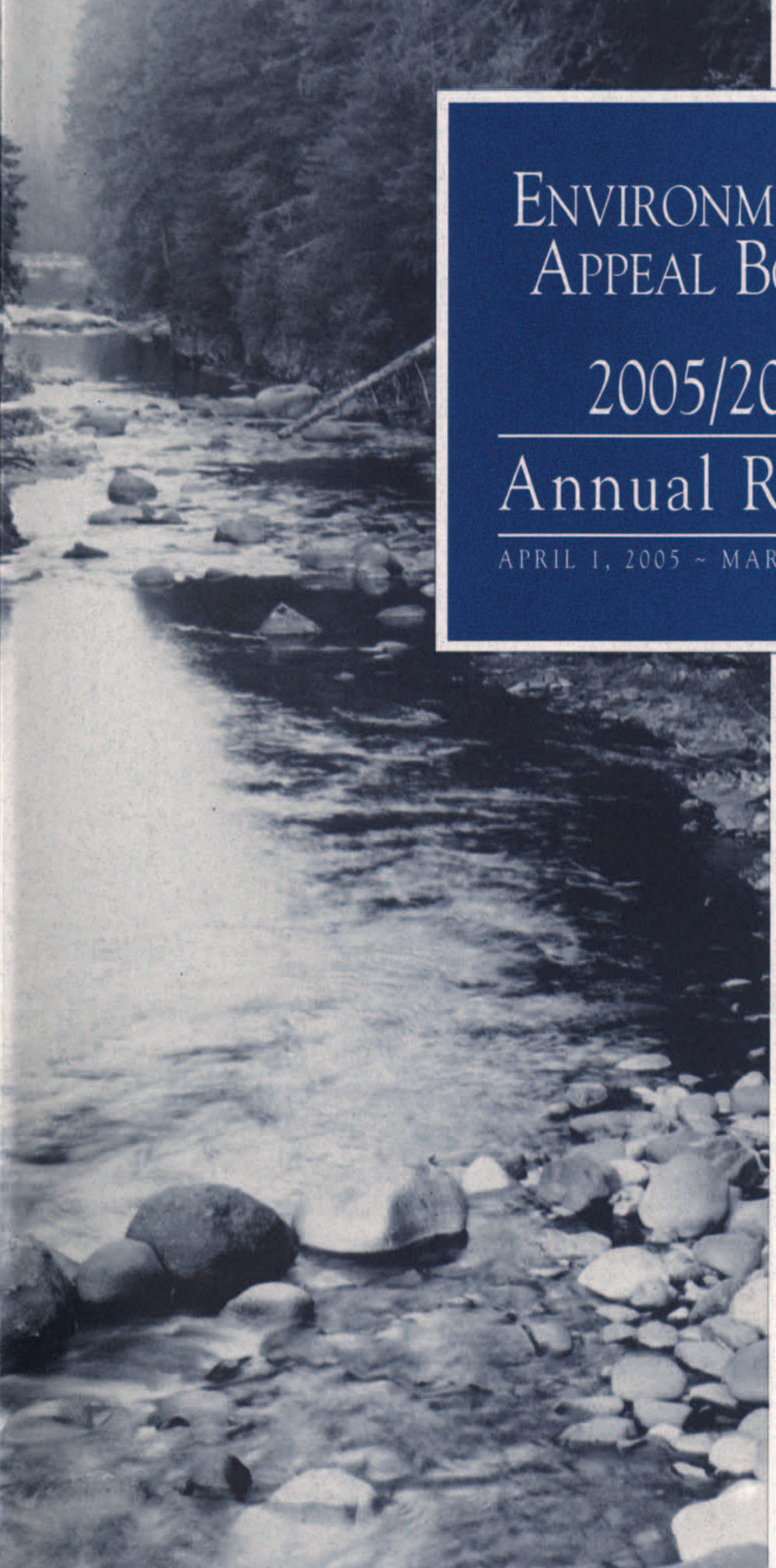

Environmental Appeal Board

2005/2006

Annual Report

APRIL 1, 2005 ~ MARCH 31, 2006

BRITISH COLUMBIA

Environmental Appeal Board

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Minister of Health
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Dear Ministers:

I respectfully submit herewith the Annual Report of the Environmental Appeal Board for the period April 1, 2005 through March 31, 2006.

Yours truly,

Alan Andison
Chair
Environmental Appeal Board

AR 05/06

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Message from the Chair

I am pleased to submit the fifteenth Annual Report of the Environmental Appeal Board.

Some significant changes to the legislation governing appeals to the Board came into force during the 2004/2005 report period. The Board has now had the opportunity to review those changes in more detail, and evaluate the impact of those legislative changes on the Board. The most significant impact has been experienced in the number of appeals filed.

The number of appeals filed with the Board decreased during the 2005/2006 report period. There were 67 appeals filed in this report period compared to 81 in the 2004/2005 report period. The most substantial change occurred in relation to appeals dealing with on-site sewage disposal systems filed under the *Health Act*. The number of appeals filed under that Act declined by approximately 70%. This decline is expected to continue as the only appealable decision under the new *Sewerage System Regulation* is from permits (or the refusal to issue a permit) for holding tanks.

The Board saw a slight increase in appeals filed under the *Water Act* and the *Wildlife Act* and a slight decrease in waste management appeals, which were previously filed in relation to decisions made under the *Waste Management Act*, and are now filed in relation to decisions made under the *Environmental Management Act*.

Unlike previous years, the membership of the Board did not change in 2005. The Board continues to have a stable roster of highly qualified individuals, including professional biologists, engineers, foresters, and lawyers with expertise in the areas of natural resources and administrative law, who are appointed as part-time members. I would like to take this opportunity to thank all of the members, as well as the Board's staff, for their hard work and dedication throughout the year.

The Board strives to ensure that its appeal process and policies are understandable and accessible to those who wish to access it. Looking forward, the Board seeks to further improve public access to its process by utilizing new technologies such as updating and improving our website and case management system, and implementing electronic filing of appeals.

Alan Andison

Introduction

The Environmental Appeal Board hears appeals from administrative decisions related to environmental issues. The information contained in this report covers the period of time between April 1, 2005 and March 31, 2006.

The report provides an overview of the structure and function of the Board and how the appeal process operates. It contains statistics on appeals filed, hearings held and decisions issued by the Board within the report period. It also contains the Board's recommendations for legislative changes to the statutes and regulations under which the Board has jurisdiction to hear appeals. Finally, a selection of summaries of the decisions issued by the Board during the report period are provided and sections of the relevant statutes and regulations are reproduced.

Decisions of the Environmental Appeal Board are available for viewing at the Board office, on the Board's website, and at the following libraries:

- Ministry of Environment Library
- University of British Columbia Law Library
- University of Victoria Law Library
- British Columbia Court House Library Society
- West Coast Environmental Law Library

Decisions are also available through the Quicklaw Data Base.

Detailed information on the Board's policies and procedures can be found in the Environmental Appeal Board Procedure Manual, which may be obtained from the Board office or viewed on the Board's website. If members of the public have questions, or would like additional copies of this report, please contact the Board office. The Board can be reached at:

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The Board

The Environmental Appeal Board is an independent, quasi-judicial tribunal established on January 1, 1982 under the *Environment Management Act*, and continued under section 93 of the *Environmental Management Act*. It hears appeals from administrative decisions made under a number of statutes. The statutes in force during the report period were the *Environmental Management Act*, the *Integrated Pest Management Act*, the *Wildlife Act* and the *Water Act*, all of which are administered by the Ministry of Environment, and the *Health Act*, administered by the Ministry of Health.

The Board makes decisions about the legal rights and responsibilities of the parties that appear before it and decides whether the decision under appeal was made in accordance with the law. Like a Court, the Board must decide its appeals by weighing the evidence before it, making findings of fact, interpreting the legislation and common law and applying the law and legislation to the facts.

In carrying out its functions, the Board has the powers granted to it under the above-mentioned statutes, as well as additional powers provided by the *Inquiry Act*, including the ability to compel persons or evidence to be brought before the Board. The Board also ensures that its processes comply with the common law principles of natural justice.

The Board is not subject to the provisions of the *Administrative Tribunals Act*.

Board Membership

Board members are appointed by the Lieutenant Governor in Council (Cabinet) under section 93(3) of the *Environmental Management Act* (formerly section 11(3) of the *Environment Management Act*). The members appointed to the Board are highly qualified individuals, including professional biologists, professional foresters, professional engineers and lawyers with expertise in the areas of natural resources and administrative law. These members apply their respective technical expertise and adjudication skills to hear and decide the appeals in a fair, impartial and efficient manner.

The members are drawn from across the Province. Board membership consists of a full-time chair, one or more part-time vice-chairs, and a number of part-time members.

