BACKGROUND

Houston operates a sawmill-planer mill complex in the community of Houston, British Columbia, approximately 60 kilometres south of Smithers in the Bulkley Valley. In February of 1979, it obtained waste permit PA-05339, which authorizes the discharge of certain emissions from six different sources. Section 1.1 of its waste permit authorizes Houston to discharge emissions into the air from a beehive burner.

In 1995, the *Wood Residue Burner and Incinerator Regulation*, B.C. Reg. 519/95 was enacted, with an effective date of January 1, 1996. That *Regulation* prohibited the use of a beehive burner unless the burner facility operator was listed in Schedule 1 of the *Regulation*, and was authorized to operate a beehive burner on December 31, 1995, by a "valid and subsisting permit." Houston is listed in Schedule 1, had a permit in 1995, and was authorized by that Schedule to operate its beehive burner to dispose of wood residue until December 31, 2000.

On January 26, 1999, the Assistant Manager amended Houston's permit. The amendments, as they affect the operation of the beehive burner, relate to the rate and characteristics of the air emissions from the beehive burner; the upgrading of the burner system (including the capacity to regulate the flow of woodwaste to the beehive burner); semi-annual progress reporting; environmental protection planning; and the provision for visual monitoring of the burner operation.

On February 5, 1999, Houston appealed the Assistant Manager's decision to amend its permit. Houston seeks an order deleting certain of the amendments.

On February 23, 1999, the Individual Appellants also appealed the decision. Each of the Individual Appellants resided and/or worked in Smithers at the time they filed their appeals. They appealed the decision on the grounds that the permit authorizes the creation of air pollution in the Bulkley Valley airshed that:

1. Exceeds the provincial Interim Air Quality Objective for Fine Particulate (PM_{10});

2. Exceeds the reference level for PM_{10} established by the National Ambient Air Quality Objectives for Particulate Matter;

3. Causes or creates the risk of adverse health effects in residents of the Bulkley Valley airshed; and

4. Causes or creates the risk of adverse health effects for residents of the Bulkley Valley airshed who are asthmatic, elderly and/or infants, which differential effects are discriminatory and constitute a breach of section 15 of the *Canadian Charter of Rights and Freedoms*.

The relief sought by the Individual Appellants is:

1. An order quashing the permit in so far as it authorizes the operation of a beehive or wood waste burner; or in the alternative;

2. An order amending the permit so as to eliminate or minimize the adverse and/or discriminatory health effects resulting from air pollution emitted by the beehive burner; or in the further alternative

3. An order remitting the permit to the Director, to be amended in accordance with the reasons and instructions of the Environmental Appeal Board.

Also in January 1999, the Assistant Manager amended waste permits issued to West Fraser Mills Ltd. ("West Fraser") and Northwood Inc. ("Northwood"), who operate in Smithers and Houston respectively. Their permits were also amended in relation to the operation of their respective beehive burners. Northwood and West Fraser appealed the Assistant Manager's decision to amend their permits, as did the Individual Appellants.

On April 30, 1999, the Board decided that the appeals would be heard together, with the stipulation that the parties may proceed with any preliminary applications as if the proceedings were not joined at all.

On December 9, 1999, Houston raised two preliminary objections to the Individual Appellants' appeals in respect of the Houston permit. Houston argues that these Appellants are not "persons aggrieved" under section 44 of the *Waste Management Act*, and, therefore, do not have standing to appeal. It also argues that these Appellants seek to quash the Houston permit rather than appeal the decision of the Assistant Manager to amend the permit and, as such, the appeals are outside of the jurisdiction of the Board. Accordingly, Houston asks that the Individual Appellants' appeals be dismissed.

West Fraser and Northwood take no position with regard to the standing of the Individual Appellants. However, both West Fraser and Northwood submit that the Board does not have jurisdiction to hear the appeals brought by the Individual Appellants and support the submissions made by Houston in this regard. Both companies request that the Board's ruling in respect of the jurisdictional issue also apply to the appeals filed by the Individual Appellants against the permits issued to them.

The Assistant Manager submits that both preliminary objections should be dismissed and the appeals should proceed.

RELEVANT LEGISLATION

The Assistant Manager amended Houston's permit pursuant to section 13 of the *Waste Management Act,* which states:

Amendment of permits and approvals

13 (1) A manager may, subject to this section and the regulations, and for the protection of the environment,

(a) on the manager's own initiative if he or she considers it necessary, or

(b) on application by a holder of a permit or holder of an approval,

amend the requirements of the permit or approval.

