



Province of
British Columbia

Environmental Appeal Board

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APPEAL NO. 2004-WAS-004(a)

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

BETWEEN:	Ajah Azreal	APPELLANT
AND:	Regional Waste Manager	RESPONDENT
AND:	Nexterra Energy Corp.	THIRD PARTY
BEFORE:	A Panel of the Environmental Appeal Board Alan Anderson, Chair	
DATE:	Conducted by way of written submissions concluding May 21, 2004	
APPEARING:	For the Appellant: Ajah Azreal For the Respondent: Larry Gardner For the Third Party: Jonathan Rhone	

JURISDICTION - STANDING

APPLICATIONS

The Regional Waste Manager, Ministry of Water, Land and Air Protection (the "Regional Manager"), and Nexterra Energy Corp. ("Nexterra"), separately applied to dismiss the appeal of Ajah Azreal on the grounds that Mr. Azreal does not have standing to appeal the January 22, 2004 decision of the Regional Manager to issue an approval to Nexterra to operate a gasification test facility in the Kamloops area.

The applications were conducted by way of written submissions.

BACKGROUND

In January 2004, Nexterra obtained Approval AA-17496 (the "Approval"). The Approval authorizes Nexterra to discharge emissions into the atmosphere from a research and development gasification plant in Kamloops from January 22, 2004 to April 22, 2005. The maximum authorized rate of discharge is 750 cubic metres per minute for a cumulative total of 1200 hours over the 14-month term of the Approval. The concentration of contaminants in the discharge are not to exceed:

Total Particulates - 120mg/cu.m.

Sulphur dioxide - 250mg/cu.m.

Oxides of Nitrogen - 240mg/cu. m.

Opacity - 5 per cent

The works authorized by the Approval is a 2-Stage Gasifier employing natural gas auxiliary fuel (the "Plant"). Nexterra is authorized to gasify and burn "uncontaminated cellulosic material" in the Plant, but is eligible to apply to the Regional Manager for authorization to burn other fuels.

The Plant is being used in a research program jointly funded by Nexterra, the National Research Council of Canada, the Department of Natural Resources Canada and Ethanol BC. The purpose of the Plant is to test gasification technology on different fuels as part of developing commercial gasification plants that can convert wood waste and other biomass fuels into clean, low cost thermal energy and/or electricity. According to the Nexterra's submission of May 3, 2004, the Plant has been operating for 10 to 20 hours per week since the beginning of the term of the Approval.

Mr. Azreal appealed the Approval on February 20, 2004. His grounds for appeal are:

- the record of non-compliance with the *Waste Management Act* attributed to a company from which Nexterra bought the gasification technology and which employed a number of current Nexterra employees;
- the environmental sensitivity of the specific site – along the South Thompson River – with potential risks for salmon;
- potential health risks from emissions for workers at nearby manufacturing and other industrial facilities;
- potential health risks from particulates, "neurotoxins" and other emission components for residents and others within a 20 km radius;
- potential for particulates to enter the South Thompson River and, therefore, Kamloops drinking water;
- a high level of existing pollution in the local airshed, primarily from transportation and a pulp and paper mill;
- risk that particulates and emissions will not dissipate during the "dead calm" that occurs during the summer months;
- his contention that Nexterra has not complied with a site plan filed along with its approval application; the plan specified that a fuel storage area would have an asphalt floor and would be covered by an arched roof.

Mr. Azreal asks the Board to rescind the Approval. He also seeks an interim stay of the Approval, pending a decision on the merits of his appeal.

On May 3 and May 4, 2004 respectively, Nexterra and the Regional Manager raised preliminary objections to Mr. Azreal's standing to appeal. Nexterra submits that as Mr. Azreal resides "well beyond the area impacted, we question how he is impacted and request that the Board review his standing in this matter." The Regional Manager submits that Mr. Azreal lives "approximately 21 kilometres from the site" and, therefore, will not be affected by emissions which, the Regional Manager notes, Mr. Azreal said would have an impact within "a twenty kilometre radius of this location."

RELEVANT LEGISLATION

The following section of the *Act* is relevant to this appeal:

Appeals to the Environmental Appeal Board

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

[emphasis added]

ISSUES

Whether Mr. Azreal is a "person aggrieved" and, therefore, has standing to bring the appeal.

DISCUSSION AND ANALYSIS

Whether Mr. Azreal is a "person aggrieved."

The Regional Manager argues that Mr. Azreal has "failed the burden of evidence that he is aggrieved." The Regional Manager submits that the Board's decision in *Dave Stevens v. Regional Waste Manager* (Appeal No. 2001-WAS-030, February 28, 2002) (unreported) (hereinafter "*Stevens*") is helpful.

