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Environmental Appeal Board

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DECISION NO. 2003-WAS-004(c)

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

BETWEEN:	Houweling Nurseries Limited	**APPELLANT**
AND:	District Director of the Greater Vancouver Regional District	**RESPONDENT**
AND:	Roger Emsley	**THIRD PARTY**
AND:	Corporation of Delta	**PARTICIPANT**

BEFORE: A Panel of the Environmental Appeal Board
Alan Andison, Chair
Dr. Robert Cameron, Member
Phillip Wong, Member

DATES: July 8 – 10 and December 8 – 11 & 19, 2003, March 22 & 23, 2004 and March 19 – 23, 2007

PLACE: Vancouver, BC

APPEARING:

For the Appellant:	Robert W. Grant, Counsel
	Susan Horne, Counsel
	Ryan N. Patryluk, Counsel
For the Respondent:	M. Kevin Woodall, Counsel
	Ian N. Carter, Counsel
For the Third Party:	Roger and Angela Emsley
For the Participant:	Verne Kucy

DECISION ON THE MERITS

[1] This is the Board's decision on the merits of the 2003 appeal filed by Houweling Nurseries Limited. This decision is issued in accordance with the direction of the BC Supreme Court in *Houweling Nurseries v. District Director of the GVRD et al.*, 2005 BCSC 894. The procedural history of this appeal up to and including the Court's decision are discussed in further detail below.

APPEAL HISTORY

[2] On January 17, 2003, Houweling Nurseries Limited ("Houweling") appealed the December 20, 2002 decision of Nancy Knight, the then District Director (the

"District Director") of the Greater Vancouver Regional District ("GVRD"). Houweling appealed the District Director's refusal of Houweling's application to amend its air quality permit GVA 0349 (the "Permit"). The Permit authorized the discharge of air emissions from Houweling's greenhouse facilities located in Delta, British Columbia. The amendment would have allowed Houweling to derive 3/5 of its energy needs from the combustion of wood waste, and 2/5 of its energy needs from a combination of natural gas and fuel oil. Under the existing Permit, Houweling is not allowed to burn wood waste.

[3] In 2003 and 2004, this Panel of the Environmental Appeal Board conducted a hearing into both this appeal and an appeal of a separate order that had been issued to Houweling by the District Director (Appeal No. 2002-WAS-025). The Panel heard all of the evidence and some closing submissions on the merits of both appeals. However, prior to the conclusion of closing submissions, the Board's jurisdiction over this appeal – the GVRD's "refusal to amend a permit" – was raised. The issue was whether a refusal to amend a permit is an appealable "decision", as defined in the *Waste Management Act* (the "*Act*")[1].

[4] After considering the parties' submissions on the jurisdictional issue, the Panel found that the Board had no jurisdiction to hear this appeal. It then concluded closing submissions on the other appeal only, Houweling's appeal of the order.

[5] On April 26, 2004, the Panel issued its final decision on the merits of Houweling's appeal of the order, as well as its written reasons on the jurisdictional issue. As the Panel concluded that it had no jurisdiction over the GVRD's refusal to amend the Permit, it dismissed the appeal and made no findings on its merits: *Houweling Nurseries Limited v. District Director of the Greater Vancouver Regional District*, (Appeal Nos. 2002-WAS-025(a) and 2003-WAS-004(a), April 26, 2004) (unreported).

[6] Subsequently, Houweling sought a judicial review of the Board's decision in the BC Supreme Court (the "Court"). On June 15, 2005, the Court concluded that the Board had the jurisdiction to hear the appeal of the refusal to amend the Permit: *Houweling Nurseries v. District Director of the GVRD et al.*, 2005 BCSC 894. Accordingly, the Court remitted the matter back to the Board to decide the merits of the appeal. The GVRD then filed an appeal with the B.C. Court of Appeal. That appeal was abandoned in June 2006 and, as a result, the Board scheduled new hearing dates to conclude this appeal.

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[1] At the time of the District Director's decision, the *Waste Management Act* governed the subject matter of the appeal and provided Houweling with a right of appeal. Also at that time, the *Environment Management Act*, R.S.B.C. 1996, c. 118 was in force and established the Board's statutory powers and procedures. On July 8, 2004, both of these enactments were repealed; the discharge of waste and the appeal provisions are now contained in the *Environmental Management Act*, S.B.C. 2003, c. 53, which came into force on the same day. However, the provisions of the *Waste Management Act* in force when the District Director's decision was made, apply for the purposes of considering the merits of the decision. The proceedings were continued under the new *Environmental Management Act*; the relevant procedures which are identical to those in the former *Environment Management Act*.

[7] Prior to the resumption of the hearing before the Board, Houweling applied to introduce fresh *evidence*. On January 11, 2007, the Panel granted Houweling's application: *Houweling Nurseries v. District Director* (Appeal No. 2003-WAS-004(b), January 11, 2007) (unreported). As a result, all parties were given the opportunity to adduce fresh evidence.

[8] The new evidence was presented and final closing arguments on the appeal were concluded in March of 2007.

[9] Section 47 of the *Act* (now section 103 of the *Environmental Management Act*) provides that 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.

[10] Houweling asks the Board to declare that it does not require a permit from the GVRD to operate wood-fired heaters to heat its greenhouses and, therefore, it does not require the amendment which is the subject of this appeal. Alternatively, Houweling asks the Board to grant its application for an amended permit.

BACKGROUND

General

[11] Houweling has operated greenhouses in Delta, British Columbia, since 1985, where it produces vegetables and vegetable plant crops. In the past, it has also grown flowers.

[12] At the time of the Board's hearings, there were three wood-fired heaters and six natural gas-fired heaters supplying heat, as needed, to four greenhouse buildings. The greenhouse buildings are heated in order to enhance plant growth.

[13] The burning of fuels, including waste wood and natural gas, produces air emissions which meet the definition of "air contaminant" under the *Act*. Under section 24 of the *Act*, the District Director and the GVRD have certain powers to regulate air emissions within the GVRD. In particular, the GVRD has the authority to create bylaws that regulate the discharge of air contaminants in the GVRD.

