



Province of  
British Columbia

# Environmental Appeal Board

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## APPEAL NO. 2000-WAS-003

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

<b>BETWEEN:</b>	Delta Shake & Shingle (1989) Ltd. and  429155 British Columbia Ltd.	<b>APPELLANTS</b>
<b>AND:</b>	Assistant Regional Waste Manager	<b>RESPONDENT</b>
<b>BEFORE:</b>	A Panel of the Environmental Appeal Board Toby Vigod, Chair	
<b>DATE OF HEARING:</b>	June 20, 2000	
<b>PLACE OF HEARING:</b>	Vancouver, B.C.	
<b>APPEARING:</b>	For the Appellant: [the Appellant failed to appear]  For the Respondent: Gareth Morley, Counsel	

## APPEAL

This is an appeal by Delta Shake & Shingle (1989) Ltd. ("Delta Shake & Shingle") and 429155 British Columbia Ltd. ("429155") of a December 14, 1999, decision of the Assistant Regional Waste Manager (the "Assistant Manager") to issue Pollution Prevention Order OR-16222 (the "Order"). The Order requires the Appellants to undertake certain actions and prepare a remediation plan by specified dates following a fire that took place at the landfill owned by Delta Shake & Shingle located at 8970 River Road, Delta.

A Notice of Appeal was filed on January 13, 2000, by Barry Fraser, McCarthy Tetrault, on behalf of the Appellants. The Notice included a request for a stay of the Order. On January 14, 2000, the Board wrote to the parties setting out a schedule for the submissions on the stay request. The Appellants comments were due by February 4, 2000. On February 10, 2000, the Board wrote to the Appellants counsel noting that, as submissions had not been received, the Board was assuming that the stay application had been abandoned.

On March 15, 2000, the Board wrote to the parties scheduling the hearing of the appeal for June 20, 2000. Statements of Points were to be filed by the Appellants no later than May 31, 2000, and by the Respondent no later than June 9, 2000. On June 1, 2000, the Board wrote to Mr. Fraser indicating that no Statement of Points

had been received and asking for confirmation of whether the Appellants were pursuing their appeal of the matter. A response by June 2, 2000 was requested. On June 1, 2000, the Board received notification from Mr. Fraser that McCarthy Tetrault was no longer acting for the Appellants and that Ted Myrah, an officer of both Delta Shake & Shingle and 429155, would be in contact with the Board if the companies wished to continue with the appeal.

On June 2, 2000, the Board wrote to Mr. Myrah advising him that if he intended to file a Statement of Points, he should do so by June 7, 2000. A Notice of Hearing was also attached confirming the hearing venue as the Terminal City Club, 837 West Hastings Street, Vancouver. The hearing was set down to commence at 9:00 a.m. on June 20, 2000.

No Statement of Points was filed by the Appellants. The Respondent filed its Statement of Points on June 9, 2000.

On June 19, 2000, at approximately 3:30 p.m., the Executive Director of the Board telephoned the residence of Mr. Myrah. A woman answered the phone and a message was left confirming the hearing. A request was made for Mr. Myrah to contact the Board's office which he did shortly after the initial call was made. Mr. Myrah indicated that he had received all the documents and that he would attend the hearing, but might be requesting an adjournment. He was reminded that the hearing was set for 9:00 a.m. and that a failure to attend could result in a cost order being made against him.

The Panel, Respondent and recorder were all present in the hearing room at the Terminal City Club by 9:00 a.m. on June 20, 2000. The Appellant was not present. At approximately 9:15 a.m., the Panel Chair contacted the Board and a call was placed by the Board's Registrar to Mr. Myrah's residence. A woman answered the phone and indicated that she did not know where Mr. Myrah was and she did not have any forwarding telephone number where he could be located. The Panel waited until 9:30 a.m. and then called the hearing to order. The Panel Chair outlined the chronology as set out above and declared the appeal dismissed as abandoned.

The Respondent then made an application for costs against the both Delta Shake & Shingle and 429155. Counsel for the Respondent referred to the Board's Procedure Manual and submitted that this was an appropriate case for the Board to exercise its discretion and award costs against the Appellants.

The Board ordered that since Mr. Myrah was not present, submissions on costs and quantum would be done by writing. A Notice was sent by the Board to the parties on June 20, 2000, setting out a schedule for the receipt of written submissions.

## **DECISION**

The Appellant failed to appear at the hearing at the time and place stated in the Notice of Hearing and made no apparent attempt to notify the Board office or the hearing venue of any problem with attending the hearing as scheduled. The Panel

of the Environmental Appeal Board, therefore, orders that the appeal of Delta Shake & Shingle and 429155 be dismissed as abandoned. The December 14, 1999 Pollution Prevention Order OR-16222, therefore, stands as issued.

The Respondent's application for costs will be addressed in a separate decision.

Toby Vigod, Chair  
Environmental Appeal Board

June 21, 2000