The Board	Profession	From
Chair		
Alan Andison	Lawyer	Victoria
Vice-chair		
Cindy Derkaz	Lawyer (Retired)	Salmon Arm
Members		
Sean Brophy	Professional Engineer	North Vancouver
Robert Cameron	Professional Engineer	North Vancouver
Richard Cannings	Biologist	Naramata
Don Cummings	Professional Engineer	Penticton
Bruce Devitt	Professional Forester (Retired)	Victoria
Margaret Eriksson	Lawyer	New Westminster
Bob Gerath	Engineering Geologist	North Vancouver
R.A. (Al) Gorley	Professional Forester	Victoria
James Hackett	Professional Forester	Nanaimo
Lynne Huestis	Lawyer	North Vancouver
Katherine Lewis	Professional Forester	Prince George
Paul Love	Lawyer	Campbell River
David Ormerod	Professional Forester	Victoria
Gary Robinson	Resource Economist	Victoria
David Searle	Lawyer (Retired)	Vancouver
Lorraine Shore	Lawyer	Vancouver
David J. Thomas	Oceanographer	Victoria
Robert Wickett	Lawyer	Vancouver
Stephen V.H. Willett	Professional Forester (Retired)	Kamloops
Phillip Wong	Professional Engineer	Vancouver
J.A. (Alex) Wood	Professional Engineer	North Vancouver

The Board Office

The Board office provides registry services, legal advice, research support, systems support, financial and administrative services, training and communications support for the Board.

The Board shares its staff and its office space with the Forest Appeals Commission. The Chair of the Board is also the Chair of the Commission.

The Forest Appeals Commission hears appeals from forestry-related administrative decisions made under the *Forest Practices Code of British Columbia Act*, the *Forest Act*, the *Forest and Range Practices Act*, the *Private Managed Forest Land Act*, the *Range Act* and the *Wildfire Act*, in much the same way that the Board hears environmental appeals.

In 2004, the administration of two additional tribunals was transferred to the office: the Community Care and Assisted Living Appeal Board and the Hospital Appeal Board. The Community Care and Assisted Living Appeal Board hears appeals under the *Community Care and Assisted Living Act*, and the Hospital Appeal Board hears appeals from matters under the *Hospital Act*.

In March of 2006, discussions were underway to administer a new tribunal from the office, the Industry Training Appeal Board. The office took over responsibility for this tribunal after this report period, and that will be discussed further in next year's Annual Report.

Each of these tribunals operates completely independently of one another. Supporting four tribunals through one administrative office gives each tribunal greater access to resources while, at the same time, cutting down on administration and operation costs. In this way, expertise can be shared and work can be done more efficiently.

Policy on Freedom of Information and Protection of Privacy

The appeal process is public in nature. Hearings are open to the public, and information provided to the Board by one party must also be provided to all other parties to the appeal.

The Board is subject to the *Freedom of Information and Protection of Privacy Act* and the regulations under that Act. If a member of the public requests information regarding an appeal, that information may be disclosed, unless the information falls under one of the exceptions in the *Freedom of Information and Protection of Privacy Act*.

Parties to appeals should be aware that information supplied to the Board is subject to public scrutiny and review.

In addition, the names of the parties in an appeal appear in the Board's published decisions which are posted on the Board's website.

Legislative Amendments Affecting the Board

In this report period, there were very few legislative changes that affected or will affect the Board.

The new *Sewerage System Regulation*, which replaced the existing *Sewage Disposal Regulation*, came into effect on May 31, 2005. The impact of this new *Regulation* is that the Board will only hear appeals from the issuance, or refusal to issue, permits for holding tanks.

The ground water protection provisions set out in the *Ground Water Protection Regulation*, B.C. Reg. 299/2004 came into force on November 1, 2005. The appeal provisions in the *Water Act* had been previously expanded to include matters relating to ground water.

On March 30, 2006, an amendment to the *Environmental Management Act* came into force which expanded the type of decisions that could be appealed to the Board. As a result of the amendment to the definition of "decision" in section 99, the Board can also hear appeals from a refusal, cancellation or refusal to amend a permit, approval or operational certificate made under that *Act*.

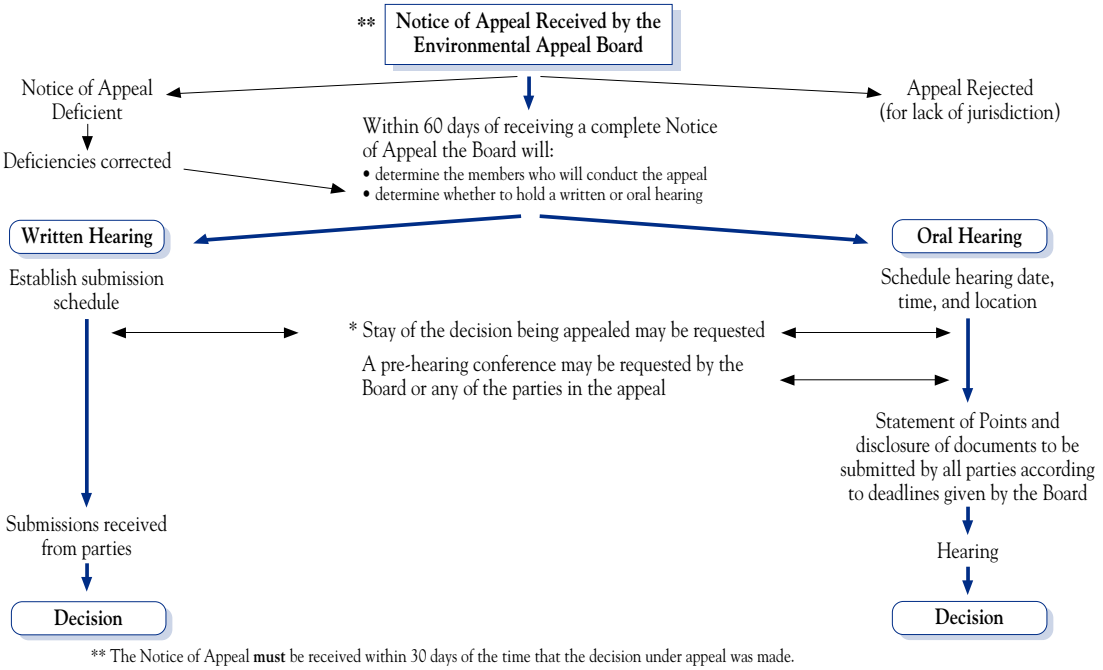
The Appeal Process

Part 8 of the *Environmental Management Act* sets out the basic powers and procedures of the Board. Additional detail is provided in the *Environmental Appeal Board Procedure Regulation*.

The Board's authority over a specific appeal is further defined in the individual statutes and regulations which provide the right of appeal to the Board. The individual statutes set out the types of decisions that are appealable to the Board, the time for appealing the decisions, as well as the Board's decision-making powers on the appeal.

In order to ensure that the appeal process is open and understandable to the public, the Board has developed the Environmental Appeal Board Procedure Manual. The manual contains information about the Board itself, the legislated procedures that the Board is required to follow, and the policies the Board has adopted to fill in the procedural gaps left by the legislation.

The following is a brief summary of the appeal process. For more detailed information, a copy of the Board's Procedure Manual can be obtained from the Environmental Appeal Board office, or from the Board's website.



** The Notice of Appeal **must** be received within 30 days of the time that the decision under appeal was made.

* The Board's authority to issue a stay varies from one statute to the next.

Recommendations

There were no issues that arose in 2005/2006 to warrant a recommendation at this time.

Statistics

The following tables provide information on the appeals filed with the Board, and decisions published by the Board, during the report period. The Board publishes all of its decisions on the merits of an appeal, and most of the important preliminary and post-hearing decisions. The Board also issues numerous unpublished decisions on a variety of preliminary matters that are not included in the statistics below.

Between April 1, 2005 and March 31, 2006, a total of 67 appeals were filed with the Board against 64 administrative decisions, and a total of 56 decisions were published.

April 1, 2005 – March 31, 2006

Total appeals filed		**67**
Number of administrative decisions appealed		**64**
Appeals abandoned, withdrawn, rejected, jurisdiction/standing		**53**
Hearings held on the merits of appeals		
Oral hearings completed	15	
Written hearings completed	14	
***Total hearings held on the merits of appeals**		**29**
Total oral hearing days		**19**
Published Decisions issued		
Final Decisions		
Appeals allowed	4	
Appeals allowed, allowed in part	14	
Appeals dismissed	24	
Total Final Decisions		**42**
Decisions on preliminary matters		**5**
Other Decisions		**4**
Decisions on Costs		
Costs denied	5	
Total Costs Decisions		**5**
Total published decisions issued		**56**

*Note: Most preliminary applications and post-hearing applications are conducted in writing. However, only the final hearings on the merits of the appeal have been included in this statistic.

▲

This table provides an overview of the total appeals filed, hearings held, and published decisions issued by the Board during the report period. It should be noted that the number of decisions issued and hearings held during the report period does not necessarily reflect the number of appeals filed for the same period, because the appeals filed in previous years may have been heard or decided during the report period.

