



Environmental Appeal Board

APPEAL NO. 97-WAS-09(b)

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

BETWEEN:	Gurmeet Brar	APPELLANT
AND:	Deputy Director of Waste Management	RESPONDENT
AND:	District of Invermere	THIRD PARTY

STANDING OF THE APPELLANT BEFORE THE BOARD

BACKGROUND

The District of Invermere (the "District") operates a waste water treatment plant adjacent to Toby Creek under waste permit PE-03094, issued pursuant to the *Waste Management Act*. This permit allows the District to discharge 1400³ per day of effluent.

The District applied to amend its permit to upgrade the existing facility by increasing the amount of allowable discharge and constructing certain works to accommodate the increase. On January 10, 1997, the Regional Waste Manager approved the amendments and issued an amended permit. The amended permit allows the District to discharge a maximum of 2275 m³ of effluent per day from the municipal waste water treatment plant to the ground and to Toby Creek. It is authorized to discharge an annual average of 1850 m³ per day.

Mr. Gurmeet Brar, a retired chemical engineer and resident of Invermere, appealed the amended permit to the Deputy Director of Waste Management ("Deputy Director"). On August 1, 1997, the Deputy Director denied the appeal but added two further conditions to the amended permit. On August 19, 1997, Mr. Brar appealed the Deputy Director's decision to the Environmental Appeal Board under section 44 of the *Waste Management Act*. Mr. Brar appeals on the grounds that

- the amended permit does not satisfy the key requirements of the Ministry of Environment, Lands and Park's "Pollution Control Guidelines for Municipal Effluent Application to Land" and its "Pollution Control Objectives for Municipal Type Waste Discharges in British Columbia";
- the current location and use of rapid infiltration basins at the disposal site causes groundwater contamination and the increased discharges authorized in the amended permit will worsen the situation;
- higher discharge volumes will increase the risk of contamination of the surface waters of Toby Creek;

- the sewage collection system should be made part of the permit; and
- he disagrees with some of the reasons given by the Deputy Director for denying his appeal.

Mr. Brar also requested a stay of the Deputy Director's decision. Upon consideration of the submissions of all parties, the Board granted the stay in decision 97-WAS-09(a) dated October 17, 1997.

By letter dated November 13, 1997, the District challenged Mr. Brar's standing to appeal the Deputy Director's decision and asked the Board to dismiss his appeal accordingly. The District submits that Mr. Brar is not a "person aggrieved" by the decision, as required by section 44(1) of the *Waste Management Act*. The Appellant, Mr. Brar, argues that he meets the test for standing and his appeal should therefore proceed. The Deputy Director agrees with Mr. Brar and submits that including Mr. Brar in the appeal is "fair and justified."

ISSUE:

Does Mr. Brar have legal standing to file an appeal under section 44(1) of the *Waste Management Act*.

Section 44(1) reads as follows:

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]

Although Mr. Brar argued that he should have standing based upon the wording of the former standing provision which allowed a person to appeal if he or she "considers" himself or herself aggrieved by a decision, this section was repealed and replaced with the current language of section 44(1) on July 28, 1997. As the Deputy Director's decision was made after this section came into effect, the Board finds that the new section applies. We will now turn to consider Mr. Brar's standing as a "person aggrieved" as required under the new section.

DISCUSSION

In the case of *Metalex Products Ltd. v. Deputy Director of Waste Management and Gerry Wilkin* (Environmental Appeal Board, Appeal No. 96/17(b), April 24, 1997) (unreported), the Board was called upon to interpret the meaning of the words "person aggrieved". In that case, the Board adopted the court's interpretation of the phrase "a person aggrieved" as "a person who has a genuine grievance because an order has been made which prejudicially affects his interests". The Board went on to state:

The legislature did not intend the *Waste Management Act* to give a right of appeal to every person whose sensibilities are offended by government decisions, but only to those people whose rights and interests are genuinely affected.

If the legislature had intended to give the right of appeal to any member of the public, it could have done so by using the words "any person may appeal" as it has done in other statutes.

In cases subsequent to *Metalex*, the Board has indicated that residency and proximity to the "discharge site" are relevant considerations to an assessment of whether a person is "aggrieved" (see *Fleischer v. the Deputy Director of Waste Management* (Environmental Appeal Board, Appeal No. 97-WAS-11(a), November 17, 1997) (unreported)). Considerations of residency and proximity are relevant to the "reasonableness" of a person's allegation that his or her rights or interests are "genuinely" affected.