In *Stevens*, the issue was whether an individual who lived 130 kilometres from a beehive burner in the Ootska Lake area and who occasionally travelled to within 50 kilometres of that site had standing to appeal a permit authorizing certain air emissions from the burner. The Appellant had previously been an active participant in a public consultation process conducted by the Ministry prior to issuing the permit.

The Board found in *Stevens* that

Regardless of his previous participation in the permit approval process, the Board finds that Mr. Stevens must still meet the test required under section 44 of the *Act*, namely that he is a 'person aggrieved.'

The Board in *Stevens* also reviewed its previous decision in *Houston Forest Products et al. v. Assistant Regional Waste Manager* (Appeal Nos. 1999-WAS-06(c), 08(c))

and 11(c)-13(c), February 3, 2000) (unreported) (hereinafter "*Houston*") with respect to "persons aggrieved" in respect of air emissions issues. It found 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. (quoting *Metalex Products Ltd. v. Deputy Director of Waste Management and Gerry Wilkin* (Appeal No. 96/17(b), April 24, 1997).

In *Stevens*, the Board found that Mr. Stevens had provided no evidence that emissions from the beehive burner would, or even could, makes its way from the mill site to Burns Lake, the point 50 kilometres away which was the closest Mr. Stevens travels took him to the burner site.

The Regional Manager also referred the Panel to the Ministry's Technical Report that was written to assess Nexterra's application for the Approval. The report contains information from the Regional Meteorologist who modelled the potential impacts of the Plant by applying emission data from the Plant's earlier operation to meteorological conditions in Kamloops. According to the report, the Regional Meteorologist indicated he had no issues to raise and that:

- "significant increases" in particulate matter "would not be likely to occur as a result of the approved discharge" and that
- particulate matter impact "would not be detected outside of the immediate industrial area surrounding the facility."

Mr. Azreal argues that he is a "person aggrieved" under the *Act*. Although he lives 21 kilometres from the Plant, Mr. Azreal states that he frequently travels closer to the Plant. Mr. Azreal submits that the Approval is prejudicing his personal interests because of:

- the environmental sensitivity of the specific site – along the South Thompson River – with potential risks that the Approval will result in pollution of salmon habitat and Kamloops drinking water;
- potential health risks from emissions for workers at the nearby manufacturing and other industrial facilities;
- potential health risks from particulates, "neurotoxins" and other emission components for residents and others within a 20 km radius;
- the susceptibility of many members of the population to health problems exacerbated by air borne contaminants, especially after the regions' experience with forest fires last summer.

Mr. Azreal submits that the Approval is resulting in particulates and other contaminants entering the air and potentially endangering him when he travels within 20 kilometres of the site.

The Panel has reviewed Mr. Azreal's submissions. The Panel finds that Mr. Azreal has provided no evidence that he fishes for or eats salmon from the river, or that it is a source of his drinking water or that the entry of particulates or other contaminants from the Plant into the river would otherwise prejudicially affect his personal interests.

The Panel further finds that while Mr. Azreal's concern for the health of workers in the immediate area is admirable, the potential harm identified is not one prejudicial to his own interests. The Panel finds that the same is true with respect to Mr. Azreal's concern that there are people in the area who have health problems that are exacerbated by airborne contaminants, and that the incidence of such problems may have increased since last summer. Mr. Azreal has provided no evidence that he suffers from such health problems and his concern for those who do, while well motivated, does not provide grounds for finding that Mr. Azreal's personal interest are prejudiced by the Approval.

The Panel further notes that Mr. Azreal provided no evidence or information to support his assertion that the air plume from the Plant or any of its emissions can travel the distance to his home or reach detectable levels outside of the industrial park area in which the Plant is located. Conversely, the Panel has received both the results of the Regional Meteorologist's modeling and a report from the Regional Manager, in his May 4, 2004 submission, that the Ministry's air quality monitoring since the Plant began operating indicates no change in ambient levels of particulates in Kamloops.

While Mr. Azreal is not obliged to provide definitive proof that he will be harmed by the Approval, his ability to bring an appeal under section 44(1) of the *Act* does rest on his ability to disclose enough evidence to allow the Board to reasonably conclude that his personal interests are being prejudicially affected. The Panel finds that Mr. Azreal has not provided sufficient evidence for the Panel to reach such a conclusion.

Based on the evidence and the arguments presented, the Panel concludes that Mr. Azreal has not established that he is a person "who has genuine grievances because an order has been made which prejudicially affects his interests." Accordingly, he is not a "person aggrieved" under section 44(1) of the *Act*.

DECISION

In making this decision, the Panel has considered all of the evidence before it, whether or not specifically reiterated herein.

The Board finds that Mr. Azreal does not have standing to appeal the January 22, 2004 decision of the Regional Waste Manager.

The appeal is dismissed for lack of jurisdiction.



Alan Andison, Chair
Environmental Appeal Board
June 14, 2004