[14] In this case, the applicable bylaw is Air Quality Management Bylaw No. 937, 1999 (the "*Air Quality Bylaw*"). Section 4.1 of the *Air Quality Bylaw* provides that the District Director may issue a permit that allows the discharge of air contaminants, subject to certain conditions. The District Director also has the power to issue permits under the authority of the *Act*. Section 24(2)(b) of the *Act* states that the District Director "may, with respect to the discharge of air contaminants in the Greater Vancouver Regional District, exercise all the powers of a manager under this Act and the regulations", and under section 10 of the *Act*, a

manager may issue a permit authorizing the introduction of "waste" into the environment. Under the *Act*, "waste" includes "air contaminants".[2]

Permit History

[15] On September 20, 1985, the GVRD granted Houweling the initial Permit which allowed it to discharge air contaminants from a wood-fired heater. The Permit allowed particulate emissions of up to 180 milligrams per cubic metre ("mg/m^3"). Between 1985 and 1990, Houweling expanded its greenhouse operations, and added three wood-fired heaters and one natural gas-fired heater to heat the increased greenhouse space. Houweling obtained permit amendments from the GVRD each time a new wood-fired heater was added to its operations. In 1990, further expansions included the installation of additional gas-fired heaters.

[16] In 1995, Houweling began the last phase of expansions, and applied to the GVRD for a permit amendment to install a natural gas-fired heater, called the Saskatoon boiler.

[17] On October 3, 1997, the GVRD amended the Permit to authorize installation of the Saskatoon boiler. However, in doing so, it also required Houweling to cease using its wood-fired heaters by December 31, 1999, which was later extended to March 31, 2000. The amended Permit was issued under the authority of Air Quality Management Bylaw 725, which was subsequently replaced by the *Air Quality Bylaw*.

[18] Thus, according to the 1997 amended Permit, after December 31, 1999, as extended to March 31, 2000, the only allowed energy source for ordinary heating purposes at Houweling's Delta greenhouse was natural gas. Fuel oil was allowed on a standby basis only, and no wood waste was to be burned. This permit was consistent with the GVRD's general objective of improving air quality in the area as set out in its Air Quality Management Plan: wood-fired heaters generally emit significantly more particulate matter and more nitrogen oxides than natural gas-fired heaters.

[19] In or around March 2000, Houweling installed the Saskatoon boiler, but experienced problems with it between March and September 2000. To address those problems, the GVRD further extended Houweling's deadline to cease using the wood-fired heaters to September 28, 2000.

[20] On September 4, 2000, Houweling shut down its wood-fired heaters and began relying solely on its gas-fired heaters. However, by that time, the price of natural gas had increased significantly. As a result, Houweling reactivated the wood-fired heaters in late 2000.

[21] On December 14, 2000, an Assistant District Director of Air Quality with the GVRD wrote to Houweling advising that, as of September 28, 2000, Houweling was no longer authorized to burn wood. Further, the GVRD advised Houweling that it would have to apply for a permit amendment if it wished to reactivate its wood-fired heaters.

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[2] The GVRD's authority over air emissions within the GVRD is now found in Part 3 of the *Environmental Management Act*.

[22] In a letter dated January 11, 2001, Houweling explained to the GVRD that the requirement to switch to natural gas threatened the survival of Houweling's business and the jobs that it provides.

[23] On or about May 4, 2001, Houweling was charged with burning wood without a valid permit.

[24] On June 8, 2001, Houweling applied to amend its Permit to allow the use of its wood-fired heaters. The application contemplated the use of four wood-fired heaters with multiclones and a common electrostatic precipitator for particulate removal, with additional heat provided by natural gas-fired and/or oil-fired heaters.

The Refusal to Amend the Permit

[25] On December 20, 2002, the District Director issued her decision refusing Houweling's application to amend the Permit. The decision consists of a letter which advises that the application was denied, citing an attached memo by the District Director regarding the reasons for the decision. That memo states as follows:

> In considering the application for a permit amendment… I have concluded that the following factors are relevant to the decision:
>
> - the policy context;
> - the technical information regarding emissions;
> - comments received on the application;
> - the consistency of the application with current requirements and practices for the industry sector in the GVRD; and
> - any specific considerations.
>
> The application is not consistent with the goal of continual improvement in the [GVRD's] Air Quality Management Plan, as the current authorized emissions would be increased by the amendment, for the same level of activity. Public comments received are against the application to burn wood at this establishment. In terms of a level playing field, most greenhouse facilities are relying on natural gas with up-to-date control technologies for their needs. Establishments in the GVRD that are using wood rather than natural gas are small in number, and are largely in the wood products sector. The majority of these are using an on-site waste product from their industrial or sectoral manufacturing processes. Thus, to approve this permit would set a precedent that would be inconsistent with current policy with potential significant ramifications.
>
> In a case like this … one must ask two questions: first, has the applicant justified a departure from the policy; and second, what would be the result if other applicants were granted a similar departure? On the first question, Houweling says that it cannot operate profitably unless it burns wood waste instead of natural gas. I observe, however, that other greenhouses burn natural gas. Also,

> natural gas prices have declined significantly from their peak during the winter of 2000, which is when the company applied to have its permit amended. Houweling has not provided any information to substantiate the claim that it cannot operate economically if it burns natural gas. And by itself, profitability is not a justification for emitting air contaminants into the environment. On the second question, one must consider not only the effect that this individual operation would have on air quality, but also what the impact would be if wood burning were allowed generally. The general effect is particularly important because Houweling has not justified an individual exception from the rule. The cumulative effect of allowing operations to burn wood instead of natural gas would undoubtedly be a degradation of air quality within the GVRD.
>
> For all these reasons, the application is denied.

The Appeal

[26] Houweling appealed the District Director's refusal to amend the Permit. In doing so, Houweling challenges the very need to have a permit in the first place. It submits that it is not required to obtain a permit from the District Director because it is an "agricultural operation" as defined in the *Agricultural Waste Control Regulation*, B.C. Reg. 131/92 (the "*Regulation*"), and is therefore exempt from the requirement to obtain a permit as long as it complies with the "Code of Agricultural Practice for Waste Management" (the "Code of Practice"). Sections 18 and 19 of the Code of Practice specify the standards for air emissions from wood-fired boilers.

[27] The Code of Practice is part of the *Regulation*; it is set out immediately after section 2 of the *Regulation*. The relevant sections of the *Regulation* and the Code of Practice are reproduced below for convenience:

Interpretation

1 In this regulation:

> **"agricultural operation"** means any agricultural operation or activity carried out on a farm including
>
> (a) an operation or activity devoted to the production or keeping of livestock, poultry, farmed game, fur bearing animals, crops, grain, vegetables, milk, eggs, honey, mushrooms, horticultural products, tree fruits, berries, and…
>
> [emphasis added]

Exemptions

2 A person who carries out an agricultural operation in accordance with the Code is, for the purposes of carrying out that agricultural operation, exempt from section 3(2) and (3) of the *Waste Management Act* [prohibiting the introduction of waste to the environment].