…

(4) A manager's power to amend a permit or approval includes all of the following

(a) authorizing or requiring the construction of new works in addition to or instead of works previously authorized or required;

(b) authorizing or requiring the repair of, alteration to, improvement of, removal of or addition to existing works;

(c) requiring security, altering the security required or changing the type of security required or the conditions giving security;

(d) extending or reducing the term of the permit or approval of renewing it;

(e) authorizing or requiring a change in the characteristics or components of waste discharged, stored, treated, handled of transported;

(f) authorizing or requiring a change in the quantity of waste discharged, stored, treated, handled of transported;

(g) authorizing or requiring a change in the location of the discharge or storage, treatment, handling or transportation of the waste;

(h) altering the time specified or the construction of works or the time for other requirements imposed on the holder of the permit or approval;

(i) authorizing or requiring a change in the method of discharging, storing, treating, handling or transporting the waste;

(j) changing or imposing any procedure or requirement that was imposed or could have been imposed under section 10 or 11.

Section 44(1) of the *Waste Management Act* sets out who may appeal, and what may be appealed to the Board. It states:

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. [emphasis added]

"Decision" is defined in section 43 of the *Act* as:

43 For the purposes of this Part, "**decision**" means

...

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

...

Section 47 of the *Waste Management Act* provides:

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.

ISSUES

The issues raised by Houston are:

1. Whether the Individual Appellants are "persons aggrieved" and, therefore, have standing to bring the appeals.

2. Whether the Board has jurisdiction over the appeals.

DISCUSSION AND ANALYSIS

1. Whether the Individual Appellants are "persons aggrieved" and, therefore, have standing to bring the appeals.

Both Houston and the Individual Appellants agree that "a person aggrieved" in section 44(1) of the *Waste Management Act* is "a person who has genuine grievances because an order has been made which prejudicially affects his interests" (*Metalex Products Ltd*. v*. Deputy Director of Waste Management and Gerry Wilkin,* (Appeal No. 96/17(b), April 24, 1997), (unreported)). This is taken from the decision of the House of Lords in *Attorney General Gambia* v*. N'Jie* [1961] 2 All E.R. 504, where the Court stated as follows:

> The words "person aggrieved" are of wide import and should not be subjected to a restricted interpretation. They do not include, of course, a mere busybody who is interfering in things that do not

> concern him; but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests.

Although the Board initially adopted this test under the previous legislation which gave standing to a person "who considers himself or herself aggrieved," the Board has also accepted it as an appropriate interpretation of the words "person aggrieved" under the current legislation (see *Keays and Goggins* v*. Assistant Regional Waste Manager and MB Paper* (Appeal No. 97-WAS-10(a), November 17, 1997) (unreported) (hereinafter "*Keays and Goggins*")).

Houston argues that the Individual Appellants do not meet the test for standing and, therefore, their appeals should be dismissed. It maintains that none of these Appellants live in the Houston area where its beehive burner is located, and therefore could not be "aggrieved."

Each of the Individual Appellants provided an affidavit setting out why they are "persons aggrieved" by the Assistant Manager's decision.

In an affidavit sworn on December 22, 1999, Dr. Bastian states that she lives and works in Smithers and regularly treats patients from all over the Bulkley Valley with respiratory problems. She states that she has also done medical work in Houston and may do so again on a locum basis. Dr. Bastian is concerned that wood smoke emitted from Houston's beehive burner adversely affects the health of her patients while also posing a personal health risk to her.

Dr. Bastion also states that, in 1988 or 1989, she and several other physicians formed the Physicians for the Environment Concern Committee ("PECC"). She states that PECC has been involved in a number of activities relating to air quality in the Bulkley Valley. Some of these activities include: public meetings in Smithers regarding air quality issues, writing letters to the editor and taking out advertisements in the local newspapers about air quality, and marching down the Main Street of Smithers to demand action on poor air quality in the Bulkley Valley. In addition to her involvement with PECC, Dr. Bastian states that she has been an active member of the Smithers Air Quality Committee since its inception in the early 1990s.

