



Province of
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Environmental Appeal Board

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DECISION NO. 2005-EMA-009(a)

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

BETWEEN:	Brian H. Ruddell on behalf of the North Peace Clean Air Association	APPELLANT
AND:	Director of Waste Management	RESPONDENT
AND:	Canfor-LP OSB (G.P.) Corp.	THIRD PARTY
BEFORE:	A Panel of the Environmental Appeal Board Alan Andison, Chair	
DATE:	Conducted by way of written submissions concluding on September 5, 2006	
APPEARING:	For the Appellant: George Leven, Counsel For the Respondent: Dennis Doyle, Counsel For the Third Party: Diana Valiela, Counsel	

PRELIMINARY ISSUE OF STANDING

On October 7, 2005, Brian Ruddell appealed the decision of Del Reinheimer, made on behalf of the Director of Waste Management (the "Director"), Ministry of Environment, under the *Environmental Management Act*, S.B.C. 2003, c. 53, (the "Act") to issue a permit to Canfor-LP OSB (G.P.) Corp. ("Canfor") to discharge contaminants to the air from an oriented strandboard manufacturing facility (the "OSB facility") located in Fort St. John, BC. Mr. Ruddell appealed on his own behalf and on behalf of the North Peace Clean Air Association ("NPCAA").

By a letter dated August 4, 2006, Canfor challenged Mr. Ruddell's and the NPCAA's standing to appeal under section 100(1) of the *Act* as "a person aggrieved by a decision of a director."

The Board reviewed submissions from Mr. Ruddell, Canfor, and the Director on the preliminary issue of standing.

BACKGROUND

On August 30, 2005, the Director issued Permit PA-17751 (the "Permit") to Canfor authorizing it to discharge contaminants to the air from the OSB facility, subject to a number of conditions. The OSB facility will use three oriented strandboard wood

wafer dryers to dry cut log strands used to form boards. This will result in water vapour emissions. The OSB facility is located approximately one kilometre southwest of the Fort St. John Airport. The Permit contains the following conditions regarding water vapour emissions:

- 2.9.1 The permittee shall continue discussions with the owners and management of the Fort St. John airport to evaluate any impacts on the operation of the airport due to water vapour from the OSB facility.
- 2.9.2 The permittee shall record concerns expressed by the owners and management of the Fort St. John airport regarding impacts of water vapour on local airport traffic and operations. A summary of those concerns, along with the results of any investigations or mitigative action by the permittee shall be submitted at the request of the Director.

The Board received two appeals in respect of the Permit. The first appeal was filed by Neil Thompson on September 28, 2005. Mr. Thompson appealed the Permit on the grounds that water vapour emissions allowed under the Permit would have a detrimental impact on the general operation of the Fort St. John airport.

Mr. Thompson's appeal was dismissed by the Board on November 25, 2005, on the basis that Mr. Thompson did not have standing to appeal the Permit as he was not a person aggrieved under the *Act*. (*G.N. (Neil) Thompson v. Director of Waste Management and Canfor LP OSB (G.P.) Corp.*, Decision No. 2005-EMA-008(a), November 25, 2005), (hereinafter "*Thompson*").

A second appeal was received from Mr. Ruddell on October 7, 2005, regarding the Permit. It is Mr. Ruddell's appeal that is the subject of this decision. In his Notice of Appeal, Mr. Ruddell states that he received notice of the Permit in a letter from the Ministry of Environment that arrived, via Canada Post, at his home on September 9, 2005. He also states that he is filing the appeal on behalf of himself and the NPCAA, and that he has standing to appeal on the following basis:

... I am a 53 year old male with Asthma, a father of children with Asthma, all residing inside the City of Fort St. John. I am also a thirty two year veteran volunteer search and rescue member, a general aviation enthusiast, and an active senior member of North Peace Clean Air Association for five years now. I have participated in many Air Search and Rescue Missions. I have personally solicited at least 100 of the 1,475 signatures of the petition by NPCAA members to oppose the building of an OSB plant...

In his Notice of Appeal, Mr. Ruddell provided several grounds for appeal, which may be summarized as follows:

- the Director has inadequate qualifications to properly assess the potential effects of the OSB facility's discharges to the atmosphere, and he failed to fully recognize the negative effects of the discharges on aviation, highways and roads due to fog and ice conditions;

- the plant's emissions will cause pollution that will alter or impair the usefulness of the environment for aviation, vehicular and human use, and will negatively affect human health; and,
- the Permit should be amended to require the plant to install equipment that will result in zero emissions to the atmosphere.

