

# Environmental Appeal Board

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## DECISION NO. 2008-EMA-014(a)

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

<b>BETWEEN:</b>	Paddy Goggins and Patricia Aldworth	<b>APPELLANTS</b>
<b>AND:</b>	Director, <i>Environmental Management Act</i>	<b>RESPONDENT</b>
<b>AND:</b>	Catalyst Paper Corporation and Catalyst Pulp Operations Ltd., doing business as Catalyst Paper, General Partnership	<b>THIRD PARTY/ PERMIT HOLDER</b>
<b>BEFORE:</b>	A Panel of the Environmental Appeal Board Alan Andison, Chair	
<b>DATE:</b>	Conducted by way of written submissions concluding on November 3, 2008	
<b>APPEARING:</b>	For the Appellants: Paddy Goggins For the Respondent: Dennis Doyle, Counsel For the Permit Holder: Janice Walton, Counsel	

### PRELIMINARY ISSUE OF STANDING

Seven separate appeals were filed against a decision issued on August 6, 2008, by Steffanie Warriner on behalf of the Director, *Environmental Management Act* (the "Director"), Lower Mainland Region, Ministry of Environment (the "Ministry"). The decision amends permit 4565 held by Catalyst Paper Corporation and Catalyst Pulp Operations Ltd., doing business as Catalyst Paper, General Partnership ("Catalyst"). The amended permit authorizes the expansion of a landfill located in Powell River, BC. The landfill receives refuse from Catalyst's pulp and paper mill, also located in Powell River.

On September 7, 2008, Paddy Goggins and Patricia Aldworth filed a joint appeal of the amended permit (Appeal No. 2008-EMA-014).

By a letter dated September 23, 2008, Catalyst requested that the Board rule on the standing of Mr. Goggins and Ms. Aldworth. Catalyst submits that they are not persons aggrieved by the amended permit, and therefore, they have no standing under section 100 of the *Environmental Management Act* (the "Act") to bring the appeal.

Accordingly, the Board requested written submissions regarding whether Mr. Goggins and Ms. Aldworth are "persons aggrieved" within the meaning of section 100 of the *Act*.

This preliminary matter was heard by way of written submissions.

## **BACKGROUND**

The landfill is located in the Wildwood area of the City of Powell River. The landfill site is legally described in the amended permit as: Part of Block 55, DL 450, Plan 8096, and Part of Block 48, DL 1901A, Plan 8096, Group 1, New Westminster District. The landfill is in close proximity to residential areas, Highway 101, and the Powell River.

The permit was originally issued in December 1976 to a previous owner of the pulp and paper mill. The mill had been using the site, an old sand and gravel quarry, as a landfill since approximately the 1960's.

Before the August 6, 2008 amendment, the last significant amendment to the permit was on September 15, 1995, to authorize a small engineered landfill (mini-landfill) adjacent to the pre-existing landfill. Authorization of the mini-landfill coincided with steps that were taken by the permit holder to address leachate that was entering the groundwater from the pre-existing landfill.

In 1998, the then owner of the pulp and paper mill started shipping fly ash waste from the mill's power boilers to the United States. As a result, relatively small amounts of waste were being discharged to the mini-landfill as the fly ash was being shipped away.

In 2006, the mill resumed using the mini-landfill for fly ash disposal. However, it was apparent that the mini-landfill would soon reach its capacity.

In August 2006, Catalyst submitted a draft application to the Ministry for a permit amendment to expand the landfill.

In September 2006, the draft application was published in a Powell River newspaper, and was circulated to several agencies and community groups for comment. During 2007, Catalyst took steps to consult with the general public and the Sliammon First Nation regarding the proposed amendment. A number of citizens expressed opposition to the expansion of the landfill.

In July 2007, Catalyst submitted its amendment application to the Ministry. In support of its application, Catalyst submitted an environmental assessment report prepared by Golder Associates, and a consultation report.

In mid-2007, the Ministry retained Hatfield Consultants to complete an independent review of water quality data related to the landfill.

On August 6, 2008, the Director issued the amended permit. It authorizes a maximum of 25,000 cubic metres per year (uncompacted volume) of refuse to be discharged to the landfill from Catalyst's mill. Before the amendment, the permit authorized a maximum of 14,000 cubic metres per year (uncompacted volume) of refuse to be discharged to the landfill. Also under the amended permit, the maximum total volume of refuse to be discharged to the landfill has increased from 100,000 cubic metres to 620,000 cubic metres. Similarly, the authorized landfill area has been increased from 2.3 hectares to 6.1 hectares. The components of refuse that may be discharged to the landfill remain the same under the amended permit: fly ash, waste asbestos, and "miscellaneous mill waste" as defined in section 2.9 of the permit.