In an affidavit sworn on December 22, 1999, Dave Stevens states that he operates a computer consulting business out of an office in Smithers and resides in the Bulkley Valley, 30 kilometres northwest of Smithers. He states that he is concerned that the three beehive burners are contributing pollution to the Bulkley Valley airshed that can have an adverse affect on his personal health and the health of other residents of the Valley. He also states that he travels through Houston approximately six times per year. Both Mr. Stevens and Dr. Bastian state that they have observed a definable plume of smoke moving from Houston towards Smithers.

In an affidavit sworn on December 23, 1999, Laurie Mutschke states that smoke from Houston's beehive burner has caused a significant adverse affect on the health of her daughter Emily Dodd, and poses a risk to her personal health. She states

that her daughter, born in Smithers on March 19, 1998, suffers from asthma, and that concern for her daughter's health figured prominently in her family's decision to move to Terrace, British Columbia. She states that she and her husband have considered moving back to Smithers, where they still own a house, but the Valley's smoke and its possible impact on Emily's health provide a major disincentive to do so.

The Individual Appellants submit that it is indisputable that Houston's beehive burner produces considerable volumes of wood smoke. Pursuant to its 1999 permit, Houston is authorized to burn up to 95,200 m^3 of wood residue annually, and to discharge smoke of up to 40% opacity at a rate of 5500 m^3/min.

The Individual Appellants cite memoranda from BC Environment officials to support their contention that the smoke emitted from the beehive burner in Houston is transported throughout the Bulkley Valley, including to Smithers. In one memorandum (obtained through the *Freedom of Information Act* with the date omitted), the Assistant Manager states that "smoke from the Houston mills ends up in Smithers under normal winter inversion/outflow conditions."

The Individual Appellants submit that smoke from beehive burners is scientifically known to prejudice health. They submit that the wood smoke contains small particles of 10 microns and smaller ("PM_{10}") which have been demonstrated to have a wide range of adverse health effects. Further, they cite a 1997 BC Environment Memorandum which states that ambient levels of PM_{10}, less than that experienced in the Bulkley Valley, are responsible for increased risk of: cardiac and respiratory mortality, cardiac and respiratory hospitalization, asthma emergency room visits, and upper and lower respiratory illnesses. The adverse health effects were quoted from a 1995 study done by Dr. Sverre Vedal of the University of British Columbia, and published by BC Environment.

The Individual Appellants submit that the beehive burners operated by Houston, West Fraser and Northwood are the largest contributors to PM_{10} emissions in the Valley, and therefore the largest contributors to the above-noted adverse health effects. They cite a 1999 Bulkley Valley Air Quality Management Plan, which states the following:

> Estimates for the Houston area done by BC Environment's Air Resources Branch indicate that the two beehive burners (and other sawmill emissions) put out 92% of the PM_{10} emissions in the community, excluding large area sources such as prescribed burning [reference omitted]. Similarly, in Smithers an estimated 70% of particulate emissions from the town come from the sawmill which continues to dispose of its wood 'waste' in a beehive burner.

In summary, the Individual Appellants submit that they have standing to appeal because smoke from Houston's beehive burner puts their health at risk. They submit that there is credible scientific evidence that smoke emitted from Houston's beehive burner is transported to Smithers, and that ambient PM_{10} levels are sufficiently high at Smithers to have adverse health effects. Since the Individual

Appellants all live and/or work in Smithers or have done so (Mutschke/Dodd), they all submit that they have a reasonable apprehension that the smoke puts their personal health at risk. Additionally, Dr. Bastion has a reasonable apprehension that the public health is at risk.

Houston argues that these Appellants have not met the test for standing. It notes that in previous cases dealing with standing, the Board has held that residency and proximity to the discharge site are highly relevant considerations under the "person aggrieved" test. In *Keays and Goggins*, the Board granted standing to an appellant who lived 2.5 km from the mill that was the subject of that appeal, and had children attending a school which was 1 km from the mill. In *Keays* v. *Assistant Regional Waste Manager and MB Paper Ltd.* (Appeal No. 97-WAS-10(c), January 6, 1998) (unreported), the Board granted standing to an appellant who lived 10 km downwind from the mill and had children attending a school which was 1 km from the mill. In *Fleischer et al* v. *Assistant Regional Waste Manager and Pacifica Papers Inc.* (Appeal No. 98-WAS-29(c), April 27, 1999) (unreported)), the Board granted standing to appellants who resided in Powell River, the location of the mill.