In a letter dated November 4, 2005, Mr. Ruddell requested that the Board hold an oral hearing of the appeal. He also advised that he was seeking legal counsel, and that he anticipated securing counsel by January 2006.

In a letter dated November 7, 2006, the Board advised Mr. Ruddell that it would hold the appeal in abeyance until January 31, 2006, pending notification of his legal representative.

On January 30, 2006, the Board received a letter from Mr. Ruddell requesting that the appeal be held in abeyance for an additional month in order to finalize details concerning his legal representation.

In a letter dated February 6, 2006, the Board granted Mr. Ruddell's request to continue to hold the appeal in abeyance. The Board requested that he advise it on the status of the matter by March 6, 2006.

On February 13, 2006, the Board received a letter from counsel for Canfor expressing her client's concern regarding the "considerable delay already experienced in starting the appeal proceedings and regarding any potential further delays beyond March 6, 2006."

Subsequent to February 13, 2006, there were numerous letters between the parties and the Board in an effort to reach mutually acceptable hearing dates.

As a result, by letter dated April 7, 2006, the Board advised the parties that it would schedule the appeal for a hearing on September 19-22, 2006.

On July 13, 2006, the Board received a letter from counsel for Mr. Ruddell confirming that he had been retained by Mr. Ruddell and the NPCAA, and that his clients proposed to narrow the issue in the appeal "to the affects [sic] of water vapour emissions from the plant and potential fogging and icing at the Fort St. John airport and on nearby roads and highways." He also provided notice of an expert witness, and advised that two days should be sufficient to hear the appeal. He proposed that it be heard on September 19-20, 2006.

On August 4, 2006, Canfor's counsel wrote to the Board asking that the appeal be dismissed for lack of standing, on the basis that neither Mr. Ruddell nor the NPCAA are a "person aggrieved" by the Permit. Canfor provided submissions to support that request, including an affidavit sworn by Chris Baby, General Manager of the OSB facility.

By a letter dated August 8, 2006, the Board requested that Mr. Ruddell provide details by August 15, 2006, regarding how he is a "person aggrieved" as defined in the *Act*. The Board offered the Respondent an opportunity to reply to those submissions, and offered the Appellant an opportunity to make a final reply by August 22, 2006.

The Board received no response on behalf of Mr. Ruddell by the August 15, 2006 deadline.

On August 17, 2006, the Board sent a letter to Mr. Ruddell's counsel requesting that he confirm whether he intended to provide submissions on the question of standing. The Board requested a reply by no later than 4:30 p.m. on August 18, 2006. If he intended to provide submissions, the Board further requested that he do so by no later than August 22, 2006.

On August 23, 2006, the Board received a letter from Mr. Ruddell's counsel advising that he had been away on holidays for the past two weeks, and had just reviewed the Board's letter dated August 8, 2006. He advised that he was awaiting instructions from his client regarding the question of standing and he would be providing a response "in the near future." The Board received Mr. Ruddell's submission on September 1, 2006.

Mr. Ruddell submits that he is an "aggrieved person" within the meaning of the *Act*, and should be accorded standing to appeal. He further submits that the NPCAA "derives its standing from the interests of its members."

Canfor and the Director submit that neither Mr. Ruddell nor the NPCAA have standing to bring the appeal.

RELEVANT LEGISLATION

The following section of the *Act* is relevant to the preliminary issue:

Appeals to Environmental Appeal Board

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

ISSUES

The preliminary issues to be determined are whether Mr. Ruddell and/or the NPCAA are a "person aggrieved" under the *Act* and, therefore, have standing to bring the appeal.

DISCUSSION AND ANALYSIS

The test applied by the Board in determining whether a person has standing to bring an appeal under section 100(1) of the *Act* is whether the person "has a genuine grievance because an order has been made which prejudicially affects his interests." This test is from the decision of the House of Lords in *Attorney General 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.

This test for standing has been consistently applied by the Board in a number of cases¹ dealing with the discharge of emissions under the current *Environmental Management Act* as well as its predecessor statute, the *Waste Management Act*.

In the present case, the Panel must determine whether Mr. Ruddell has disclosed sufficient evidence to allow the Panel to reasonably conclude that the issuance of the Permit to Canfor has or will prejudicially affect his interests or those of the NPCAA, which he purports to represent.