It should also be noted that two or more appeals may be heard together.

Appeal Statistics by Act

	Environmental Management	Health	Integrated Pest Management	Pesticide Control	Waste Management	Water	Wildlife
Appeals filed during report period	9	5	1	1		22	29
Number of administrative decisions appealed	9	5	1	1		20	28
Appeals abandoned, withdrawn, rejected jurisdiction/standing	7	5	1	8	4	14	14
Hearings held on the merits of appeals							
Oral hearings	2	2				3	8
Written hearings	3				3	2	6
Total hearings held on the merits of appeals	**5**	**2**			**3**	**5**	**14**
Total oral hearing days	**3**	**2**				**5**	**9**
Published decisions issued							
Final decisions	2	3			2	8	27
Cost Award						3	2
Preliminary applications	2						3
Reconsideration							
Consent				1			3
Total published decisions issued	**4**	**3**		**1**	**2**	**11**	**35**

▲

This table provides a summary of the appeals filed, hearings held and published decisions issued by the Board during the report period, categorised according to the statute under which the appeal was brought.

Summaries of Environmental Appeal Board Decisions

April 1, 2005 ~ March 31, 2006

The Board issues hundreds of decisions each year, some that are published and others that are not published. A selection of published decisions has been summarized below. These decisions were issued by the Board between April 1, 2005 and March 31, 2006. They are organized according to the statute under which the appeal was filed. For a full viewing of all decisions and summaries issued during this report period please refer to the Board's web page.

The summaries that have been selected in this Annual Report reflect the variety of subject matters and issues that come before the Board. The subject matter and the issues can vary significantly in both technical and legal complexity. Appeals are not heard by the entire Board; the appeals are heard by a "panel" of the Board. The Chair of the Board will decide whether an appeal should be heard and decided by a panel of one, or by a panel of three members of the Board. The size and composition of the panel generally depends upon the type(s) of expertise needed by the Board members in order to understand the issues.

Under all of the statutes in which the Board is empowered to hear appeals, the Board has the power to confirm, vary or rescind the decision under appeal. In addition, under all of the statutes except the *Health Act*, the Board may also send the matter back to the original decision–maker with or without directions. When an Appellant is successful in convincing the panel that the decision under appeal was made in error, or that there is new information that will change the decision, the appeal is said to be "allowed". If the Appellant succeeds in obtaining some changes to the decision, but not all that he or she has asked for, the appeal is said to be "allowed in part". When an Appellant fails to establish on a balance of probabilities that the decision is incorrect on the facts or in law, and the Board upholds the original decision, the appeal is said to be "dismissed".

It is important to note that the Board encourages parties to resolve the subject of the appeal either on their own or with the assistance of the Board. Many appeals are resolved without the need for a hearing. Sometimes the parties will reach an agreement amongst themselves and the Appellant will simply withdraw the appeal. At other times, the parties will set out the changes to the decision under appeal in a "Consent Order" and ask the Board to approve the order. The Consent Order then becomes an order of the Board. The Board has included a description of a Consent Order in the summaries that follow.

Environmental Management Act

Air Emissions from a Manufacturing Facility in Abbotsford

2005-EMA-006(a) Western Canoeing & Kayaking Inc. v. Director, Environmental Management Act

Decision Date: December 19, 2005

Panel: David H. Searle, Q.C., Sean Brophy, Dr. Robert Cameron

Western Canoeing & Kayaking Inc. (the "Appellant") appealed a requirement contained in its air contaminant discharge permit that required the installation of two emission stacks at its canoe and kayak manufacturing facility. The Appellant manufactures and sells canoes, kayaks and rescue sleds (the latter for ski hills). Relatively few kayaks and rescue sleds are produced. Approximately 850 (11½-foot to 41½-foot) canoes are built each year. The Appellant has operated its businesses in its present location in Abbotsford, BC since 1989.

As a result of public complaints about odours and particulate emissions from the facility, it was determined that a permit was required under the *Environmental Management Act*. The Permit was issued to the Appellant in April of 2005, which gives the Appellant the authority to discharge air contaminants into the environment. Specifically, it authorizes the discharge of certain levels of styrene and particulate matter. The Permit also provided that, "The authorized works are a fan, filter, stack, and related appurtenances approximately located as shown on Site Plan A." There was no disagreement that particulate matter and styrene had been emitted from the facility. The subject of the appeal to the Board was the requirement in the permit to install emission stacks.

The Appellant raised three main arguments in its appeal.

First, the Appellant contended that styrene, the emission that was allegedly causing the odours, is not toxic. The Appellant submitted numerous documents to support that submission including statements from past employees as well as letters from businesses close to the Appellant's facilities. However, the Board gave little weight to those documents because the Appellant did not call any witnesses to support the documents, nor was the Director able to question any witnesses regarding the documents.

Second, the Appellant expressed concerns regarding the installation of stacks. One was that, by emitting styrene through stacks, people living in the condominiums near the facility might detect the odours and file complaints. The other was that the presence of stacks could indicate to the public that the business produces pollution. The Appellant also submitted that the odours were really produced by the other businesses close to the Appellant's facilities. No witnesses or facts were presented to support this last submission.

Third, the Appellant asserted that styrene did not fall under the definition of "air contaminant" in the Act, that there is no legal authority for either a permit or stacks, and that there are no Ministry regulations in respect of these emissions.

The Director stated that the concern was not one of toxicity but simply one of odour.

The Director submitted that the use of stacks would result in sufficiently low styrene concentrations so that no odour would be observed by nearby business operators and nearby residents. In support of these submissions, the Director called a meteorologist as a witness. She testified that stacks would address the odour problem.

The Director also submitted that, under current legislation, a permit is required for any

discharge from a "prescribed industry, trade or business" and that the Appellant's fibre glass boat manufacturing falls within those prescribed activities.

The Board found that, on the evidence presented, it could not find that the fibre glass boat manufacturing business was one "prescribed" in the *Regulation*. However, it noted that the *Act* provides that a person must not introduce "waste" into the environment in such a manner or quantity as to cause "pollution", unless the waste is authorized by a permit. The Board found that the styrene emissions caused material physical discomfort to a number of people, thus falling within the definition of "waste" under the *Act* (air contaminant). Further, its discharge into the environment did cause "pollution" as defined in the *Act*, because its air contaminants did "substantially alter or impair the usefulness of the environment." Accordingly, the Board held that a permit was required and there was legal authority for the Director to "require the permittee" to add works or to construct new works." Thus, the Director has the authority to require the stacks. Therefore, the Board found that there was legal authority for both the permit and the requirement for stacks.

On the evidence, the Board found that discharge through stacks would result in a very low possibility of noticeable odours being detected by neighbours of the Appellant's facility and that the stacks were a reasonable requirement.

The appeal was dismissed.

Discharges to Air and Land at Dry Land Log Sort on Haida Gwaii

2005-EMA-007(a) Rolf Bettner on behalf of Haida Gwaii Marine Resources Group Association v. Director, Environmental Management Act (Husby Forest Products Ltd., Third Party)

Decision Date: March 20, 2006

Panel: Alan Andison

Husby Forest Products Ltd. conducts logging operations on Graham Island, Queen Charlotte Islands (also known as Haida Gwaii), BC. As part of those operations, it operates a dry land log sort near the shore of Rennell Sound, on the west side of Graham Island, approximately 35 km by road from Queen Charlotte City. Logs are brought to the log sort after being harvested using a method known as "heli-logging," which involves cutting, topping, and limbing trees *in situ*, and then transporting them by helicopter to the log sort. Topped and limbed materials are left at the harvesting site in order to reduce the weight carried by the helicopter. However, approximately 0.5 percent of the unusable wood material such as bark, trimmed ends, and limbs, accumulates at the log sort.

Husby applied for a permit that would allow it to open burn combustible wood waste in a burn pile at the log sort. It also asked for a permit that would allow it to dispose of ash, soil, and noncombustible waste from the log sort in a former rock quarry, located a short distance inland from the log sort. Husby's application states that Rennell Sound is uninhabited, but the open burning may affect forest industry personnel and recreational users passing by the area.

The Permit was issued to Husby by the Director, *Environmental Management Act*. It authorized the burning of a maximum of 400 m^3/year

of wood residue, and the land filling of a maximum of 1000 m^3/year of ash and noncombustible yard scrapings in the rock quarry. The Permit contains a number of requirements pertaining to both the open burning and the land filling operations.

Rolf Bettner ("the Appellant"), on behalf of Haida Gwaii Marine Resource Group Association, appealed the issuance of a permit to Husby. The Appellant asked the Board to reverse the decision to issue the Permit or, alternatively, to send the matter back to the Director with certain directions. He argued that the open burning of the materials would release toxins, such as dioxins and furans, which would cause detrimental environmental impact. He also submitted that the Director failed to properly consider Ministry Policies and Canada's commitments under the Kyoto Accord and failed to obtain independent scientific research regarding the effects of wood waste burning. The Appellant further argued that the Director did not follow the precautionary principle and that Husby failed to meet its obligation as a Third Party to comply with his reasonable requests for document disclosure.