Unlike these cases, Houston submits that none of the Individual Appellants in the present case are residents of the community of Houston, and none have demonstrated that they work or engage in activities in the proximity of the Houston mill site for any length of time that would give them standing. It points out that Dr. Bastion lives and works in Smithers, approximately 66 km from the Houston mill, Mr. Stevens lives almost 100 km from the mill and Ms. Mutschke lives in Terrace. Accordingly, they do not live or work within a close enough proximity to the Houston mill to give them legitimate concerns about air emissions from it.

Houston also notes that none of the actual residents of Houston appealed the Assistant Manager's decision.

Regarding the Appellants' evidence that the emissions move towards Smithers, Houston argues that they did not provide wind data demonstrating that the discharge from the Houston burner is prejudicially affecting their interests. It submits that, in the absence of such evidence, the Individual Appellants have no standing to bring their appeals in respect of the Houston permit.

The Respondent submits that the Individual Appellants have disclosed reasonable grounds for concern that air emissions discharged under the Houston permit may affect their health and well being. Therefore, the Respondent submits, the Individual Appellants are "persons aggrieved" and should be granted standing.

As the Board has stated in previous cases, residency and proximity are relevant to the consideration of whether a person is "aggrieved." However, these are not the only considerations. As previously stated, the test under section 44(1) is whether the person has a genuine grievance because an order has been made which prejudicially affects his or her interests. Air pollutants are mobile and can affect air quality at large distances (see *Keays and Goggins*). Thus, there is no defined distance beyond which persons are necessarily precluded from having standing to appeal.

The Board has also stated that the grievance claimed to be suffered must be reasonable. In other words, it must be reasonable to believe that the subject matter of the appeal may prejudicially affect the person's interests. This does not require an appellant to demonstrate definitive proof of prejudice suffered. As the Board stated in *Fleischer and Goggins* v. *Assistant Regional Waste Manager et al*. (Appeal No. 97-WAS-11(a), November 17, 1997) (unreported), "To require lay people to essentially 'prove' how they will or will likely be affected is to impose an impossible burden on them. Proof of their cases comes at the hearing stage when the merits of the case are addressed…." Failure to provide definitive proof should not deny a person standing if they disclose enough evidence for one to conclude, on reasonable grounds, that the subject matter of the appeal may prejudicially affect his or her interests.

The Board finds that the Individual Appellants have adduced such evidence. The Appellants Mr. Stevens and Dr. Bastian reside and/or work in Smithers, and Dr. Bastian has also been involved in PECC, a committee with an interest in air quality issues. The Appellants Mutschke and Dodd resided in Smithers at the time of their respective appeals, and continue to own a house there. All of these Appellants have been or may be exposed to the particulate matter emitted from Houston's beehive burner. The Board recognizes that the Houston burner is not the sole source of particulate matter, as Northwood and West Fraser also operate in the Valley. However, there is evidence before the Board to support the Individual Appellants' assertion that some of the smoke from the Houston's burner moves through the Valley to Smithers at certain times of the year. Specifically, the memorandum from the Assistant Manager sates that "smoke from the Houston mills ends up in Smithers under normal winter inversion/outflow conditions." Therefore, the Board accepts that the Individual Appellants have legitimate concerns that emissions from the burner are prejudicially affecting their interests.

Given the evidence submitted by the Individual Appellants in this case, wind data is not required to legitimize these concerns. Houston argues that none of the Individual Appellants have demonstrated an interest that is affected beyond that of the general public (see Brar v. Deputy Director of Waste Management and District of Invermere, (Environmental Appeal Board, Appeal No. 97-WAS-09(c), March 11, 1998) (unreported)). The Board disagrees. As the Board has found that the Individual Appellants may be personally affected by the pollutants, the Board finds that they have an interest that is prejudicially affected beyond that of the general public.

Based upon the evidence and arguments presented, the Board finds that the Individual Appellants are "persons aggrieved" under section 44(1) of the Waste Management Act and should be granted standing to bring the appeals against the amendment of the Houston permit.

2. Whether the Board has jurisdiction to hear the appeal.

This issue arises out of the relief sought by the Individual Appellants in their appeals. For convenience, the relief is restated below. They request:

1. An order quashing the permits in so far as they authorize the operation of beehive or wood waste burners; or in the alternative;

2. An order amending the permits so as to eliminate or minimize the adverse and/or discriminatory health effects resulting from air pollution emitted by the beehive burners; or in the further alternative

3. An order remitting the permits to the Director, to be amended in accordance with the reasons and instructions of the Environmental Appeal Board.