Mr. Ruddell's standing to appeal on his own behalf

Canfor submits that Mr. Ruddell's narrowed grounds for appeal, as stated in the July 12, 2006 letter from his counsel, are limited to the effects of "water vapour emissions from the plant and potential fogging and icing at the Fort St. John airport and on nearby roads and highways." Canfor notes that, in that letter, Mr. Ruddell's counsel states that an attached summary of the opinion evidence of Bodhan W. Hrebenyk "contains all of the evidence and submissions I expect to make to the Board on this appeal." Mr. Hrebenyk's evidence states that he limited his review "of the air quality impact assessments to those sections of the report dealing with water vapour emissions and their predicted impacts." Canfor submits, therefore, that the narrowed grounds do not include the potential health effects of the OSB facility's air emissions on Mr. Ruddell or his children. Accordingly, these grounds of appeal are no longer an issue in the appeal, and Mr. Ruddell's interests are not prejudicially affected by the subject matter of the appeal.

Canfor maintains that, although Mr. Ruddell's Notice of Appeal states that he is a veteran search and rescue volunteer and a general aviation enthusiast, he provides no evidence that the OSB facility's emissions will affect aviation, or him personally any more than any other member of the public. In that regard, Canfor notes that Mr. Ruddell's counsel states as follows in his July 12, 2006 letter:

Specifically, Mr. Hrebenyk makes mention of four shortcomings in the Application for a Project Approval Certificate relating to potential impacts of water vapour emissions from the WESP [wet electrostatic precipitator] stack. Please consider the four areas identified by Mr. Hrebenyk to be our submissions with respect to why the methods used to evaluate potential fogging and icing impacts are flawed.

¹ See *G.N. (Neil) Thompson v. Deputy Director of Waste Management and Canfor-LP OSB (G.P.) Corp.* (Appeal No. 2005-EMA-008(a), November 25, 2005 [*Thompson*]; *Ajah Azreal v. Regional Waste Manager and Nexterra Energy Corp.* (Appeal No. 2004-WAS-004(a), June 12, 2004) [*Azreal*]; *Gurmeet Brar v. Deputy Director of Waste Management and District of Invermere* (Appeal No. 97-WAS-09(c), March 11, 1998) [*Brar*]; *John Keays and Paddy Goggins v. Assistant Regional Waste Manager and MB Paper Limited* (Appeal No. 97-WAS-10(a), November 17, 1997 [*Keays and Goggins*]; *Dave Stevens v. Regional Waste Manager* (Appeal No. 2001-WAS-030, February 28, 2002) [*Stevens*]; *Philip Fleischer and Paddy Goggins v. Assistant Waste Manager and Macmillan Bloedel Limited* (Appeal No. 97-WAS-11(a), November 17, 1997) [*Fleischer and Goggins*]; *Houston Forest Products Co. v. Assistant Regional Waste Manager and West Fraser Mills* (Appeal No. 99-WAS-06(c), 08(c) and 11(c)-13(c), February 3, 2000) [*Houston*].

Canfor submits that the first three alleged shortcomings cited by Mr. Hrebenyk are criticisms of the modeling methods, assumptions or conclusions leading to results in the Application for a Project Approval Certificate (an approval under the *Environmental Assessment Act*) regarding potential fogging and icing at the Fort St. John airport. The fourth alleged shortcoming is that the analysis should have included the potential impacts of the moisture emissions on icing and fogging of roads in the vicinity of the OSB facility's stack.

Canfor argues that Mr. Ruddell provides no evidence or description of whether he presently uses the airport more frequently than the average traveling public, or whether he is a pilot, an airline manager, is responsible for airline safety, or represents a government agency responsible for the issues he raises. Canfor submits that there are other individuals or agencies with direct interests in these matters, such as North Peace Airport Services, pilots frequently using the airport, and airline tenants of the airport, who could have appealed the Permit but did not.

Canfor argues that, similar to the Board's finding at page 5 of the *Thompson* decision, there is no reason to believe that Mr. Ruddell has "any more of a personal interest in the issues he raises than the general public who may have occasion to fly into or out of the Fort St. John airport." In particular, Canfor notes that the Board held as follows at pages 5-6 of *Thompson*:

...while Mr. Thompson has established evidence of a close proximity to the site and emissions, he is not alleging any potential adverse health impacts on himself or his family from exposure to those emissions. He has stated that he is aware of another appeal of the Permit brought by a different appellant that is addressing such health issues. Mr. Thompson's appeal is solely concerned with the potential for water vapour emissions to affect weather within the air traffic control zone, and any resulting impacts on the aviation industry as a result of increased fogging or aircraft icing conditions at the airport.