The Board determined that the legislature's approach to regulating wood waste burning may be characterized as one of managing and minimizing the potential risks, rather than broadly prohibiting the activity. This indicates that the legislature views wood waste burning as an activity that poses relatively low risks to human health and the environment, as long as it is properly managed.

The Board concluded that there was no legal basis to engage the precautionary principle in this case, and that the proposed open burning is at the low end of the spectrum in terms of potential risks to human health or the environment. In particular, the Board noted that the burning takes place in a remote location, where the only people who may be affected are occasional recreationists who could see the smoke plume, and that the burning involves a relatively small volume of wood waste which is burned over a few days each year.

The Board determined that the Appellant provided no evidence that the burning of wood waste under the Permit will produce dioxins or furans. The Board found that, although the Director may not have considered the potential risks associated with the emission of dioxins and furans, the Director relied on adequate information in all other respects.

The Board found that the Kyoto Accord had little relevance in this case, since the burning in question is not related to permanent deforestation, and is therefore considered greenhouse gas "neutral" under the Kyoto Accord.

The Board found that Husby was under no legal obligation to comply with the Appellant's request for document disclosure in the absence of a summons, and that its failure to disclose information did not prejudice the Appellant's ability to argue its case or respond to the Director's case.

The appeal was dismissed.

Health Act

Residential Septic System in Sooke

2005-HEA-002(a) and 2005-HEA-003(a)
Monique Bosse and Bruce Johanson v. Environmental Health Officer
Decision Date: May 24, 2005
Panel: Lynne Huestis

An Environmental Health Officer (the "EHO") issued a Permit to Paul and Martha Fisher allowing them to construct a sewage disposal system on their property in Sooke, BC. Monique Bosse and Bruce Johanson (the "Appellants") each own properties adjacent to the Fishers' property. They filed separate appeals against the Fishers' Permit,

asking the Board to rescind the EHO's decision to issue the permit.

The main argument in both appeals was that the permit should not have been issued because there was previously an access route to the Appellants' properties in the location of the absorption field, and that, under an easement, the Appellants are currently entitled to travel to their properties over the field location. The Board found that the only relevant section to this case was section 19(a) of Schedule 2 of the *Sewage Disposal Regulation*, which states that an absorption field cannot be located under a "roadway".

The Board confirmed the issuance of the sewage disposal permit. The Board found there was no historical roadway in the location of the field, nor was the location of the field the only viable route for a roadway to access the Appellants' properties. It accepted the argument that a corridor need not be paved to be a "roadway", and agreed that, to qualify as a "roadway" for the purposes of the *Sewage Disposal Regulation* it must be intended for vehicle traffic. Based on the evidence, the location of the sewage disposal system would not contravene section 19(a) of Schedule 2 of the *Regulation*.

The Appellants also argued that the location of the system is inconsistent with the "blanket easement" over the Fishers' property. The Appellants' argument was essentially that the easement gave them a right to a road, of some sort, to their respective properties. Ms. Bosse stated that she is "entitled to a free and uninterrupted right of way for vehicles, heavy equipment, RV's etc., to develop and enjoy my property" and Mr. Johanson stated that the proposed field will be exposed to vehicle and other traffic since "virtually all of Lot 3 is covered by a blanket right of way."

The Board noted that there are a number of outstanding legal issues around the proper interpretation of the easement, all of which are currently and appropriately before the courts. It stated that whether the easement legally precludes the type of development undertaken by the Fishers, and the relocation of historic access routes in the absence of the agreement of the Appellants, is a question of law properly left to the courts and that the Board does not have any jurisdiction to resolve these legal disputes.

The Board noted that its jurisdiction is limited to health issues and, in this case, the question of whether the Fishers' sewage disposal system complies with the applicable legislation. The Board found that, in this case, the sewage disposal system did not contravene section 19(a) of Schedule 2 of the Regulation. It also found that the Fishers honestly believed there were alternative routes for the Appellants to access their respective properties, and did not try to mislead the EHO by stating that there was no roadway in the area of the proposed system.

Both of the appeals were dismissed.

Pesticide Control Act and Integrated Pest Management Act

Pest Management Plan Adjusted by Consent Order

***2003-PES-002(a) Slocan Forest Products Ltd. v. Deputy Administrator, Pesticide Control Act, (Fort Nelson First Nation, Third Party)**

Decision Date: May 17, 2005

Panel: Alan Andison

Slocan Forest Products Ltd. ("Slocan") appealed the Deputy Administrator's approval of Slocan's 5-year Pest Management Plan for certain forest licences in the Fort Nelson Forest Region. Slocan had prepared the Plan and submitted it to the Deputy Administrator for approval. However, the approval that was issued contained two requirements that Slocan wanted changed. Specifically, Slocan wanted the treatment threshold set out in the Approval changed from 100 hectares within a 100 square kilometre planning polygon to a maximum of 300 hectares within a 100 square kilometre planning polygon. It also wanted the Landscape Unit Maximum for landscape unit 38 to be adjusted from 334 hectares to 1000 hectares for the entire 5-year term of the Plan.

After it filed its appeal, Slocan advised the Board that it was abandoning its first ground of appeal. It also advised that Slocan and the Deputy Administrator had resolved Slocan's second ground for appeal whereby the Deputy Administrator agreed to adjust the landscape unit maximum for landscape unit #38 from 334 hectares to 1000 hectares annually. These terms were set out in a Consent Order provided to the Board for its consideration and approval.

By consent of the parties, the Board ordered that the landscape unit maximum for landscape unit 38, as set out in Pest Management Plan No. 312-062-03/08 be adjusted from 334 hectares to a total of 1000 hectares annually, for the term of the Plan (May 1, 2003 to December 31, 2008).

* This case is an example of an appeal that has been resolved through negotiations between the parties without a hearing on the merits before the Board. By issuing a Consent Order the Board has given legal authority to the terms negotiated by the parties to the appeal.

The Board is supportive of parties entering into alternate dispute resolution processes and considers this to be an important component of the appeal process.

Waste Management Act

Legality of an Indemnity Clause

2004-WAS-001(a) and 2004-WAS-002(a) Petro-Canada v. Assistant Regional Waste Manager, Deputy Director of Waste Management

Decision Date: January 17, 2006

Panel: Alan Andison

Petro-Canada appealed a Conditional Certificate of Compliance (the "Conditional Certificate"), issued by the Regional Manager as well as a Certificate of Compliance (the "Certificate") issued by the Deputy Director of Waste Management. These certificates pertain to two different properties, owned by Petro-Canada, that have been remediated to address soil and groundwater contamination. One property is located in Golden, BC and the other is located in Sechelt, BC.

By agreement of the parties, one of the issues raised in the appeal was heard first. Specifically, the issue was whether the Regional Manager had the authority to insert an indemnity clause in favour of the Crown into the Conditional Certificate and the Certificate.

The Board considered whether the *Waste Management Act* and/or the *Contaminated Sites Regulation* provided any authority to include the indemnity clauses in the Conditional Certificate and the Certificate. It concluded that there was no express or implied authority allowing the Regional Manager to include the indemnity clauses in the Conditional Certificate and the Certificate. The Board also considered whether there may be implied authority based on the ancillary powers provisions in the *Interpretation Act* and concluded that there was no such authority.

For all of these reasons, the Board found that the Regional Manager did not have the authority under the *Act* or the *Regulation* to include the indemnity clauses in the Certificate and the Conditional Certificate.

The appeals were allowed on this issue.

Water Act

11 Million Gallons of Water per Year Allowed to be Diverted from Hotel Lake under Transferred Water Licences

2004-WAT-003(b) and 2004-WAT-004(b) Joanne McClusky and Terry and Joyce Milligan v. Assistant Regional Water Manager (Daniel Point Projects Ltd. and Sunshine Coast Regional District, Third Parties) (Ralph James and Peter J. Nelson, Participants)

Decision Date: August 9, 2005

Panel: Alan Andison, David H. Searle, Q.C., Robert Gerath

These appeals were filed on behalf of a large number of residents and recreational users of Hotel Lake, located near Pender Harbour, BC, who were concerned about the Regional Water Manager's decision to transfer two water licences to the Sunshine Coast Regional District. The water licences allowed the diversion of over 11 million gallons of water per year from Hotel Lake. These licences had been previously held by the Garden Bay Waterworks District, but the water rights had not been exercised since the 1980s. The Appellants were concerned that allowing the transfer of such a large volume of water, without first studying the impact on Hotel Lake, could have serious impacts on the quantity and quality of the water in Hotel Lake, as well as negative impacts on fish and fish habitat in the lake, and surrounding waters.