**Code of Agricultural Practice for Waste Management,
April 1, 1992**

...

Wood-fired boilers

18 Emissions from a wood-fired boiler must not exceed 180 mg per cubic metre of particulate matter and 20% opacity, except that

(a) for a permanent wood-fired boiler installed before April 1, 1992 and not operating under a waste management permit, emissions must not exceed 230 mg per cubic metre of particulate matter and 20% opacity, and

(b) for a permanent wood-fired boiler installed before April 1, 1992 and operating under a waste management permit, the emission levels under that permit apply unless those levels are higher than the levels specified in (a).

Allowable use

20 Wood waste may only be used for

...

(c) fuel for wood-fired boilers.

[28] Houweling submits that it complies with these provisions of the Code of Practice and, therefore, is exempt from the general prohibition against discharging waste under the *Act* (subsections 3(2) and (3)), and is also exempt from any corresponding requirements for a permit.

[29] Alternatively, even if the GVRD and the District Director have the jurisdiction to require a permit, Houweling argues that the District Director did not have the jurisdiction to refuse the Permit amendment. It argues that refusing to allow Houweling to discharge emissions from wood-fired heaters, or from using wood as the fuel for such heaters, amounts to a prohibition on the use of wood-fired heaters to heat an agricultural operation, contrary to the legislation.

[30] In the further alternative, Houweling submits that the District Director has no authority to require a permit to regulate the emission of air contaminants produced for "comfort heating", because those emissions are exempt by virtue of section 3(5)(l) of the *Act*, which is reproduced later in the body of this decision.

[31] Finally, Houweling submits that if the GVRD and the District Director have the jurisdiction to regulate or prohibit the burning of wood for heating in a commercial greenhouse, Houweling's application ought to have been granted based on the merits of the application, and it asks the Board to order that the appropriate Permit amendment be made.

[32] The District Director submits that the decision to refuse the Permit amendment should be confirmed and the appeal dismissed. The District Director

argues that she had the appropriate authority to require a permit, and to refuse the requested amendment. Further, on the facts of this case, she argues that the proposed Permit amendment should be refused as it would allow greater emissions of air contaminants for the same level of activity, and there are serious environmental and health issues associated with the discharge of air contaminants from Houweling's wood-fired heaters.

[33] The Third Party, Roger Emsley, owns property in Delta near the greenhouses. Mr. and Mrs. Emsley reside at that property and operate a horse boarding farm there. They have made many complaints to the GVRD regarding emissions from the wood-fired heaters at Houweling's greenhouses over the years. Their complaints relate to the "fall out" from Houweling's air emissions; specifically, soot and ash often lands on their property from Houweling's greenhouse operations when the wood-fired heaters are in use and the wind is blowing in their direction. The Emsleys also complain that the air quality on their property is severely diminished by the emissions from the wood-fired heaters, and affects their ability to enjoy fresh air while carrying out normal activities at their farm. The Emsleys were added to these proceedings as persons who may be affected by the results of the appeal. They support the District Director's refusal of the Permit amendment, and ask the Panel to confirm that decision.

[34] The Corporation of Delta was added as a Participant in the appeal on the grounds that it may have information pertinent to the matter under appeal and may bring a unique local perspective. It takes the same position as the District Director and Mr. Emsley.

ISSUES

[35] Many issues were raised during the appeals. The Panel has characterized the main issues to be determined as follows:

1. Whether the Board has the jurisdiction to decide whether the District Director has the jurisdiction to regulate emissions from Houweling's greenhouse facilities in Delta.
2. Whether the GVRD has the jurisdiction to regulate emissions from wood-fired heaters, used to heat an agricultural operation, through the issuance of permits under its *Air Quality Bylaw*.
3. If not, whether Houweling is exempt from needing a permit for its wood-fired boilers because they are used for "comfort heating" and are, therefore, exempt under section 3(5)(l) of the *Act*.
4. If a permit is required, should Houweling's application for a permit amendment be granted in the circumstances, and, if so, what terms and conditions should apply.

[36] Houweling also argued that the District Director violated the principles of procedural fairness in her decision-making process. In extensive submissions, Houweling argued that the District Director fettered her discretion, took irrelevant factors into consideration, failed to take relevant factors into consideration, failed to administer the GVRD's bylaws within a reasonable time and with reasonable

consultation contrary to Houweling's legitimate expectations, and that her decision was discriminatory.

[37] The Panel conducted the appeal as a new hearing, accepting new evidence and legal argument that was not previously before the District Director. The parties had a full opportunity to make submissions on the proposed amendment, the application of any relevant policies and on the relevant legal principles. In these circumstances, the Panel finds that the alleged procedural defects, including issues of discrimination, in the decision-making process have been cured by this hearing.

RELEVANT LEGISLATION

[38] The following sections of the *Act* are relevant to this appeal. Other relevant legislation is reproduced in the body of this decision, as required.

The *Act*

[39] The *Act* deals with waste disposal by setting out a general prohibition against the introduction of waste into the environment, and then provides specific exceptions to the general prohibition. For instance, a person may introduce waste into the environment in accordance with a permit, approval or regulation. In addition, air contaminants may be discharged if authorized by a bylaw made under section 24 of the *Act* (a bylaw made by the GVRD) or if the air emissions arise from the combustion of wood or fossil fuels used solely for the purpose of comfort heating of certain classifications of buildings.

[40] Section 3 of the *Act* states, in part:

Waste disposal – strict liability

3 (2) Subject to subsection (5), a person must not, in the course of conducting an industry, trade or business, introduce or cause or allow waste to be introduced into the environment.

(3) Subject to subsection (5), a person must not introduce or cause or allow to be introduced into the environment, waste produced by any prescribed activity or operation.

(4) Subject to subsection (5), a person must not introduce waste into the environment in such a manner or quantity as to cause pollution.

(5) Nothing in this section or in a regulation made under subsection (3) prohibits any of the following:

(a) the disposition of waste in compliance with a valid and subsisting permit, approval, order or regulation, or with a waste management plan approved by the minister;

...

(d) the discharge of air contaminants authorized by a bylaw made under section 24 (3) (d) [Control of air contaminants in Greater Vancouver];

…

(l) the emission of an air contaminant from combustion of wood or fossil fuels used solely for the purpose of comfort heating of domestic, institutional or commercial buildings;

…

[41] The authority for a manager to issue permits under the *Act* is found in section 10 of the *Act*. As noted previously in this decision, a district director with the GVRD has been granted the powers of a manager under the *Act*, which includes the power to issue permits under section 10 (see section 24(2)(b) of the *Act*).