Canfor submits that the issues now forming the subject matter of Mr. Ruddell's appeal place him in the same position as Mr. Thompson regarding his standing to appeal.

Canfor further submits that Mr. Ruddell provided no evidence to support his claim that the steam plume from the OSB facility will cause fogging of roads, or that this would affect him personally more than any other member of the public. Specifically, Mr. Ruddell has not established that he uses the roads close to the source of the emissions any more than the general public.

The Director submits that Mr. Ruddell has not established sufficient interest in the issues of icing and fogging to give him standing under the *Act*. The Director notes that Mr. Ruddell's submissions relate to the potential impact on him of fogging and icing conditions that may affect the airport and roads near his home. The Director argues that neither of those impacts are unique to Mr. Ruddell and, even if his submissions can be supported on evidence, he would not suffer any greater impact than other members of the public. The Director maintains that the OSB facility is operating, yet no evidence of specific impact on Mr. Ruddell has been provided. The Director submits that Mr. Ruddell's circumstances are indistinguishable from those considered by the Board in *Thompson*.

Mr. Ruddell submits that he is a "person aggrieved" within the meaning of the *Act*. Mr. Ruddell states that his interests in the appeal derive from his volunteer search and rescue work, whereby he acts as an air spotter on search and rescue missions out of Fort St. John. He also submits that he lives approximately 2 ½ miles away from the OSB facility, and is concerned about icing on roads near his home and the airport. Specifically, Mr. Ruddell's counsel submits as follows on the issue of Mr. Ruddell's standing:

Mr. Ruddell's Notice of Appeal indicates "I am also a 32 year veteran volunteer search and rescue member... I have participated in many search and rescue missions." As the issue of standing has not been raised until now, we did not anticipate having to provide additional evidence with respect to Mr. Ruddell's use of the airport. Mr. Ruddell indicates that he works as a volunteer spotter in the event that there is a search and rescue mission out of Fort St. John. He has done this for approximately 32 years and has had to be taken into the air [on] at least 14 rescue missions, often on short notice. One of these missions lasted approximately 30 days and Mr. Ruddell was actively involved as an air spotter during the duration of this search. Most search and rescue missions last multiple days. In addition, he has participated in many training exercises during that term. He indicates he is a very experienced air spotter and rescue member in Fort. St. John and as such will be given priority should search and rescue missions be undertaken. Depending on need, Mr. Ruddell will potentially be required to use airport facilities at a greater rate than members of the general public.

In addition, Mr. Ruddell resides about 2 and ½ miles away from the Canfor-LP OSB plant and is concerned that if an inversion and ice fogging takes place, the roads near his home and in particular the roads near the airport would be subject to icing, should he be called to the airport

In response, Canfor submits that Mr. Ruddell has not disclosed sufficient evidence to show that he will be prejudicially affected by ice and fog allegedly caused by emissions from the OSB facility. Further, even if emissions from the OSB facility were to cause icing and fogging at the airport, there is insufficient evidence to establish that Mr. Ruddell would be more personally affected than other members of the public. Specifically, Canfor submits that there is no evidence that Mr. Ruddell is currently on a roster of eligible persons qualified to be called out on air search and rescue missions now or in the future. Canfor submits that Mr. Ruddell's submissions regarding search and rescue missions refer only to past events, and his submissions regarding the future likelihood of him being called out to a mission are hypothetical and contrary to the affidavit evidence submitted by Canfor. Canfor maintains that Mr. Ruddell appears to be in the same position as Mr. Thompson, a retired search and rescue volunteer. His enthusiasm for aviation and search and rescue operations does not make him a "person aggrieved" under the *Act*.

In support of those submissions, Canfor submitted an affidavit from John Wyatt, zone commander of the Civil Air Search and Rescue Association ("CASARA"), also

known as the Air Division of the Provincial Emergency Program ("PEP Air") for the North East Region, which includes Fort St. John. Mr. Wyatt deposed that CASARA's Air Deputy for Fort St. John, Bob Velie, does not have Mr. Ruddell on his list of member volunteers who are eligible to be called out on air-based search and rescue missions in the area. Mr. Wyatt also attested that there are no other air-based search and rescue organizations operating in the Fort St. John area.