The Sunshine Coast Regional District wanted the additional water in order to meet the current demand of its residents, as well as to supply its future need as lands in the area are developed. Presently, the Regional District's existing demand was exceeding its existing water licence by approximately 1,500,000 gallons per year.

In transferring the two licences, the Regional Manager added a clause stating the licensees could not divert water from the lake when water levels in the lake fell below a minimum level established by an engineer under the *Water Act*. No minimum level had been established at the time of the appeal hearing.

Joanne McClusky and Terry and Joyce Mulligan appealed the transfers on behalf of the Area "A" Quality Water Association ("AAQWA"). They argued that (1) the Garden Bay licences should have been cancelled or suspended for lack of beneficial use since the rights under the licences had not been used for many years, (2) the transfers were defective because notice of the proposed transfers had not been given, and (3) the transfers would negatively impact the quantity and quality of water in Hotel Lake and have a correspondingly negative impact on fish and fish habitat in and around the area.

Regarding the first issue, the Board noted that the appeals were against the "transfers of appurtenancy" of the licences; therefore, the issue of beneficial use and cancellation of the Garden Bay licences was not relevant to the appeals and was, ultimately, beyond the jurisdiction of the Board in the appeals.

The Board also found that it was not necessary for the Comptroller or the Regional Manager to require notice of the requested transfers. If the lack of notice resulted in procedural unfairness, the hearing of the appeals would cure any errors.

The impact of the transfers on the quantity and quality of water in Hotel Lake and on fish and fish habitat received the most attention at the hearing. The Appellants argued that, if the transfers are allowed: there will be a substantial increase in actual water use; less water will be available, particularly during the summer and fall; the increase in actual water use will impact water quality; the increased actual use will increase the lake level drawdown, with attendant consequences; there will be decreased outflow from the lake which will affect fish and the downstream environment; and the increased use may impact groundwater users. In addition, they argued that clause (e) of the licences, which prohibits the diversion and use of the water at any time when the lake level falls below a minimum level established by an engineer, provides little or no actual protection.

There was no dispute that the transferred licences allow a large volume of water to be diverted from Hotel Lake. Although that same volume could have been diverted under the previous licences, the evidence was that it had not actually been diverted by the Garden Bay Waterworks District. The Board accepted the evidence that the Regional District only needed a small portion of the total licensed amount (1,500,000 gallons per year) in order to meet its current demand and that the witnesses for both the Appellants and Respondent agreed that further study of the lake was needed to establish a minimum lake level and to assess how much water can be licensed while properly managing the water resource.

The Board noted that section 19(1) of the *Water Act* provides some flexibility to the Regional Water Manager when considering a transfer – he or she may transfer all or part of a licences. In addition, the Board noted that management of the water resource is one of the purposes of the Act. In the circumstances, the Board was of the view that it was reasonable to transfer enough water to cover the current actual use, in addition to the foreseeable future needs while more study of the impact of the full transfer is assessed and minimum lake levels are established. Therefore, the Board sent the matters back to the Regional Manager with directions to limit the amount of water withdrawn from the lake until further studies were completed.

At the conclusion of the hearing, the Regional District made an application for an order requiring the Appellants to pay all or part of the Regional District's costs in connection with the appeals. The Board found that no special circumstances had arisen that would attract or result in an order of costs for any party.

The appeals were allowed in part, and the decisions were sent back to the Regional Manager to be amended according to the Board's directions.

The applications for costs were denied.

Application for a Water Licence Denied on the Basis of a Lack of Water

2005-WAT-013 (a) Randall (Randy) K. McRoberts v. Assistant Regional Water Manager (Zehnder Farms Ltd.; NathanLee Forest and Farms Inc., Third Parties)

Decision Date: December 14, 2005

Panel: J. Alex Wood

Randall McRoberts appealed a decision by the Regional Manager refusing Mr. McRoberts' application for a water licence on Salter Creek. The application was refused on the grounds that the flow in Salter Creek was fully recorded under existing water licences, and there was insufficient water in the creek to grant a new licence.

Mr. McRoberts sought an order reversing the decision on the grounds that the amount of water requested was very small and would not adversely affect the other licensed water users on Salter Creek. Mr. McRoberts requested a licence allowing the use of 1000 Imperial gallons per day (Igpd) for domestic purposes and 1000 Igpd for lawn irrigation. Alternatively, if a licence was not issued, Mr. McRoberts requested that the licence application fee of $250 be returned to him.

Mr. McRoberts' water licence application was for his lot, located downstream of the Zehnder Farms and upstream of NathanLee Forest and Farm's ("NathanLee") lots. Zehnder Farms and NathanLee have water licences, the first for irrigation purposes and the second for power (residential) purposes for one dwelling unit. Neither Zehnder Farms nor NathanLee had began to make beneficial use of the water at the time of the hearing, because authorized "works", described in their water licences, had not been completed.

The Regional Manager submitted that Mr. McRoberts' licence could not be granted because Salter Creek was fully recorded (meaning that the amount of water use authorized under licences for the stream had reached the stream's full capacity for licensed use), and, thus, the requested licence would exceed the total flow available for most of the year.

The Regional Manager noted that the Zehnder Farms and NathanLee licences were granted in 1999, before Mr. McRoberts' application. If a licence were granted to Mr. McRoberts and Zehnder Farms began to use its licence, Mr. McRoberts would have to allow the total flow to pass his proposed point of diversion to satisfy NathanLee's priority licence downstream. The Regional Manager stated Mr. McRoberts was refused the licence because granting it would adversely affect Zehnder Farms' or NathanLee's rights under their licences.

NathanLee's two concerns were that when Zehnder Farms utilizes its licensed flow for irrigation, the water available for NathanLee's power generation will be substantially reduced. Furthermore, NathanLee stated that when this occurs, the Salter Creek flow will be insufficient to supply someone else with water.

The Board first found that, in light of Salter Creek being fully recorded, there was no clear justification to issue a licence for 1000 Igpd for residential lawn irrigation, as this type of water use is ranked lower than other uses under section 15(2) of the *Water Act*.

However, the Board determined that Mr. McRoberts' licence for 1000 Igpd for domestic purposes, as defined in section 1 of the *Water Act*, would not impact the upstream licence holder (Zehnder Farms).

The Board also found that, although the Zehnder Farms' licence was not yet being used, once Zehnder Farms commenced using it, the remaining flow of the creek would likely be too low to operate NathanLee's turbine, regardless of whether

Mr. McRoberts' licence was granted. However, when the stream has sufficient flow to generate power, the impact of Mr. McRoberts' use under his licence would be very small or relatively insignificant.

Thus, the Board reversed the Regional Manager's decision and ordered him to issue a conditional water licence to Mr. McRoberts for domestic purposes, but not for lawn irrigation.

As for Mr. McRoberts' request for a refund of his application fee, the Board found that there is no provision in the legislation that would allow the Board to waive or modify the fees for any individual making a water licence application.

The appeal was allowed, in part.

A Change in and about a Stream – Adding Fill without Authority

2005-WAT-027(a) Kenneth and Suzan Basso v. Regional Water Manager

Decision Date: December 29, 2005

Panel: Don Cummings

Kenneth Basso and Suzan Basso appealed an order of the Regional Manager directing them to remove the fill they had deposited on the foreshore of Red Lake fronting their property. Red Lake is located approximately 50 km. northwest of Kamloops, BC.

The Appellants raised two grounds for the appeal. One was that there had been a number of placements similar to the fill on the property without previous complaints. The Board found the question of other contraventions beyond the purview of this appeal, as its authority is limited to that set out under section 92(8) of the *Water Act* –namely to consider the Order under appeal.

Their second ground for appeal was that the fill was not placed below the high watermark, as the lake level had artificially been raised due to a dam that was constructed by Ducks Unlimited several years prior to the placement of the fill. The Board had to decide where the natural boundary between the lake and the property was, whether the placement of fill, if within this lake's boundary, constituted "a change in and about a stream", and whether the fill placement constituted "works" within the meaning of the *Water Act*.

The Board found that lakes and rivers fluctuate as a result of human and natural factors. The Board concluded that natural boundaries are a question of fact to be determined in each case, and that natural boundaries are ambulatory in nature and not fixed by surveys. On the evidence before the Board, it found that the edge of an area of bullrushes between the Appellants' property and Red Lake defined the "natural boundary" of the lake property, as defined in the *Water Act*.

The Board further found that some of the fill material was placed on and below this boundary, constituting an unauthorized change in and about a stream, which is an offence under the *Water Act*.

Finally, the Board found the discontinuity created by the gravel placement is an obstruction in the stream, and thus concluded that the fill constituted "works" as defined under the *Water Act*.

Therefore, the Board found that it was reasonable for the Regional Manager to order removal of the fill and restoration of the foreshore. The Regional Manager's order was confirmed.

The appeal was dismissed.