Permits

10 (1) A manager may issue a permit to introduce waste into the environment, … subject to requirements for the protection of the environment that the manager considers advisable and, without limiting that power, may in the permit do one or more of the following …

[42] The specific powers of the GVRD and the District Director are set out in section 24 of the *Act*:

Control of air contaminants in Greater Vancouver

24 (1) Despite anything in its letters patent or supplementary letters patent, the Greater Vancouver Regional District may provide the service of air pollution control and air quality management and, for that purpose, the board of the regional district may, by bylaw, prohibit, regulate and otherwise control and prevent the discharge of air contaminants.

(2) The board of the Greater Vancouver Regional District must appoint

…

(b) a district director and one or more assistant district directors who may, with respect to the discharge of air contaminants in the Greater Vancouver Regional District, exercise all the powers of a manager under this Act and the regulations.

(3) Without limiting subsection (1), a bylaw under this section may do one or more of the following:

(a) provide that contravention of a provision of the bylaw that is intended to limit the quantity of air contaminants or that specifies the characteristics of air contaminants that may be discharged into the air is an offence …

(b) provide that a contravention of a provision of the bylaw, other than a provision referred to in paragraph (a), is an offence …

(c) require the keeping of records and the provision of information respecting air contaminants and their discharge;

(d) exempt from the application of section 3 (2) and (3), in relation to the discharge of air contaminants, any operation, activity, industry, trade, business, air contaminant or works that complies with the bylaw, if it also complies with any further restrictions or conditions imposed by this Act or a regulation, permit, order or approved waste management plan under this Act;

(e) establish different prohibitions, regulations, rates or levels of fees, conditions, requirements and exemptions

(i) for different persons, operations, activities, industries, trades, businesses, air contaminants or works, and

(ii) for different classes of persons, operations, activities, industries, trades, businesses, air contaminants or works.

(4) A district director may, by order, impose on a person further restrictions or conditions in relation to an operation, activity, industry, trade, business, air contaminant or works covered by a bylaw under subsection (3) (d) in order that the person may qualify for an exemption under that subsection, including a condition that the person obtain a permit.

[43] Given that the *Act* allows two levels of government to regulate air emissions, the province and the GVRD, conflicts may arise. The *Act* specifically addresses conflicts in section 25 below:

Conflicts between this Act and bylaws, permits, etc., issued by a municipality

25 (2) A bylaw under section 23, 24, 24.1 or 24.2 that conflicts with this Act, the regulations, an approved waste management plan or a permit, approval or order, other than one issued by a district director, is without effect to the extent of the conflict.

(3) A permit, approval or order issued by a district director that conflicts with this Act, the regulations, an approved waste management plan or a bylaw under section 23, 24, 24.1 or 24.2 is without effect to the extent of the conflict.

...

(5) For the purposes of subsections (1) to (4), a conflict does not exist solely because further restrictions or conditions are imposed by the bylaw, permit, licence, approval, order or other document that is without effect if a conflict exists, unless the minister by order declares that a conflict exists.

[44] In essence, it provides that a GVRD bylaw or a permit that is issued by the district director that conflicts with the *Act* or the regulations is without effect to the extent of the conflict.

DISCUSSION AND ANALYSIS

1. Whether the Board has the jurisdiction to decide whether the District Director has the jurisdiction to regulate emissions from Houweling's greenhouse facilities in Delta.

[45] The District Director submits that the Board does not have the jurisdiction to decide whether the District Director has the authority to regulate emissions from Houweling's facilities. The District Director argues that the present appeal is from a decision on Houweling's application for a permit amendment, a decision that did not involve a determination of the jurisdiction of the District Director or the GVRD. Therefore, the District Director asserts that the decision now before this Board does not relate to the jurisdiction of the District Director or the GVRD.

[46] The District Director notes that, under section 103 of the *Environmental Management Act*, the Board has the power to confirm, reverse or vary the District Director's decision. The District Director submits that the remedy Houweling seeks is not that the District Director's decision be reversed, but that the Board make a declaration of law on the effect of the *Regulation* and the *Act* on the District Director's jurisdiction to issue permits generally. The District Director argues that the Board cannot make a declaration on a subject that the District Director did not consider in her decision.

[47] Moreover, the District Director maintains that the *Act* does not confer on the Board the power to make declarations of law, and that Houweling's arguments regarding the *Regulation* and comfort heating are pure points of statutory interpretation, which do not engage the Board's specialized expertise. Therefore, the District Director submits that the Board does not have the jurisdiction to consider the argument that the GVRD does not have the power to regulate air emissions in the greenhouse sector. Finally, the District Director argues that Houweling's jurisdictional arguments amount to an indirect attempt to appeal the existing permit, although Houweling agreed to that permit and the appeal period expired over nine years ago.

[48] In reply, Houweling submits that the Board has stated in very similar circumstances that it can properly consider jurisdictional issues. Houweling cites a number of court decisions in support of the principle that issues of jurisdiction are always before an administrative tribunal, even when not specifically pleaded.

[49] The Panel notes that the Board is a statutory body, and its authority is limited to the jurisdiction that it has been granted in its enabling legislation. In this case, the Board's enabling legislation is the *Act* and the *Environment Management Act*. In particular, section 46(2) of the *Act* (now section 102(2) of the *Environmental Management Act*) gives the Board the authority to conduct an appeal under the *Act* "by way of a new hearing." In addition, section 11(13)(d) of the *Environment Management Act* (now section 93(2)(d) of the *Environmental Management Act*) states that a party in an appeal "may… make submissions as to facts, law and jurisdiction." [emphasis added]

[50] The Panel finds that the use of the word "law" in section 11(13)(d) of the *Environment* Management *Act* indicates that the legislature intended the Board to have the jurisdiction to consider questions of law. If a party may make

submissions on law, it is logical that the Board may decide issues of law. Furthermore, the Panel finds that the issue of the District Director's jurisdiction in this case is a question of law, and as such, the Board has the jurisdiction to decide that question.