Additionally, Canfor submits that even if Mr. Ruddell was called out to a search and rescue mission, a missing person is a matter of community concern, and the inability of a plane to take off from the airport, due to fogging from the OSB facility or otherwise, does not prejudicially affect Mr. Ruddell's personal rights and interests. Rather, it would affect the interests of the missing person(s) and their family and friends. Moreover, Canfor maintains that if a significant amount of fog existed at the Fort St. John airport, a search and rescue flight would not take off because the aircraft used for those missions only fly using Visual Flight Rules, and fog would make it difficult for spotters to locate missing persons or aircraft on the ground. Canfor submits that, when a search and rescue mission cannot be launched from the Fort St. John airport due to weather conditions, private air strips near Fort St. John or airports in other parts of the Northeast region are used.

Canfor also submits that roads in immediate proximity to the OSB facility are not on any likely route from Mr. Ruddell's residence to the airport, and even if emissions from the OSB facility caused increased fogging at the airport or icing of roads such that Mr. Ruddell's use of the airport for general purposes, other than search and rescue, was affected, it would not affect him any more than any other member of the public.

The Panel notes that previous air emissions decisions from the Board have established that residency and proximity to a discharge site are relevant to an assessment of whether a person is "aggrieved".² Accordingly, standing has been granted to appeal where personal health issues are concerned and the applicant lives or works in close proximity to the site of the emissions, by virtue of the fact that such close proximity necessarily subjects the person to any potential effects of the discharge.³ Standing has been refused where sufficient proximity and potential prejudice have not been established.⁴

In this case, Mr. Ruddell alleges that he lives in close proximity to the OSB facility and that the emissions may affect the use of roads near his home, and near the airport in the event that he is called out to a search and rescue mission. However, he is not alleging any potential adverse health impacts on himself or his family from exposure to those emissions. Mr. Ruddell's appeal is solely concerned with the potential for water vapour emissions to cause increased fogging or icing conditions at the Fort St. John airport or on nearby roads and highways.

² *Azreal, Brar, Keays and Goggins, Stevens, Fleisher and Houston, supra* note 1

³ *Keays and Goggins, Fleisher, supra* note 1

⁴ *Azreal, Brar, Stevens, supra* note 1

Mr. Ruddell's submissions indicate that he has been active in the past as a volunteer search and rescue air spotter, and that he may be required in the future to use the airport more often than members of the general public if he is called out to a search and rescue mission. However, the affidavit evidence provided by Canfor indicates that Mr. Ruddell is not on the list of member volunteers who are eligible to be called out on air-based search and rescue missions in the Fort St. John area. Mr. Wyatt stated that Mr. Ruddell "is not involved with CASARA and would not be called out to assist with a search and rescue operation." Further, Mr. Wyatt attested that there are no other air-based search and rescue organizations operating in the Fort St. John area. The Panel accepts Canfor's evidence in this regard. The Panel notes that the documents submitted by Canfor indicate that two other search and rescue organizations, North Peace Search and Rescue and Fort St. John Search and Rescue, are based in Fort St. John, but members of those organizations conduct ground-based, rather than air-based, search and rescue operations.

The Panel finds that there is no evidence that Mr. Ruddell will suffer any personal prejudice if fogging or icing occurs at the Fort St. John airport or on nearby roads and highways, assuming such fogging and icing was a result of the OSB facility's emissions and not a result of natural weather conditions.

The Panel also notes that Mr. Ruddell is not an owner or manager of the Fort St. John airport or nearby roads, nor is he accountable for airport operations, road operations, airport safety, or road safety. There is no evidence that he is a pilot, owner or manager for one of the airline tenants. Further, Mr. Ruddell is not representing an agency responsible for the environment, safety or transportation issues. In that regard, the Panel notes that organizations which have direct interests in the use and safety of the airport and nearby roads, such as North Peace Airport Services, which operates the airport, have not appealed the Permit.

The Panel finds that Mr. Ruddell has not adduced any evidence that the Permit will directly affect his income or livelihood, that his personal health or welfare, or that of his family, may be compromised by exposure to the emissions, or that he will suffer some other prejudice. In these circumstances, Mr. Ruddell has failed to meet the test of a person aggrieved, as stated by the House of Lords in *Attorney General Gambia v. N'Jie*, above.

While Mr. Ruddell is not required to provide definitive proof that he will be harmed by the granting of the Permit, he must disclose enough evidence to allow the Panel to find that his interests are being prejudicially affected.⁵ The Panel finds that while Mr. Ruddell's concern for the safety of aircraft and roads is admirable, he has not provided sufficient evidence for the Panel to find that the potential harm identified is prejudicial to his own interests. The Board is bound by its enabling legislation in regard to substantive rights to appeal, and in determining who has a substantive right to bring an appeal under the *Act*. In this case, the Panel finds that Mr. Ruddell's stated interests are too remote and speculative to support standing for him to bring an appeal in his own right under section 100 of the *Act*.