On September 9, 2008, the Board received Mr. Goggins' and Ms. Aldworth's joint Notice of Appeal. Their Notice of Appeal lists a number of grounds for appeal, including alleged environmental harm arising from the expansion of the landfill, and alleged legal errors by the Director in issuing the amended permit. Their Notice of Appeal briefly addresses the issue of their standing where it states, in part:

*Environmental Management Act s. 100(1) provides standing for a person aggrieved.*

I, Paddy Goggins, live approximately 3 kilometres from the subject landfill. I, Patricia Aldworth, live less than 2 kilometres from the landfill.

We rely on the same conditions of proximal residence which the Board accepted as qualifying as a *person aggrieved* in other appeals that Paddy Goggins brought before the Board under the old Waste Management Act.

[italics in original]

By a letter dated September 23, 2008, Catalyst questioned the standing of Mr. Goggins and Ms. Aldworth. Specifically, Catalyst asked the Board to seek clarification from them as to specific reasons why they believe that they qualify as persons aggrieved by the amended permit. Catalyst argued that they do not live in the Wildwood area, and Ms. Aldworth did not provide her address.

By letters dated September 24 and 25, 2008, the Board requested written submissions from Mr. Goggins and Ms. Aldworth, the Director and Catalyst regarding whether Mr. Goggins and Ms. Aldworth are "persons aggrieved" by the amended permit. The Board requested submissions from Mr. Goggins and Ms. Aldworth by October 6, 2008, and submissions from the Director and Catalyst by October 14, 2008. Mr. Goggins and Ms. Aldworth were offered the opportunity to provide a final reply by October 17, 2008.

On October 9, 2008, the Board received a letter dated October 3, 2008, from Mr. Goggins. That letter states, in part, as follows:

If there is a legitimate *standing* challenge, then the challenger should make its case to the Board first. Including some argument as to any 'test' normally relied on by the Board; and why a challenge can be to some appellants *standing* and not others. The Board could then call for submissions from all parties...

...

Appellants Aldworth/Goggins have already provided the Board with sufficient grounds to meet the test of a "person aggrieved". In fact, the Board has already accepted it.

As the Board accepted Paddy Goggins as the contact person when it accepted the joint appeal we did not include Patricia Aldworth's mailing address it is...

[italics in original]

On October 10, 2008, the Board sent a letter to Mr. Goggins clarifying that the Board's initial acceptance of the Notice of Appeal does not mean that the question

of standing cannot be raised as part of the appeal process. The Board reiterated that it was requesting submissions on the issue of their standing to appeal the amended permit as "persons aggrieved." The Board's letter also reproduced section 100 of the *Act*, and set out the test previously applied by the Board to determine whether a person is a "person aggrieved" under section 100 of the *Act*. The Board offered Mr. Goggins and Ms. Aldworth a second opportunity to provide submissions on the issue of their standing, by October 21, 2008. Accordingly, the Board extended the deadlines for the Director's and Catalyst's submissions to October 21, 2008, and for the Appellants' final reply to November 3, 2008.

Mr. Goggins submits that he and Ms. Aldworth are "persons aggrieved".

Catalyst submits that Mr. Goggins and Ms. Aldworth have not established that they have standing to appeal the amended permit, and their appeal should be dismissed.

The Director takes no position on the issue of standing.

## **RELEVANT LEGISLATION**

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

### **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.

## **ISSUE**

Whether Mr. Goggins and Ms. Aldworth have standing to appeal as "persons aggrieved" within the meaning of section 100 of the *Act*.

## **DISCUSSION AND ANALYSIS**

### **1. Whether Mr. Goggins and Ms. Aldworth have standing to appeal as "persons aggrieved" within the meaning of section 100 of the *Act*.**

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 of the Gambia v. N'Jie*, [1961] 2 ALL E.R. 504 ("*Attorney General of the Gambia v. N'Jie*"), 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 cases dealing with the discharge of emissions under the current *Environmental Management Act* as well as its predecessor statute, the *Waste Management Act*.

Thus, in determining whether Mr. Goggins and Ms. Aldworth have standing to bring this appeal, the Panel must determine whether they have disclosed sufficient information to allow the Panel to reasonably conclude that the Director's decision to issue the amended permit has or will prejudicially affect their interests.