[51] The Panel finds that this approach is consistent with previous decisions of the Board in which it concluded, based on the language in its enabling legislation, that is has the jurisdiction to consider questions of law. For example, see: *Cook's Ferry Indian Band v. Assistant Regional Water Manager* (Appeal No.98-WAT-04(a), August 25, 1998) (unreported); *Fort Nelson First Nation v. Deputy Administrator, Pesticide Control Act* (Appeal Nos. 99-PES-03(b) through 99-PES-08(b), August 31, 1999) (unreported); *British Columbia Railway Company v. Director of Waste Management* (Appeal No. 2000-WAS-018(6), March 3, 2004) (unreported); *Watutco Enterprises v. Deputy Comptroller* (Appeal No. 2003-WAT-18(a), March 4, 2005) (unreported).

[52] The Panel finds that this approach is also consistent with the Supreme Court of Canada's decision in *Paul v. Forest Appeals Commission*, 2003 S.C.C. 55 (hereinafter *Paul*). In *Paul*, the Court considered similar statutory language. An aboriginal British Columbian challenged the jurisdiction of the Forest Appeals Commission to decide constitutional questions, including legal questions related to aboriginal rights. The Court found that the Commission's enabling legislation, the *Forest Practices Code of British Columbia Act*, required the Commission to determine questions of law pursuant to section 131(8)(d) of that Act, which stated that a party may "make submissions as to facts, law and jurisdiction." The Court found that this section provided the Commission with the general authority to decide questions of law, including questions of aboriginal rights and title.

[53] In summary, based on the language in the Board's enabling legislation, the Panel finds that the Board has the jurisdiction to deal with questions of law, including the question of whether the District Director has the jurisdiction to regulate emissions from Houweling's greenhouse facilities in Delta.

2. Whether the GVRD has the jurisdiction to regulate emissions from wood-fired heaters, used to heat an agricultural operation, through the issuance of permits under its *Air Quality Bylaw*.

[54] There is no dispute that section 24 of the *Act* allows the GVRD to, "by bylaw, prohibit, regulate and otherwise control and prevent the discharge of air contaminants" within the regional district.

[55] Pursuant to this authority, the GVRD enacted the *Air Quality Bylaw*. This bylaw regulates the discharge of air contaminants within the GVRD. For the purposes of this appeal, the relevant portions of the *Air Quality Bylaw* are as follows:

> 2. GENERAL
>
> ...
>
> 2.2 Nothing in this Bylaw is intended to conflict with the *Waste Management Act* except that this Bylaw may impose further

restrictions or require further conditions than those imposed by the *Waste Management Act*.

3. PROHIBITIONS

3.1 Subject to section 3.2, no Person shall in the course of conducting an industry, trade or business of whatsoever kind or nature discharge or allow or cause the discharge of any Air Contaminant.

3.2 Subject to section 3.5, nothing in section 3.1 prohibits the discharge of an Air Contaminant where

...

(a) the discharge is in compliance with a valid and subsisting Permit or Approval and the discharge is conducted strictly in compliance with the terms and conditions of the Permit or Approval;

...

3.5 Notwithstanding any other provision in this Bylaw no Person shall discharge or allow or cause the discharge of any Air Contaminant so as to cause Pollution.

[56] Permits are covered in the *Air Quality Bylaw* under section 4.1. This section expressly authorizes district directors to issue permits to allow the discharge of air contaminants, using language very similar to that found insection 10 of the *Act*. Section 4.1 states:

PERMITS

4.1 The District Director may issue a Permit to allow the discharge of an Air Contaminant subject to requirements for the protection of the Environment that on reasonable grounds the District Director considers advisable and without limiting the generality of the foregoing the District Director may in the Permit

(a) place limits and restrictions on the quantity, frequency and nature of an Air Contaminant permitted to be discharged and the term for which such discharge may occur;

(b) require the Permittee to repair, alter, remove, improve or add to Works or to construct new Works and submit plans and specifications for Works specified in the Permit;

(c) require the Permittee to give security in the amount and form and subject to conditions the District Director specifies;

(d) require the Permittee to monitor in the way specified by the District Director an Air Contaminant, the method of

> handling, treating, transporting, discharging and storing of the Air Contaminant and the places and things that the District Director considers will be affected by the discharge of an Air Contaminant or the handling, treatment, transportation or storage of the Air Contaminant;
>
> (e) require the Permittee to conduct studies, keep records and to report information specified by the District Director in the manner specified by the District Director;
>
> (f) specify procedures or requirements respecting the handling, treatment, transportation, discharge or storage of an Air Contaminant that the Permittee must fulfill.

[57] The Panel notes that the *Air Quality Bylaw* does not prohibit the burning of wood waste, nor does it set out any specific requirements (such as the requirement for a permit) for agricultural operations, such as greenhouses. The provisions in the *Air Quality Bylaw* are general in nature and, as noted above, use similar language to that in section 10 of the *Act*.

[58] In the past, Houweling operated its wood-fired heaters under the Permit. The Permit was issued in 1985. The Panel notes that the Code of Practice came into effect on April 1, 1992. From the language in the Code of Practice itself, it appears that, prior to that date, some wood-fired boilers used in agricultural operations were operating under a permit, and others were not. Both situations are referenced in section 18(a) and (b) of the Code of Practice.

[59] When Houweling's Permit was amended in 1997, the Permit no longer allowed Houweling's use of wood-fired heaters after December 31, 1999, which was extended to September 28, 2000. Therefore, Houweling's burning of wood waste after that date was considered by the GVRD to be unauthorized. This is why Houweling applied for the Permit amendment which was refused and is now the subject of this appeal.

[60] Houweling's main argument is that the GVRD cannot require an agricultural operation to obtain a permit (or amendment thereof), if that operation already complies with the Code of Practice. Specifically, Houweling notes that section 2 of the *Regulation* exempts "agricultural operations" from subsections 3(2) and (3) of the *Act*, provided that the operation is carried out in accordance with the Code of Practice. "Agricultural operation" is defined in the *Regulation* as "any agricultural operation or activity carried out on a farm including (a) an operation or activity devoted to the production or keeping of livestock, poultry, farmed game, fur bearing animals, crops, grain, vegetables, milk, eggs, honey, mushrooms, horticultural products, tree fruits, berries, … ." [emphasis added]

[61] Houweling submits that section 18 of the Code of Practice establishes the emission limits from wood-fired boilers in agricultural operations, and that section 20 expressly authorizes the use of wood as fuel for wood-fired boilers. These sections are:

18 Emissions from a boiler must not exceed 180 mg per cubic metre of particulate matter and 20% opacity, except that

(a) for a permanent boiler installed before April 1, 1992 and not operating under a waste management permit, emissions must not exceed 230 mg per cubic metre of particulate matter and 20% opacity, and

(b) for a permanent boiler installed before April 1, 1992 and operating under a waste management permit, the emission levels under that permit apply unless those levels are higher than the levels specified in (a).