Wildlife Act

Guide Outfitters Challenge Grizzly Bear Quotas across the Province

2004-WIL-001(a); 2004-WIL-002(a); 2004-WIL-003(a); 2004-WIL-004(a); 2004-WIL-005(a); 2004-WIL-007(a); 2004-WIL-008(a); 2004-WIL-009(a); 2004-WIL-012(a); 2004-WIL-014(a); 2004-WIL-015(a); 2004-WIL-019(a); 2004-WIL-024(a); 2004-WIL-029(a); 2004-WIL-031(a) Dawson Deveny, Ray Jackson, Armand Didier, Dale Drinkall, Darwin Cary, Mike Hammett, Neil Caldwell, Guy Anttila, Dave Wiens, Gary Blackwell, Gene Allen, Keith Connors, Philip Des Mazes, John Blackwell & Randy Bedell vs. Regional Managers, Environmental Stewardship Division

Decision Date: July 8, 2005

Panel: Alan Andison

Guide Outfitters are licensed to guide non-resident hunters on hunting expeditions in British Columbia. Non-resident hunters are otherwise prohibited from hunting in the Province. In order to carry out this business activity, guide outfitters require an annual quota of animals that they can harvest within their guide outfitter territory. This allows them to sell hunting opportunities to non-resident hunters.

The 15 Appellants filed separate appeals of decisions of various Regional Managers. The decisions under appeal set out the grizzly bear quotas and allocations for the individual Appellants, who are all guide outfitters operating in British Columbia. The quotas and allocations limited the number of grizzly bears that may be harvested by guided hunters within the Appellants' territories between April 1, 2004 and March 31, 2007.

All of the Appellants requested an increase in their annual quotas and 3-year allocations. Their grounds for appeal included:

- The Regional Manager, in making his decision to reduce the Appellants' allocation, allowed his discretion to be fettered;
- The Regional Manager was guided by a document that was not approved for use by any person in authority;
- The Regional Manager failed to exercise a fair procedure that was unbiased and failed to allow the Appellants to be heard before the decision about allocation was made;
- The Regional Manager did not provide adequate and appropriate reasons and did not provide the calculations used to reach the allocation decision;
- The Regional Manager failed to take into account relevant factors;
- The Regional Manager, in making his decision to reduce the Appellants' allocations, was guided by mistake of fact in a regional grizzly bear harvest management spreadsheet that was flawed;
- The Regional Manager made his decision under a mistake of fact regarding the status of grizzly bear populations in the Appellants' guide outfitter territories, and failed to avail himself of knowledge and facts that would have been useful to determine the state of grizzly bear populations; and
- The Regional Manager acted unfairly when he considered the harvest results of other user groups when determining the grizzly bear allocation that should be assigned to the Appellants.

Several of the Appellants provided additional grounds for their appeals.

The Board found that the Ministry's procedures for estimating grizzly populations were based on good science, and that the Ministry had properly followed the recommendation of an independent panel of bear experts in setting and calculating population estimates. The Board was satisfied that the Ministry had considered and addressed each of the Appellants' concerns when setting grizzly bear allocations. The Board also found that considerable consultation occurred at the regional level when the Ministry developed the most recent version of the grizzly bear population unit ("GBPU") boundaries. Under the circumstances, the Board was satisfied that the boundaries for the GBPUs were appropriate and based on valid information. In addition, the Board found that the method used in the Omineca and Kootenay Region, of employing a utilization rate in the determination of allocations and quotas, represented a fair and equitable approach. The Board noted that the harvest management strategy does divide the overall allowable annual hunt between resident and non-resident hunters, but that it is reasonable to balance the overall use of a GBPU to sustain bear populations.

The Board was satisfied that the discretionary powers of the Regional Managers were not fettered, and there was no evidence that any of the Regional Managers failed to perform their statutory duties. The Board accepted that the Grizzly Bear Harvest Management Procedure was properly signed off on December 16, 2003, and was, therefore, approved policy for the guidance of regional staff. The Board also found that the allocation decision is a matter that falls within the Board's jurisdiction.

In regard to the reasonableness of the grizzly bear allocations and quotas in the circumstances for each individual Appellant. The Board upheld the decision of the Regional Managers and dismissed the request for an increased quota and allocation in seven of the appeals. Those appeals were dismissed. The Board allowed a partial increase in quota and/or allocation in the other eight appeals. Those appeals were allowed in part.

Suspension of a Hunting Licence

2004-WIL-047(a) Jan Sorge v. Deputy Director of Wildlife

Decision Date: June 30, 2005

Panel: Cindy Derkaz

Mr. Sorge is an experienced hunter who began hunting when he was a child. The incident that led to his licence suspension occurred in 2002 during a hunt for grizzly bear. Grizzly bear hunting by residents of BC is regulated by limited entry hunting authorizations, the provincial lottery system for the allocation of hunting opportunities among residents. Mr. Sorge was drawn for a limited entry hunting authorization to hunt a grizzly bear in management unit ("MU") 6-18 between April 15 and June 15, 2002. MU 6-18 is located to the south of the southeast corner of Spatsizi Plateau Wilderness Park, in northwestern British Columbia, and is very isolated.

Mr. Sorge tracked and killed a grizzly bear during this hunting trip. Afterwards, he attended the Conservation Service office in Terrace and completed a form providing particulars of the hunt, including the location where he claimed the bear had been killed in MU 6-18, and left the bear.

In the meantime, the Conservation Service Office had received information that Mr. Sorge had killed a grizzly bear in an adjacent MU where there was no open season for grizzly bear at that time. When questioned about the location

of the kill, Mr. Sorge repeatedly stated that, as far as he knew, the bear was killed in MU 6-18. However, in fact, the location of the kill was approximately 1100 metres from the boundary of MU 6-18. When confronted with this evidence, he admitted that he must have been "short" of his boundary.

Mr. Sorge was charged with three counts under the *Wildlife Act* but plead guilty to one. The Court fined him $3,000 to be paid to the Grizzly Bear Conservation Fund and the grizzly hide and skull were forfeited to the Crown.

In 2004, the Deputy Director decided to suspend Mr. Sorge's hunting privileges for two years. While the Deputy Director accepted that Mr. Sorge did not intentionally shoot the bear outside of his zone, he was concerned that, when questioned by the Conservation Officer, Mr. Sorge was evasive and lied to the Conservation Officer. He also stated that Mr. Sorge demonstrated poor hunting ethics.

Mr. Sorge appealed this decision to the Board on the grounds that it was a case of unclear boundaries and that, at the time that he shot the bear, he believed that he was within his boundary. Mr. Sorge stated that he did not lie about where the bear was shot and did not evade the Conservation Officer. He points out that he did not attempt to hide the carcass. He attended the Conservation Service office voluntarily to report the kill and again on two separate occasions to provide statements to assist in the investigation. Mr. Sorge argued that the Deputy Director's decision would directly affect his business, and he sought to have his hunting privileges reinstated.

The Board considered the suspension to be reasonable and appropriate. Comparing what Mr. Sorge told the Board at the hearing with the statements he provided to the Conservation Officer, the Board found significant discrepancies. The Board concluded that, when Mr. Sorge shot the grizzly bear, he knew that he may be outside the boundary and was either reckless or negligent when he failed to accurately determine the location of the boundary before shooting the bear. The Board was not satisfied that the suspension of Mr. Sorge's hunting licence would have any negative effect on his business. The Board found the two-year suspension imposed by the Deputy Director to be conservative compared to other licensing decisions, and considered sending the matter back to the Deputy Director with directions to reconsider the length of the suspension. However, because this was the first time Mr. Sorge had been convicted in many years of hunting for big game, and he was already subject to a large fine imposed by the Court, the Board decided to uphold the two-year suspension.

The appeal was dismissed.

Application for a Permit to Possess a Cougar Hide

2005-WIL-007(a) Ken Olynyk v. Regional Manager

Decision Date: September 8, 2005

Panel: Cindy Derkaz

Mr. Olynyk killed a cougar after it had killed his family's pet dog. In order to keep the hide, he required a permit. The Regional Manager refused to issue Mr. Olynyk a permit to possess the cougar hide, and Mr. Olynyk appealed this decision to the Board. After the Regional Manager issued his decision, but before the hearing of his appeal, Mr. Olynyk purchased the hide at a Government auction for $150.

The Regional Manager had refused the permit on the basis that the average value of cougar hides at auction exceeded $200, and, therefore, he was precluded from issuing a permit by virtue of section 6(1)(d) of the *Wildlife Permit Regulation*. Section 6(2) of the *Regulation* requires the Regional Manager to determine the value of the hide based

on the average price the Government received at auction for parts of similar species over the past three years. The Regional Manager did not explain, in his decision, how he had determined the average value of the hide. However, the Board found that Mr. Olynyk bore the onus of establishing that value, and that he had not done so. Although Mr. Olynyk purchased the hide for $150, the Board found that there was no evidence that the amount reflected the average value of a cougar hide at the time of Mr. Olynyk's application to possess the hide. Rather, the Board found that the purchase amount was only evidence of one sale made after the Regional Manager's decision.