⁵ See *Azreal, Houston, Fleisher and Goggins supra* note 1

Mr. Ruddell's standing to appeal on behalf of the NPCAA

Canfor submits that Mr. Ruddell has no authority to appeal on behalf of the NPCAA. Canfor submits that the NPCAA was disbanded when the appeal was filed, as attested to by Mr. Baby in his affidavit submitted by Canfor. Mr. Baby refers to an exhibit attached to his affidavit, specifically, a letter to the editor of the Northeast News newspaper, dated October 26, 2005, in which Mr. Ruddell states, in part, "We must resurrect and reorganize the North Peace Clean Air Association ASAP, so that we can get the monetary and legal assistance we need rigfht [sic] now."

Moreover, Canfor submits that Mr. Ruddell has provided no evidence that the NPCAA authorized him to appeal on its behalf. Mr. Baby attests that the NPCAA's representative on the Citizen's Information Liaison Committee, which Canfor established to allow for the exchange of information between management of the OSB facility and community representatives, expressed no concerns regarding the facility's potential impacts on airport operations.

Additionally, Canfor submits that the NPCAA is not a "person aggrieved" because it is an unincorporated society, and is not a "person" within the meaning of the *Interpretation Act*, R.S.B.C. 1996, c. 238, which states:

"person" includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law;

In support of that submission, Canfor cites the court decision in *Eco-Tourism Society v. Van. 2010 Bid Corp. et al*, 2005 BCPC 23 (hereinafter *Eco-Tourism Society*), at paragraphs 15-17.

Canfor submits that, while an organization such as the NPCAA may be able to participate in an appeal, members of the organization must have standing to appeal in their own right, and in this case no appeal has been brought by a member with proper standing. Canfor submits that the Board decided in *Keays and Goggins* that it has no inherent jurisdiction to grant public interest standing, and its jurisdiction is limited to granting standing under the relevant legislation, namely, section 100 of the *Act*.

Mr. Ruddell concedes that the NPCAA's standing to appeal is derived from that of its members. He also concedes that he has no greater interest in the subject matter of the appeal in his capacity as a representative of the NPCAA than he does in his personal capacity.

The Panel finds that there is no evidence that the NPCAA is an incorporated society under the *Society Act*. Indeed, Mr. Ruddell concedes that the NPCAA's standing to appeal is derived from that of its members. The Panel agrees with Canfor that an unincorporated society is not a "person" at law, and is therefore unable to bring an appeal under the *Act*. In this regard, the Panel adopts that following analysis from paragraphs 15-17 of the B.C. Provincial Court's decision in *Eco-Tourism Society*:

A society does not become a "person" at law until it is incorporated. This is confirmed in section 4 of the *Society Act* which reads in part as follows:

- 4 (1) From the date of the certificate of incorporation, the members of a society are members of a corporation
- (a) with the name contained in the certificate,
 - (b) having perpetual succession,
 - (c) with the right to a seal, and
 - (d) with the powers and capacity of a natural person of full capacity as may be required to pursue its purposes...
- (3) A society may sue and be sued, contract and be contracted with, in its corporate name.

It is only upon incorporation, (which happens upon the issuance of a certificate of incorporation by the Registrar of Companies), that the society is brought to life and it is only once a certificate of incorporation has issued creating the society that it may sue or be sued. Until then, an unincorporated society is only a collection of individuals and it is those individuals who compose the proposed society who should be bringing this action in their own names.

[underlining added]

In the present case, it appears that the NPCAA is a "collection of individuals" and is not a legal person. As previously held in *Keays and Goggins*, the Board has no inherent jurisdiction to grant public interest standing. Its jurisdiction in this case is limited to granting standing under section 100 of the *Act*.

For all of these reasons, the Panel concludes that the NPCAA has no standing to file an appeal, and Mr. Ruddell has no standing to file an appeal on behalf of the NPCAA.

DECISION

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

For all of the reasons set out above, the Panel finds that neither Mr. Ruddell nor the NPCAA can properly be considered a "person aggrieved" by the decision to issue the Permit. Therefore, Mr. Ruddell and the NPCAA have no standing to bring the appeal, and the Board has no jurisdiction over the appeal.

Accordingly, the appeal is dismissed for lack of jurisdiction.

Alan Andison, Chair
Environmental Appeal Board
September 13, 2006