In this regard, Mr. Brar makes two arguments. First, he argues that he is sufficiently aggrieved because he owns and resides on a property located adjacent to Lake Windermere, approximately 1.8 kilometres south of the north end of Lake Windermere. However, based upon the information before the Board, it is unlikely that the amended permit would have any affect on Mr. Brar's rights or interests associated with this property.

From the north end of Lake Windermere, the water proceeds northward through a relatively narrow channel where it becomes the Columbia River. A relatively short distance down the Columbia River, the River is joined by Toby Creek. According to the District (and not disputed by Mr. Brar), the distance from the waste water treatment plant outfall on Toby Creek to the north end of Lake Windermere is approximately 4.6 kilometres. The distance from the north end of Lake Windermere to Mr. Brar's home is approximately 2.5 kilometres. Therefore, if any untreated effluent was released into Toby Creek, it would have to travel 4.6 kilometres down the Creek then proceed *against the flow* of the Columbia River and the Lake for approximately 2.5 kilometres to reach Mr. Brar's residence.

Although Mr. Brar suggests that, at certain times of the year when Toby Creek has high water levels, the Creek "forces" its way back into Lake Windermere, the Board accepts the evidence of the District that it would not "back up" far enough to pose a reasonable threat to the water quality of Lake Windermere.

Mr. Brar's second argument is that, in addition to his Lake Windermere residence, he also has "ownership interests" in lots 17 and 18, Plan 14927, which lie immediately north of the waste water treatment plant site. Thus, he claims to be an "immediate neighbour" to the District's sewer facility, and one who stands to be affected by any contamination to the groundwater or surface water as a result of the increased discharges and works authorized by the amended permit.

The District called into question Mr. Brar's "interests" in these properties when it produced title searches for lots 17 and 18 which failed to identify Mr. Brar as having any registered "ownership interest" in either property. In order to address the conflicting evidence on this point, the Board provided Mr. Brar with an opportunity to tender proof of his alleged ownership interests.

In letters dated November 28 and December 5, 1997, Mr. Brar's solicitor, Randall L. McRoberts, advised the Board that he drafted a Contract of Purchase and Sale on behalf of Mr. Brar wherein Mr. Brar "purchased 100 percent ownership" of Lots 17 and 18. Mr. McRoberts further advised the Board he attended upon and witnessed

the signatures of the vendors and Mr. Brar, but that this transaction has not been registered in the Land Title Office. Mr. McRoberts also informs the Board that the vendors do not want to become involved in this matter and he wishes to honor their request.

Although a copy of the contract was not provided to the Board, the Board notes that Mr. McRoberts wrote to the Board as "an officer of the court" and his conduct is governed by the Canons of Legal Ethics which provide that a lawyer "should not attempt to deceive a court or tribunal by offering false evidence or misstating facts or law ..." (chapter 1(2)). Given his professional and legal obligations, the Board is prepared to accept Mr. McRoberts' letters as satisfactory evidence of Mr. Brar's ownership interests in the two lots for the purposes of this appeal.

Mr. Brar advised the Board that the most southern of his two lots, lot 18, is only 10 metres or so from the facility's property boundary, and approximately 100 metres from the rapid infiltration basins. He is concerned that expansion of the rapid infiltration beds and an increase in the volume of discharge, as authorized in the amended permit, will negatively affect the groundwater. He alleges that groundwater and existing wells have already shown contamination and that he can and will locate one or more wells, similar to the existing monitoring wells, on or near the property.

The District argues that the Appellant has not shown that he can "reasonably fear for the safety of his air, water soil or livelihood." It argues that, as the properties are serviced with municipal water and sewer services the properties would not be negatively affected by the treated effluent discharged to ground. However, the Board notes that availability of sewer and water only address some of the issues which arise out of a concern with groundwater and surface water contamination.

While the Board is not in a position at this time to fully assess the evidence and arguments on the effect of the amendments on the adjacent lands and whether there would be a negative impact, the Board finds that, given the proximity of Mr. Brar's lands to the waste treatment site, it is reasonable to believe that the subject decision *may* prejudicially affect Mr. Brar's rights or interests.

DECISION

The Board finds that Mr. Brar is a "person aggrieved" under section 44(1) of the *Act* and, therefore, has standing to appeal the amended permit. His appeal will therefore proceed.

Toby Vigod, Chair
Environmental Appeal Board

January 6, 1998