Even if the value of the hide was determined to be less than $200, section 6(1)(b) of the *Regulation* prohibits the Regional Manager from issuing a permit if the wildlife was killed for the protection of life or property unless "special circumstances" existed in the case. Mr. Olynyk submitted that his family should be given the hide for the loss of their pet. However, the Board found that there was not sufficient evidence before it to conclude that there were special circumstances in this case.

The appeal was dismissed.

Administrative Irregularities Considered in a Hunting Licence Cancellation

2005-WIL-012(a) Douglas Dale Neal v. Deputy Director of Wildlife

Decision Date: October 6, 2005

Panel: Robert Wickett

Douglas Neal appealed the decision of the Deputy Director to cancel Mr. Neal's hunting licence and to declare him ineligible to obtain a hunting licence for seven years. Mr. Neal sought to have the period of ineligibility reduced.

In 2001, Mr. Neal was convicted in Provincial Court of ten violations of the *Wildlife Act* and one violation of the *Waste Management Act*. He was also convicted of an offence under the *Firearm Act*. As a consequence of this latter conviction, Mr. Neal was given a ten-year firearms ban commencing on February 9, 2001.

Mr. Neal submitted that the Deputy Director made an error of fact in his written decision by making reference to an offence that was committed by his hunting partner but not by him, and that the period of ineligibility would have been shorter had that particular offence not been taken into account. The Deputy Director submitted that the reference to that offence was a clerical mistake and that he did not, in fact, consider it in arriving at the conclusion that a seven-year period of ineligibility is appropriate.

The Board found that a seven-year ineligibility period was appropriate, and that Mr. Neal's convictions exhibit complete disregard for wildlife. The Board noted that the Court found Mr. Neal to be an "incorrigible poacher", and that a lifetime hunting ban was recommended by the Court. However, the Board found that the seven-year period is within range of other periods of ineligibility imposed in similar circumstances.

Mr. Neal also submitted that a more than four-year delay by the Deputy Director in rendering his decision is excessive and ought to result in a reduction in the period of ineligibility. He further submitted that although evidence of prejudice is usually required, the law establishes that, at some point, the mere fact of delay creates prejudice and ought to result in a remedy.

The Deputy Director had no explanation for the first year of delay. However, he submitted that the latter three years of delay was due to a change in government at the provincial level. Such change, the Deputy Director asserted, resulted in staff reduction at the Wildlife Branch, which led to staff placing less priority on disciplinary decisions

with respect to hunters and fishers.

The Deputy Director testified that he did not consider the delay in making his decision because there was no compelling reason for him to do so.

The Board concluded that the delay, although inordinate, was explained by the circumstances arising out of a change in government, and because there was no evidence of prejudice to Mr. Neal arising out of that delay, he was not entitled to a remedy.

The Deputy Director advised that it was his intention to impose a cumulative seven-year hunting ban upon Mr. Neal. Since Mr. Neal has been subject to a firearm ban since 2001, in effect he has been banned from hunting from 2001 through 2012, an eleven-year ban. The Board agreed with the Deputy Director's submission that the period of ineligibility ought to be reduced so as to expire on the same day as the firearms ban, being February 8, 2011.

The appeal was allowed, in part.

Transporter Licences in Conflict with Guide Outfitter Licences

2005-WIL-020(b) and 2005-WIL-026(b) David Wiens v. Regional Manager, Fish and Wildlife (Clifford Andrews, Jeff Browne, Third Parties; British Columbia Wildlife Federation, Participant)

Decision Date: March 9, 2006

Panel: Alan Andison

A transporter licence allows a transporter or packer to transport resident hunters into areas within their transporter territories to carry out hunting activities. It does not allow the transporter to guide or assist hunters in finding and harvesting animals. Transporter territories overlap the territories of guide outfitters who guide non-resident hunters to find and harvest animals within their guide outfitter territories. Accordingly, the hunters that have been transported by the transporter may be in direct competition for available animals in the same areas that non-resident hunters are being guided by a guide outfitter.

David Wiens, a guide outfitter, appealed two separate transporter licences issued by the Regional Manager to Clifford Andrews and Jeff Browne. The areas covered by the licences overlap with Mr. Wiens' guide outfitting territory. Mr. Wiens requested that the Board amend the licences so that the transporter territories of Mr. Browne and Mr. Andrews be reduced to their areas of traditional use as reflected by their respective range use permits. Mr. Andrews and Mr. Browne applied for an order that Mr. Wiens pay their appeal costs.

The issues to be determined were whether Mr. Andrews and Mr. Browne have been licensed to operate in areas where they did not historically operate; whether the Regional Manager erred by failing to give Mr. Wiens an opportunity to be heard prior to issuing the transporter licences, and by failing to require Mr. Andrews and Mr. Browne to consult with Mr. Wiens; and whether the Regional Manager failed to consider Mr. Wiens' submissions and rights as a guide outfitter as well as to provide Mr. Wiens with written reasons for his decisions. The Board also considered the applications for costs.

The Board found that Mr. Browne and Mr. Andrews had operated as transporters for approximately 18 and 30 years, respectively, in the areas covered by their licences. Consequently, the Board found that Mr. Browne and Mr. Andrews have been licensed to operate in areas where they historically operated.

The Board also found that the Regional Manager gave Mr. Wiens several opportunities to make submissions before the licences were issued, and that he properly considered Mr. Wiens' submissions and his rights as a guide outfitter before

issuing the transporter licences. The Board concluded that the Regional Manager gave Mr. Wiens' interests primary consideration while attempting to balance the valid interests of Mr. Browne and Mr. Andrews as transporters.

In regards to the effect of the licences on wildlife, the Board found that Mr. Andrews and Mr. Browne have operated in these areas for many years, and that there is no evidence that their operations have had an adverse effect on wildlife.

Regarding the requirement for Mr. Andrews and Mr. Browne to discuss the licences with Mr. Wiens, the Board found that the relevant policies in the Ministry's Procedure Manual are not legally binding.

The Board noted that there was a conflict between section 5.03(1)(a)(iv) of the *Wildlife Act Commercial Activities Regulation* and section 15 of the *Wildlife Act* regarding the form and manner of transporter licence applications. However, the Board found that, based on the principles of statutory interpretation, section 15(1) of the *Wildlife Act* prevails. This meant that it was the Regional Manager who must ultimately determine the proper manner and form of the transporter licence applications submitted by Mr. Andrews and Mr. Browne, as is provided by the *Wildlife Act*. The Board found that the Regional Manager complied with this requirement.

The appeals were dismissed.

The applications for costs were denied.

Summaries of Court Decisions Related to the Board

† *Houweling Nurseries Ltd. v. District Director of the GVRD et al.*

Decision Date: June 15, 2005
Court: Gerow, J.
Cite: 2005 BCSC 894

Houweling Nurseries Limited applied to the BC Supreme Court to set aside the Board's decision in *Houweling Nurseries Limited v. District Director of the Greater Vancouver Regional District (Roger Emsley, Third Party)*, Decision No. 2003-WAS-004(a), dated April 26, 2004 (hereinafter *Houweling Nurseries Limited*), and for an order directing the Board to hear Houweling's appeal. In the alternative, Houweling sought a declaration that the District Director lacked jurisdiction to regulate wood fired heaters and a declaration that Houweling did not require a permit to operate its heaters.

Houweling used wood fired heaters to provide heat for its greenhouses. The Greater Vancouver Regional District had issued permits to Houweling since 1985 under the *Waste Management Act* (the "*Act*"). Houweling applied to the District Director of the Greater Vancouver Regional District to amend its permit. The District Director refused to amend the permit. Houweling appealed to the Board.

In *Houweling Nurseries Limited*, the Board found that, pursuant to section 43(d) of the *Act*, it did not have jurisdiction to hear Houweling's appeal from the District Director's refusal to amend its permit. That section only provided for an appeal from "the issue, amendment, renewal, suspension, refusal or cancellation of a permit, approval or operational certificate"; it did not contemplate an appeal from a refusal to amend a permit or a refusal of an amended permit. Houweling argued in the BC Supreme Court that the Board erred in this finding.

The Court agreed. It found that the Board erred when it concluded that it did not have jurisdiction to hear the appeal. Based on the words of section 43(d) of the *Act*, the *Act* as a whole and the legislative purpose, the Court found that the phrase "refusal of a permit" included refusal of an amended permit. The Court found that the Legislature did not intend to distinguish between an issued permit and an amended permit, and that there is no policy reason to distinguish between a refusal of a permit and refusal of an amended permit for the purposes of determining whether there is a right of appeal to the Board. The Court also noted that the Board had the requisite expertise and is in a better position than the Court to determine the merits of the appeal.