*Parties' submissions*

Mr. Goggins submits that Catalyst's letter challenging the Appellants' standing was "specious" and fails to make a clear challenge to their standing. Mr. Goggins further submits that the challenge to their standing "borders on being vexatious."

Mr. Goggins submits that he is "exercising my right to protect myself from pollution released in and around my home environment..."

Mr. Goggins refers to *Attorney General of the Gambia v. N'Jie*, where it states:

The words "person aggrieved" are of wide import and should not be subjected to a restricted interpretation.

[underlining in Mr. Goggins' submissions]

Mr. Goggins argues that *Black's Law Dictionary* supports the conclusion that he and Ms. Aldworth have standing in this matter. However, Mr. Goggins did not indicate which words or phrases in that dictionary he relies on.

Mr. Goggins also submits that he has appeared before the Board in previous appeals involving amendments to permits authorizing the release of contaminants "near and at least one case not so near" his home.

Catalyst submits that the Appellants bear the onus of demonstrating that they are aggrieved by the decision, and they must disclose sufficient evidence to allow the Board to reasonably conclude that their interests are being prejudicially affected.

Catalyst argues that neither Mr. Goggins nor Ms. Aldworth has provided any evidence from which the Board could reasonably conclude that their interests have been prejudicially affected by the amended permit.

Catalyst maintains that Mr. Goggins' only claimed reason for granting him standing is that he is exercising a right to protect himself from "pollution released in and around [his] home environment..." Catalyst argues that this claim is supported by no evidence whatsoever, and it does not provide the Board with any reasonable basis on which to conclude that the Appellants have standing in this matter.

Catalyst submits that the Board has, in previous decisions, established that residency and proximity to a discharge site are relevant to the assessment of whether a person is aggrieved, but the Board has also stated that proximity is not the only relevant consideration, because the test is whether the person has a genuine grievance because an order has been made that prejudicially affects their interests. Catalyst argues, therefore, that proximity does not affect the requirement that the Appellants must provide some evidence that their interests are being prejudicially affected.

In support of those submissions, Catalyst refers to several previous decisions of the Board, including *Houston Forest Products Co. et al v. Assistant Regional Waste Manager*, Appeals No. 99-WAS-06(c) and 11(c)-13(c), February 3, 2000; and *Brian H. Ruddell on behalf of North Peace Clean Air Association v. Director of Waste*

*Management*, Appeal No. 2005-EMA-009(a), September 13, 2006 ("*North Peace Clean Air Association*").

Catalyst notes that the Board has previously considered Mr. Goggins' standing. In *John Keays and Paddy Goggins v. Assistant Regional Waste Manager*, Appeal No. 97-WAS-10(a), November 17, 1997, the appeal was against a permit to discharge air emissions from the Powell River pulp and paper mill. The Board found that Mr. Goggins lived close enough to the mill, and his daughter walked to school close enough to the mill, that the air contaminants from the mill could impact Mr. Goggins.

In *Philip Fleischer and Paddy Goggins v. Deputy Director of Waste Management*, Appeal No. 97-WAS-11(a), the appeal was against a permit authorizing the discharge of mill residuals to a "linear landfill" consisting of the surface of certain logging roads. In that case, there was evidence that the mill waste would be discharged directly in front of the school that Mr. Goggins' children attended, and they would pass through the site on their way to school. The Board found that Mr. Goggins had standing to appeal because he and his children would walk on or near the discharge site.

Catalyst submits that the "proximal" determinations in those decisions are inapplicable to the present appeal. Catalyst submits that those decisions can be distinguished from the present appeal because:

1. the landfill in this case is not at the same location as the mill, and sufficient proximity to the mill does not necessarily mean sufficient proximity to the landfill;
2. the landfill in this case is not located in the same location as the linear landfill, and sufficient proximity to the linear landfill does not necessarily mean sufficient proximity to the landfill in this case; and
3. the amended permit is not a permit to emit air contaminants.

Catalyst submits that there is no basis for the Board to conclude, based on where Mr. Goggins and Ms. Aldworth live, that their interests will be prejudicially affected by the amended permit. Catalyst maintains that such a decision would mean that anyone in Powell River would have standing to appeal the amended permit. Catalyst argues that, if the Legislature had intended to extend standing to all members of a community where there is permitted activity, regardless of the potential for prejudicial effects on their interests, it could have explicitly done so.

In addition, Catalyst submits that the exclusion of Mr. Goggins and Ms. Aldworth will have no impact on the Board's ability to fully canvass the issues raised by the local community. Catalyst maintains that all of the environmental issues identified by Mr. Goggins and Ms. Aldworth have also been identified by the other Appellants.