Houston submits that the Individual Appellants' appeals are beyond the jurisdiction of the Board as set out in the *Waste Management Act* and the *Environment Management Act*. It argues that the Individual Appellants are not appealing the Assistant Manager's January 26, 1999 decision; rather, they are seeking an Order quashing the permit itself. As the original permit was issued on February 9, 1979, it submits that the Individual Appellants have missed the 30-day appeal period and their appeals should, therefore, be "struck" for being filed out of time.

In response, the Individual Appellants state that Houston has erred in interpreting the *scope* of their pleadings. They state that the scope of their appeals is narrower than Houston alleges, in that their appeals only relate to the beehive burners, not the permit itself. On this point, the Board agrees. The Individual Appellants are not seeking to quash the permit itself – their appeals are clearly limited to the beehive burners. The Board notes that their Notices of Appeal state: "It is the terms of the permits relating to beehive burners, and those terms only, which form the subject of this Appeal." The relief requested is consistent with this assertion. For example, the first order requested is to quash the permits "*in so far as they authorize the operation of beehive or wood waste burners.*" The alternative remedies are equally clear. Thus, the limitation period argument fails.

Houston also argues that the Board cannot grant the first remedy sought, an order quashing Houston's permit as it relates to the beehive burner. This argument is based on section 2 of the *Wood Residue Burner and Incinerator Regulation,* which states:

2 (1) Except as otherwise provided in this section, a person must not use a beehive burner … to dispose of wood residue.

(2) A burner facility operator listed in Column 1 of Schedule 1 may use a beehive burner … to dispose of wood residue until the date set out opposite in Column 2 if, on December 31, 1995, the burner facility operator is authorized to do so by a valid and subsisting permit.

(2.1) Despite subsection (2), a permit continues to be required to use a beehive burner … and all terms and conditions of the permit apply except where there is a conflict with this regulation, in which case this regulation applies.

As noted earlier, Houston is listed as a burner facility operator in Column 1 of Schedule 1 of the *Regulation* and is authorized to use its beehive burner to dispose of wood residue until December 31, 2000.

Houston maintains that, as it is authorized to operate its beehive burner by section 2(2) of the *Regulation*, the Assistant Manager could not have refused to issue a permit authorizing Houston to continue to use its beehive burner. Had the Assistant Manager done so by deleting section 1.1 of the permit, a conflict would have arisen between section 2(2) of the *Regulation* and the permit: the *Regulation* would have allowed Houston to use its burner, while the terms of the permit would not have permitted such use. Based on section 2(2.1) of the *Regulation*, the conflict would be resolved in favour of the *Regulation*. As the Assistant Manager had no jurisdiction to shut down the Houston beehive burner, Houston argues that neither does the Board.

The Board accepts Houston's argument, and finds that its jurisdiction on the Individual Appellants' appeals does not go so far as to authorize it to quash or prevent Houston from operating the burner completely in this case. Schedule 1 of the *Regulation* specifically permits Houston to use its beehive burner until December of 2000. Thus, while the Assistant Manager could have added a condition that reduced the permitted emissions of the burner, he could not amend the permit such that it would conflict with the *Regulation*. Quashing the section that authorizes the operation of the burners would result in a conflict. Just as the Assistant Manager is bound by the *Regulation*, so is the Board. Accordingly, this remedy is not available to the Individual Appellants.

Having said that, the Board wants to emphasize that this finding does not in any way affect the Assistant Manager's powers under the *Act* to take appropriate action should Houston not comply with the terms of its permit.

Finally, Houston concedes that the Individual Appellants may be entitled to seek relief in connection with the amendments to Houston's permit. However, it argues that they are not entitled to an order "amending the permits so as to eliminate or minimize the adverse and/or discriminatory health effects resulting from air pollution emitted by the beehive burners" (the second ground of relief). Houston argues that this order goes beyond the amendments set out in the Assistant Manager's decision.