...

Allowable use

20 Wood waste may only be used for

...

(c) fuel for boilers.

[emphasis added]

[62] Houweling submits that its operations clearly fall within the definition of "agricultural operations" for the purposes of the *Regulation*. It also confirms that all of the wood-fired heaters in the greenhouses were installed prior to April 1, 1992 and are subject to a permit issued by the GVRD, which was last amended in 1997 and set particulate emission levels at 180 mg/m^3. Those emissions do not exceed those specified in section 18(a) of the Code of Practice.

[63] Houweling submits that the *Regulation* was drafted to provide a complete scheme for the regulation of emissions from wood-fired boilers. Therefore, provided that Houweling complies with the *Regulation*, it is exempt from any further requirement for a permit. Houweling submits that, ultimately, the GVRD does not have the jurisdiction to permit or prohibit the use of wood-fired boilers for agricultural purposes, and that Houweling is bound by the emission levels set out in the *Regulation* only.

[64] The District Director submits that she was exercising the powers granted to her under subsection 24(2) of the Act, which sets out the powers of a manager under the Act, when she granted the air quality permits and refused to grant the Permit amendment requested by Houweling. She submits that Houweling's position that she did not have the jurisdiction to require a permit amendment for burning wood waste is simply wrong in law.

[65] The District Director submits that the Code of Practice does not provide an independent set of regulatory prohibitions and entitlements, but that it lists a set of conditions which, if met, have the sole effect of exempting the agricultural operation from subsections 3(2) and (3) of the *Act*. The District Director argues that the Code of Practice does not provide a blanket exemption from the application of the Act, and certainly does not exempt agricultural operations from compliance with the sections of the *Act* under which the District Director operates, namely

sections 10, 13 and 24. Those sections of the *Act* give the District Director the authority to issue and amend permits to control the discharge of air contaminants in the GVRD under both the *Act* and the *Air Quality Bylaw*.

[66] She submits that section 20 of the Code of Practice, which provides that "wood waste may only be used for … fuel for boilers", does not grant agricultural operations affirmative permission to use wood waste for the purposes listed. Rather, it is a prohibition against the use of wood waste for any other purposes. Section 20 does not constitute a positive entitlement to burn wood waste in wood-fired boilers, nor does it constitute an exemption from the requirement for a permit to burn wood waste under sections 10, 13 and 24 of the *Act*.

[67] Further, on the facts of this case, the District Director submits that section 18 of the Code of Practice expressly contemplates the regulation of emissions from wood-fired boilers, and that the wood-fired burners used at Houweling's greenhouses are "heaters", not boilers. Therefore, the *Regulation* and the Code of Practice do not apply to Houweling's wood-fired burners.

[68] In the alternative, even if the *Regulation* applies to Houweling, the District Director submits that it does not prohibit issuing permits to agricultural operations. She notes that section 18(b) of the Code of Practice clearly contemplates the issuance of permits to agricultural operations. It does not operate to prohibit the GVRD from requiring a permit for the wood-fired boilers; rather, it specifically recognizes that there may be a permit in addition to the requirements set out in the Code of Practice.

[69] In addition, she notes that Houweling's application was to derive 3/5 of its energy needs from the combustion of wood waste, and 2/5 of its energy needs from a combination of natural gas and fuel oil. The District Director argues that the *Regulation* cannot be invoked to justify amending the Permit as requested by Houweling, nor will it give Houweling everything it requested as the *Regulation* does not regulate the use of oil as a fuel in agricultural operations.

[70] The District Director also submits that the *Regulation* does not exempt operations from the requirement to obtain a permit for the discharge of air contaminants under recent changes to the legislation. The District Director notes that, under section 14(3) of the *Environmental Management Act*, which replaced the *Act*, directors may not issue permits for the introduction of waste into the environment for industries governed by a code of practice, if the code of practice has been designated by the *Waste Discharge Regulation*. However, as there is no equivalent provision in the *Act*, the District Director concludes that directors may continue to impose further or other conditions by permit.

[71] The District Director further submits that a code of practice does not exempt an industry from being subject to permits unless the code of practice has been referred to in the *Waste Discharge Regulation*. As the Code of Practice is not prescribed in the *Waste Discharge Regulation*, the District Director concludes that it was not intended to be a code of practice for the purposes of the *Environmental Management Act*.

[72] The District Director submits that the *Regulation* and the Code of Practice do not prevent provincial directors, or the District Director, from imposing more

restrictive limits in permits on agricultural operations. The District Director has the power to issue permits under the *Environmental Management Act*, independently from the powers granted by the *Air Quality Bylaw*.

[73] In the alternative, the District Director argues that even if the *Regulation* prevents district directors from issuing permits for certain agricultural operations under the *Environmental Management Act*, it does not prevent the issuance of permits under the *Air Quality Bylaw*, because of the GVRD's independent jurisdiction to tailor the regulation of air quality to the urban circumstances of the GVRD. The power granted to the District Director by the *Air Quality Bylaw* is independent of the powers granted under provincial legislation.

[74] The District Director also submits that, even if the Board agrees with Houweling that the existence of a regulation governing an industry automatically exempts that industry from being permitted, the *Regulation* is not the only regulation governing agricultural operations within the GVRD. The *Air Quality Bylaw* is also a regulation pursuant to section 1 of the *Interpretation Act*, R.S.B.C. 1996, c. 238, which defines a regulation as including a bylaw. The District Director notes that apparent conflicts between a bylaw of the GVRD and provincial legislation are addressed in section 25(5) of the *Act*. Section 25(5) provides that the imposition of "further restrictions or conditions" in a bylaw or permit does not constitute a conflict. As that is what the Permit purports to do, there is no conflict between the Permit and the *Regulation*. The District Director notes that section 25(5) also provides that the Minister may declare, by order, that a conflict exists, but that no such order has been made.

[75] The District Director submits that the common law definition of conflict is rooted in the notion of dual compliance – where compliance with one law is in defiance of the other, conflict exists. The District Director submits that, as the Permit does not require agricultural operations to do something that the *Regulation* forbids, or vice versa, dual compliance is possible and there is no conflict between the Permit and the *Regulation*.