#### *Panel's findings*

The Panel notes that, for the purposes of this preliminary proceeding, an appellant is not required to provide definitive proof that he or she is harmed by the amended permit. As the Board stated in *Fleischer and Goggins v. Assistant Regional Waste Manager* (Appeal No. 97-WAS-11(a), November 17, 1997) (unreported), "To require lay people to essentially 'prove' how they will or will likely be affected is to impose an impossible burden on them. Proof of their cases comes at the hearing

stage when the merits of the case are addressed....” For the purposes of establishing standing, an appellant must disclose enough information or evidence to allow the Panel to reasonably conclude that their interests are or may be prejudicially affected.<sup>1</sup>

However, the Panel agrees with Catalyst that evidence of proximity alone, such as the distance between an appellant’s residence and the discharge location, does not necessarily lead to the conclusion that an appellant’s interests are prejudicially affected by the discharge. Even if an appellant lives in proximity to the point of discharge, the appellant must still provide some evidence or information indicating that he or she will, or will likely, suffer some prejudice as a result of the decision authorizing the discharge. This approach is consistent with the test set out in *Attorney General of the Gambia v. N’Jie*, and was confirmed by the Board in *North Peace Clean Air Association*, at page 8, as follows:

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”. 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. Standing has been refused where sufficient proximity and potential prejudice have not been established.

[underlining added]

In *North Peace Clean Air Association*, the appellant submitted that he lived approximately 2.5 miles away from a manufacturing facility that had received a permit authorizing the discharge of air emissions. The Board found that the appellant failed to establish that he was a “person aggrieved” because he adduced no evidence that the permitted activity would cause him to suffer any prejudice, such as a negative effect on his income or livelihood, or on his personal health or welfare, or the health and welfare of his family.

In the present case, the Panel finds that Mr. Goggins and Ms. Aldworth have provided insufficient information to indicate how the landfill expansion may affect them or their interests. In particular, they have not explained how the potential environmental impacts they have identified may be prejudicial to their own interests. For example, they have provided no indication that dust or leachate from the landfill may reach their home or affect their health, livelihood, or the enjoyment of their property. While they have expressed concern for the environment, this alone does not provide grounds for finding that their personal interest are, or may be, prejudiced by the amended permit.

As noted by Catalyst, Mr. Goggins has previously brought appeals before the Board respecting Catalyst and its predecessors’ activities at its pulp and paper mill in

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<sup>1</sup> See *Squamish Terminals Ltd. v. Director of Waste Management*, Appeal No. 2004-EMA-002(a), March 22, 2005; *Ajah Azreal v. Regional Waste Manager*, Appeal No. 2004\_WAS-004(a), June 14, 2004; *Houston Forest Products Co. and others v. Assistant Regional Waste Manager* (Appeals No. 99-WAS-06(c), 08(c), and 11(c)-13(c), February 3, 2000).

Powell River. As in this case, Mr. Goggins' standing to bring those appeals was considered in those matters.

However, the Panel finds that those previous decisions are distinguishable from the present appeal because, in those cases, Mr. Goggins provided information to support the conclusion that he was a "person aggrieved" but in this case he has not. Furthermore, the Panel finds that the landfill in this case is not at the same location as either the mill or the linear landfill at issue in the previous cases, and therefore, sufficient proximity to the mill or the linear landfill does not necessarily mean sufficient proximity to the landfill in this case. Consequently, although the Board has previously found that Mr. Goggins had standing to appeal certain decisions in the past, that does not lead to the conclusion that he also has standing to appeal the amended permit in this case.

In addition, the Panel finds that some of the issues raised by Mr. Goggins and Ms. Aldworth have also been raised by one or more Appellants whose standing has not been challenged by Catalyst. Consequently, the Panel agrees with Catalyst that their lack of participation as parties in the appeal will not affect the Board's ability to fully canvass at least some of the environmental issues of concern to them.

For all of these reasons, the Panel finds that Mr. Goggins and Ms. Aldworth have provided insufficient evidence for the Panel to reasonably conclude that they are, or will be, prejudicially affected by the amended permit. The Panel finds that they are not "persons aggrieved" within the meaning of section 100 of the *Act*. Accordingly, they are without standing to bring this appeal.

## **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 Mr. Goggins and Ms. Aldworth are not "persons aggrieved" within the meaning of section 100 of the *Act*.

Accordingly, the joint appeal by Mr. Goggins and Ms. Aldworth is rejected for lack of jurisdiction.

"Alan Andison"

Alan Andison, Chair  
Environmental Appeal Board

November 6, 2008