In support of this argument, Houston states that section 44 of the *Waste Management Act* provides the Board with jurisdiction to hear an appeal from a *decision* of a manager, among others. "Decision" is defined in section 43 of that *Act* to mean, *inter alia*, the "issue, amendment, renewal, suspension, refusal or cancellation of a permit …." Houston submits that the Assistant Manager's decision in this case was to amend sections 1.1.1, 1.7.1, 6, 7, 8 and 9 of the permit. Accordingly, the Board's jurisdiction is limited to matters directly related to that decision, does not extend to the validity of the permit itself, and the issues at the hearing should be restricted to the specific amendments made to its permit as set out above.

The Individual Appellants argue that Houston has erred in interpreting the true *nature* of the amendments. They submit that Houston is incorrect in characterizing the changes to the permit as mere "amendments." They argue that part of the January 1999 decision was to issue, "*de novo*," the whole of section 1.1, which

includes section 1.1.1. Section 1.1 of Houston's permit authorizes it to operate and emit pollutants from its beehive burner. The Individual Appellants state that this section was time-limited – the general authorization expired on December 31, 1997. They argue that Houston was, therefore, operating its beehive burner in contravention of section 4 of the *Waste Management Act* from January 1, 1998 until January 26, 1999, when the "new permit" was issued. They argue that the January decision provided "new" or "fresh" authorization for the operation of the beehive burner where there was none before, and that the Board has jurisdiction over all of section 1.1 – not simply subsection 1.1.1. The Assistant Manager did not make any submissions in response to this argument.

The Board cannot agree that the January authorization was a new or fresh authorization. The Board finds that, pursuant to the operation of section 2(2.1) of the *Regulation*, the expiration of time set out in section 1.1 of the permit did not result in Houston operating illegally, nor did it result in a "new or fresh" authorization. The Board finds that the expiration date was either a term or a condition of the existing permit. That term or condition was in direct conflict with the *Regulation* which authorizes Houston to operate until December of 2000. Therefore, the date in the *Regulation* applied, and there was no need to amend the date in the permit for this section to remain effective.

However, despite this finding, the Board agrees with the Individual Appellants that the Board's jurisdiction is not limited to consideration of those specific subsections cited in the January decision.

In his submissions to the Board, the Assistant Manager notes that the Board has *de novo* jurisdiction under sections 46 and 47 of the *Waste Management Act* and, pursuant to section 47(c), can make any amendment to the permit that could be made by a manager, and that the Board considers appropriate. A manager has broad discretion to amend, and could have made any amendments listed under section 13(4) of the *Act*, including subsection 13(4)(j) which authorizes "changing or imposing any procedure or requirement that was imposed or could have been imposed under section 10 or 11 [the general permitting and approval sections]." After noting that the Individual Appellants are not contesting the validity of the permit itself, the Assistant Manager states: "[s]ince the appellants' submissions only go to the elimination or restriction of emissions from the beehive burner as stipulated in section 1.1 of the permit, … these matters are within the jurisdiction of the Board."

The Board finds that, when he amended the permit, the Assistant Manager had the authority to reduce emissions from the beehive burner. Since the Board can make any amendment that could be made by the decision maker, the Board finds that it has jurisdiction to hear the appeals and consider whether to grant the second remedy "amending the permits so as to eliminate or minimize the adverse and/or discriminatory health effects resulting from air pollution emitted by the beehive burners." The Appellants are requesting something that could have been decided by the Assistant Manager, and therefore the Board has jurisdiction to hear the appeals and to grant this remedy if appropriate in the circumstances. Further, the Board could also grant the third remedy "remitting the permits to the Director, to

be amended in accordance with the reasons and instructions of the Environmental Appeal Board."

DECISION

The Board finds that the Individual Appellants have standing to appeal the January 26, 1999 decision of the Assistant Manager. Houston's application to dismiss their respective appeals is therefore denied.

On the jurisdiction issue, the Board finds that it does not have jurisdiction to grant the first remedy sought by the Individual Appellants, that is, to quash the permit as it relates to the authorization of the beehive burner. However, the Board does have jurisdiction over the second, and third remedies. The application to dismiss the appeals on the grounds of a lack of jurisdiction is allowed in part.

The other permit holders, Northwood and West Fraser, also challenged the Board's jurisdiction to hear the Individual Appellants' appeals against their respective permits and adopted Houston's submissions in support. The Board notes that Schedule 1 of the *Regulation* also covers their respective beehive burners. Accordingly, the Board's decision on jurisdiction applies equally to them and their applications are also allowed in part.

Toby Vigod, Chair
Environmental Appeal Board

February 3, 2000