[76] The District Director submits that the *Air Quality Bylaw* gives her the authority to regulate air emissions from Houweling's facilities.Specifically, the *Air Quality Bylaw* allows "further restrictions or conditions" respecting air contamination within the GVRD in accordance with section 25(5) of the *Act*, which is now section 37(5) of the *Environmental Management Act*.

[77] Finally, the District Director submits that, in addition to the *Air Quality Bylaw*, the GVRD has adopted another bylaw for the protection of air quality pursuant to section 24 of the *Act*. That bylaw is the *Air Pollution Control Bylaw No. 603*, enacted in 1989. The *Air Pollution Control Bylaw* sets not-to-be-exceeded limits for particulate emissions and opacity. It provides as follows:

> 5(1) No person shall discharge or allow to be discharged into the Air from a Heating Installation, an Incinerator of a Control Device any substance of Air Contaminant which exceeds:
>
> (a) an Opacity of 10%;
>
> (b) a concentration of particulate matter of 50 milligrams per cubic metre of exhaust gases.

[78] The District Director submits that Houweling's application greatly exceeds both these limits.

[79] Delta submits that Houweling has long recognized that its air emissions were under the authority of the GVRD and has accepted regulation by the GVRD since it began operating in 1985. Therefore, Delta maintains that it is disingenuous for Houweling to now argue otherwise, simply because its Permit amendment application was denied.

[80] Mr. Emsley did not make any submissions that are additional to those of the District Director and Delta.

The Panel's findings

[81] The Panel has considered the purpose and intent of the relevant portions of the legislative scheme that is created by the *Act* and the *Regulation*.

[82] Section 3(5) of the *Act* lists a number of ways that a person may gain an exemption from the general prohibition against the introduction of waste into the environment. That section provides, "Nothing in this section… prohibits any of the following: (a) the disposition of waste in compliance with a… regulation… ." [emphasis added]

[83] In this case, the *Regulation* governs the disposition of waste at an "agricultural operation". Section 2 of the *Regulation* confirms that an agricultural operation that complies with the Code of Practice is, "for the purposes of carrying out that agricultural operation, exempt from section 3(2) and (3) of the *Waste Management Act*."

[84] The Panel finds that section 3(5)(a) of the *Act* and section 2 of the *Regulation* are very clear statements of legislative intent. The intent is to allow a regulation, such as the *Regulation* at issue in this case, to provide an exemption from the general prohibition in the *Act*, without the need for further approvals.

[85] Considering the *Regulation* at issue in this case, the Panel finds that, regardless of whether or not the Code of Practice is deemed to be a "code of practice" for the purposes of the *Act* or the *Environmental Management Act*, the *Regulation* clearly is captured by section 3(5)(a) of the *Act*. The Panel accepts that, in creating the *Regulation*, the Lieutenant Governor in Council wanted to establish, for the agricultural sector, some clear standards for dealing with certain types of waste and to reduce the need for permits, approvals and other forms of regulatory involvement. Provided that the agricultural operation complied with the regulatory standards set out in the *Regulation*, no further involvement with the regulator would be required for those matters addressed in the *Regulation*. Matters covered by the *Regulation* include the maximum levels of particulate emissions and opacity for wood-fired boilers, and the authorization to use wood waste for fuel for wood-fired boilers (sections 18 and 20 of the Code of Practice, respectively).

[86] The Panel finds that the legislative intent was to authorize the use of wood waste as fuel for wood-fired boilers in agricultural operations, and set maximum levels for particulate emissions and opacity from those boilers.

[87] Section 18(b) of the Code of Practice states that "for a permanent wood-fired boiler installed before April 1, 1992 and operating under a waste management

permit, the emission levels under that permit apply unless those levels are higher that the levels specified in (a)" where (a) refers to section 18(a). The Panel finds that the purpose of section 18(b) is to "grandfather" situations where permanent wood-fired boilers installed before April 1, 1992 were "operating under a waste management permit" when the *Regulation* came into force. The Panel finds that the use of the phrase "emission levels under that permit" in section 18(b) was intended to address potential conflicts between the emission levels set out in the *Regulation* and those set out in any previously existing permits that may apply to such boilers. In addition, the Panel notes that, although Houweling's wood-fired boilers were installed before that date, emissions from Houweling's boilers ceased to be authorized by the Permit in 2000, as a result of the 1997 amendments to the Permit. Consequently, the Permit, as amended in 1997, does not currently authorize emissions from Houweling's wood-fired boilers.

[88] The *Act* gives the GVRD broad authority over waste discharge, including air contaminants, within its region. However, the Panel finds that the GVRD cannot require a permit for the same matters which the Lieutenant Governor in Council has decided will not be regulated by a permit; namely, the use of wood waste as fuel in wood-fired boilers used in agricultural operations, and the maximum particulate emission levels and opacity levels from such wood-fired boilers.

[89] Accordingly, if a permit can be required by the GVRD in relation to the burning of wood waste in an agricultural operation, it is only in relation to those matters not covered by the *Regulation*. As the Board found in *Darvonda Nurseries Ltd. v. District Director of the Greater Vancouver Regional District*, [2007] B.C.E.A. No. 12 (Q.L.)[3], where there are gaps in the *Regulation*, district directors may issue permits that fill those gaps, but district directors may not regulate matters that the *Regulation* already authorizes. This means that permits may be required for matters other than particulate matter, opacity or odour emitted by wood-fired boilers used in agricultural operations. It would also mean that permits may be required for the use of fuels not covered by the *Regulation*, such as oil.

[90] The Panel has also considered the question of whether Houweling's greenhouse operation, specifically its wood waste burning activities, properly fit under the *Regulation*. The Panel agrees with Houweling that its greenhouse facilities in Delta are an "agricultural operation" as defined in section 1 of the *Regulation*. This has not been seriously disputed in the appeal proceedings.

[91] In addition, Houweling has wood-fired heaters which it uses to burn wood waste as a primary energy source for its operation. Houweling submits that it can, and has, complied with the standards in section 18 of the Code of Practice. The District Director suggests that Houweling's wood-fired "heaters" are not covered by the *Regulation*, which refers to wood-fired "boilers".

[92] In interpreting section 18 of the Code of Practice, the Panel relies on the Supreme Court of Canada's finding in *Re: Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27 that the words of a statute are to be read in their entire context. Writing on

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[3] This appeal involved different facts and was decided on the basis that there was an improper exercise of discretion.

behalf of the Court, at page 28, Iacobucci, J. adopted the following quote from Elmer Driedger in *Construction of Statutes* (2nd ed. 1983), page 87:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[93] The Panel notes that the purpose of the Code of Practice is set out in section 1 of the Code, as follows: "The purpose of this Code is to describe practices for using, storing and managing agricultural waste that will result in agricultural waste being handled in an environmentally sound manner." The Panel finds that one of the purposes underlying section 18 of the Code of Practice was to prescribe maximum particulate emission and opacity levels for wood-fired equipment used in agricultural operations, so as to ensure that agricultural emissions are "handled in an environmentally sound manner." The Panel concludes that the term "boiler" as used in section 18 was intended to include all types of wood-burning equipment that serve the same function, i.e. that of producing heat in agricultural operations, and that emit the same type of substances into the air.

[94] In making this finding, the Panel also notes that the parties themselves seem to use these words interchangeably when describing Houweling's heating equipment. Of particular note, the GVRD stated in an internal memorandum that "the term "heater" is used in the amendment application to describe the same equipment that has previously been referred to as "boiler" in Permit GVA0349" [emphasis added].

[95] As a result, the Panel rejects the District Director's claim that sections 18 and 20 of the Code of Practice ought not to apply to the wood burning equipment used to heat Houweling's greenhouses.

[96] Furthermore, the Panel finds that the *Air Quality Bylaw* does not conflict with the *Act* or the Code of Practice. The *Air Quality Bylaw* does not give the specific authority to further restrict the use of wood-fired heaters or boilers in a manner that is inconsistent with the Code of Practice or the *Act*. Section 25(5) of the *Act* is not authority for such a finding. Since there is no conflict between the *Air Quality Bylaw* and the *Regulation*, there is no need to resort to the legal principles for resolving conflicts between laws.

[97] With respect to *Air Pollution Control Bylaw 603*, the Panel finds that it does not apply to agricultural operations that are covered by the *Regulation*, as long as such operations comply with the *Regulation* and the Code of Practice.

[98] The Panel further finds that the issue of a conflict between the Permit and the *Regulation* is moot insofar as the Permit, as amended in 1997, no longer authorizes emissions from Houweling's wood-fired boilers after September 28, 2000, and more importantly, because the Panel has found that the GVRD cannot require a permit for the use of wood waste as fuel in wood-fired boilers used in agricultural operations, or for setting the maximum particulate emission levels and opacity levels from such wood-fired boilers, as long as the operation in question complies with the Code of Practice.

[99] The Panel acknowledges that this appeal is not against the Permit itself, and therefore, the Panel has no jurisdiction to decide the merits of the Permit. However, the Panel comments that the Permit, as amended in 1997, appears to be inconsistent with the *Regulation* (specifically, section 20 of the Code of Practice) to the extent that it requires Houweling to cease using wood-fired boilers at its Delta greenhouse operations.

[100] Accordingly, the Panel finds that Houweling's use of its wood-fired heaters for its operations is governed by the *Regulation*, and it does not require a permit (or permit amendment) from the GVRD to operate them in accordance with that regulation.

[101] In reaching these conclusions, the Panel is aware that its decision will resolve some questions, but will also expose issues within the existing regulatory regime. The Panel acknowledges and wholly supports the GVRD's goal of improving air quality within the regional district. There is also no question that air quality in all parts of the Province is an important issue. In this regard, there is no question that burning wood waste produces particulates and other air contaminants which have an impact on air quality.

[102] The Code of Practice describes practices for using, storing and managing agricultural waste. The Panel appreciates the District Director's arguments, and shares her concern with the emission standards contained in the *Regulation*. The *Regulation* was created in 1992, and the standards it sets for wood waste burning have not been changed since that time. Further, the type of operations that are covered by the *Regulation* may be larger or different than the ones contemplated more than fifteen years ago. As well, there is now significantly greater scientific knowledge regarding the adverse health and environmental effects of air contaminants than in 1992. There is no question that the standards should be the subject of a thorough review and updating. However, the fact remains that the *Regulation* contains the applicable law, and the Board does not have the jurisdiction to amend or change it. Nor does the GVRD in this case.

[103] The Panel notes that the provincial Ministry of Environment (the "Ministry") issued a policy intentions paper titled "Agricultural Waste Control Regulation – Wood-fired Boilers" in June 2007, which states that the Ministry's "primary intention is to amend the regulation to establish consistent emission standards for wood-fired boilers used in agriculture." It also states that the current emission level of 180 milligrams of particulate per cubic metre of emissions "will be amended to lower limits (based on boiler output) for medium and large greenhouse operations… ."

[104] In recent years in British Columbia, Canada and internationally, there has been increasing promotion of the use of renewable alternative energy sources such as biomass, including wood waste. The dilemma facing all people interested in this issue is that burning wood waste produces particulate matter which has a negative effect on air quality, but burning natural gas contributes to the "greenhouse effect". However, dealing with this dilemma is something that must be addressed by the Government, not the Board.

[105] In conclusion, the Panel finds that the GVRD does not have the jurisdiction to regulate emissions from wood-fired heaters, used to heat an agricultural operation,

through the issuance of permits under its *Air Quality Bylaw* as long as those emissions comply with the Code of Practice.

[106] The regulation of wood-fired heaters, used to heat an agricultural operation in the Province of British Columbia including the area regulated by the GVRD (now Metro Vancouver) is generally occupied by the provisions of *Agricultural Waste Control Regulation*. However, the District Director may, by permit, regulate matters that are not covered by the *Regulation*. Under these circumstances Houweling does not require a permit to burn wood waste at its agricultural operation in Delta.

[107] As the Panel's finding under this issue is a full answer to the questions on appeal, the Panel need not address the remaining issues.

DECISION

[108] In making this decision, the Panel of the Environmental Appeal Board has carefully considered all of the evidence before it, whether or not specifically reiterated here.

[109] For the reasons provided above, the Panel finds that Houweling does not require a Permit amendment from the GVRD in order to burn wood waste in accordance with the *Regulation*, and the appeal is allowed in that regard.

[110] However, the GVRD has authority to require and issue permits in relation to matters not covered by the *Regulation*. Accordingly, the matter is sent back to the District Director to reconsider the application to amend the Permit. The District Director shall restrict any such amendments to back-up fuels used for heating the subject greenhouses and any other matters not covered by the *Agricultural Waste Control Regulation*.

[111] The appeal is allowed.

"Alan Andison"

Alan Andison, Chair
Environmental Appeal Board

"Robert Cameron"

Dr. Robert Cameron, Member
Environmental Appeal Board

"Phillip Wong"

Phillip Wong, Member
Environmental Appeal Board

January 23, 2008