† The GVRD subsequently appealed the decision of the BC Supreme Court to the BC Court of Appeal. After having done so, the legislature changed the legislation to provide that the refusal to amend a permit was an appealable decision. As a result, the GVRD withdrew its appeal to the Court of Appeal. The Board is scheduled to continue the hearing in March 2007, as directed by the BC Supreme Court.

The matter was remitted back to the Board for a decision on the merits of the appeal.

‡ *Granby Wilderness Society v. Environmental Appeal Board and Ministry of Forests*

Decision Date: July 7, 2005
Court: Slade, J.
Cite: 2005 BCSC 1031

The Granby Wilderness Society applied to the BC Supreme Court for a judicial review of the Board's decision in *Nadine Dechiron on behalf of the Granby Wilderness Society and the Boundary Naturalists v. Deputy Administrator, Pesticide Control Act (Ministry of Forests, Third Party)*, Decision No. 2003-PES-003(a), dated June 1, 2004. The Society argued that the Board erred in law in its interpretation of the statutory requirements guiding the Administrator's determination that the pesticide application authorized by the Pesticide Management Plan (the "Plan"), at issue in the case, would not cause an unreasonable adverse effect. The *Pesticide Control Act* provided that a Plan could be approved if the Administrator was satisfied that the pesticide application authorized by the Plan would not cause any unreasonable adverse effect.

The appeal to the Board had been against the Plan, which had been approved by the Administrator. The Society had argued to the Board that the Plan should not have been approved because the considerations and process mandated by the Plan to guide the plan holder (the Ministry of Forests) in deciding whether to apply pesticides, did not permit a determination that there would be no unreasonable adverse effect on the environment. The Board rejected this argument. Although the Board ordered a variation of the Plan, it did not reverse the Administrator's approval of the Plan. The Board found that the *Pesticide Control Act* did not require an administrator to examine whether the decision-making process set out in a Plan would cause an unreasonable environmental effect. The Board held that on an appeal under the *Pesticide Control Act* of a pest management plan, consideration should be given to whether the pesticide application authorized by the plan, not the decision-making process set out in the plan, will cause an unreasonable adverse effect. The Board also found that the decision-making process set out in a Plan must meet certain statutory requirements that were separate from the unreasonable adverse effect test set out in the *Pesticide Control Act*. The Board also made findings about the mandatory content of pest management plans, and whether the particular plan in this case met all statutory requirements. The Board found that the Plan should be varied to include conditions limiting the application of pesticides in areas containing important forage for grizzly bears.

The Court concluded that the Board had erred in law in its interpretation. It concluded that pest management plans set out a decision-making process by which the plan holder may decide to apply a pesticide to a particular area within the plan area. In addition, the *Act* requires that the Administrator must be satisfied that all considerations relevant to a determination that the application of pesticides will not cause an unreasonable adverse effect are considered within the process set out in the plan. Therefore, in deciding whether to approve a plan, the Administrator must consider whether the plan: (1) sets out all matters to be considered by the plan holder when deciding whether to use a pesticide, such that the Administrator can be reasonably assured that the pesticide use will not cause an unreasonable adverse effect; (2) limits the plan holder's discretion to an extent, such that the Administrator may reasonably be satisfied that a pesticide use under the

‡ Following the issuance of the BC Supreme Court's decision, both parties to the appeal advised the Board that they would not be seeking a reconsideration of the matter as directed by the Court. Accordingly, the Board closed its file on the matter.

plan will not cause an unreasonable adverse effect; and (3) includes a mechanism for notifying the Administrator in advance of an intended pesticide use, so that the Administrator's power under the *Act* to determine whether a particular pesticide use will cause an unreasonable adverse effect is not delegated to the plan holder.

Summaries of Cabinet Decisions Related to the Board

There were no orders by Cabinet during this report period concerning decisions by the Board.

APPENDIX I

Legislation and Regulations

Reproduced below are relevant provisions from each of the statutes governing the Board, and the appeals to the Board, that were in force during the report period.

The legislation contained in this report is the legislation in effect at the end of the reporting period (March 31, 2006). Please note that subsequent to the publication of this Annual Report, the legislation may have been amended. An updated version of the legislation may be obtained from Crown Publications.

Environmental Management Act, SBC 2003, c. 53

Part 8

APPEALS

Division 1 – Environmental Appeal Board

Environmental Appeal Board

93 (1) The Environmental Appeal Board is continued to hear appeals that under the provisions of any enactment are to be heard by the appeal board.

(2) In relation to an appeal under another enactment, the appeal board has the powers given to it by that other enactment.

(3) The appeal board consists of the following individuals appointed by the Lieutenant Governor in Council after a merit based process:

(a) a member designated as the chair;

(b) one or more members designated as vice chairs after consultation with the chair;

(c) other members appointed after consultation with the chair.

(4) The *Administrative Tribunals Appointment and Administration Act* applies to the appeal board.

(5 and 6) Repealed 2003-47-24.]

(7) The chair may organize the appeal board into panels, each comprised of one or more members.

(8) The members of the appeal board may sit

(a) as the appeal board, or

(b) as a panel of the appeal board.

(9) If members sit as a panel of the appeal board,

(a) 2 or more panels may sit at the same time,

(b) the panel has all the jurisdiction of and may exercise and perform the powers and duties of the appeal board, and

(c) an order, decision or action of the panel is an order, decision or action of the appeal board.

(10) The Lieutenant Governor in Council, by regulation, may establish the quorum of the appeal board or a panel.

(11) The appeal board, a panel and each member have all the powers, protection and privileges of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*.

Parties and witnesses

94 (1) In an appeal, the appeal board or panel

(a) may hear the evidence of any person, including a person the appeal board or a panel invites to appear before it, and

(b) on request of

(i) the person,

(ii) a member of the body, or

(iii) a representative of the person or body,

whose decision is the subject of the appeal or review, must give that person or body full party status.

(2) A person or body, including the appellant, that has full party status in an appeal may

(a) be represented by counsel,

(b) present evidence,

(c) if there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(3) A person who gives oral evidence may be questioned by the appeal board, a panel or the parties to the appeal.

Costs and security for costs

95 (1) The appeal board may require the appellant to deposit with it an amount of money it considers sufficient to cover all or part of the anticipated costs of the respondent and the anticipated expenses of the appeal board in connection with the appeal.

(2) In addition to the powers referred to in section 93(2) [environmental appeal board] but subject to the regulations, the appeal board may make orders as follows:

(a) requiring a party to pay all or part of the costs of another party in connection with the appeal, as determined by the appeal board;

(b) if the appeal board considers that the conduct of a party has been vexatious, frivolous or abusive, requiring the party to pay all or part of the expenses of the appeal board in connection with the appeal.

(3) An order under subsection (2) may include directions respecting the disposition of money deposited under subsection (1).

(4) If a person or body given full party status under subsection 94(2) [parties and witnesses] is an agent or representative of the government,

(a) an order under subsection (2) may not be made for or against the person or body, and

(b) an order under subsection (2)(a) may be made for or against the government.

(5) The costs payable by the government under an order under subsection (4)(b) must be paid out of the consolidated revenue fund.

Decision of appeal board

96 If the appeal board or a panel makes an order or decision with respect to an appeal the chair must send a copy of the order or decision to the minister and to the parties.

Varying and rescinding orders of appeal board

97 The Lieutenant Governor in Council may, in the public interest, vary or rescind an order or decision of the appeal board.

Appeal board power to enter property

98 The members of the appeal board have, for the purposes of an appeal, the right to enter any property except a private residence.

Division 2 – Appeals from Decisions under this Act

Definition of "decision"

99 For the purpose of this Division, **"decision"** means

(a) making an order,

(b) imposing a requirement,

(c) exercising a power except a power of delegation,

(d) issuing, amending, renewing, suspending, refusing, cancelling or refusing to amend a permit, approval or operational certificate,

(e) including a requirement or a condition in an order, permit, approval or operational certificate,

(f) determining to impose an administrative penalty, and

(g) determining that the terms and conditions of an agreement under section 115(4) [administrative penalties] have not been performed.

Appeals to Environmental Appeal Board

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

(2) For certainty, a decision under this Act of the Lieutenant Governor in Council or the minister is not appealable to the appeal board.

Time limit for commencing appeal

101 The time limit for commencing an appeal of a decision is 30 days after notice of the decision is given.

Procedure on appeals

102 (1) An appeal under this Division

(a) must be commenced by notice of appeal in accordance with the prescribed practice, procedure and forms, and

(b) must be conducted in accordance with Division 1 of this Part and the regulations.

(2) The appeal board may conduct an appeal under this Division by way of a new hearing.

Powers of appeal board in deciding appeal

103 On an appeal under this Division, 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 appeal board considers appropriate in the circumstances.

Appeal does not operate as stay

104 The commencement of an appeal under this Division does not operate as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

Division 3 – Regulations in Relation to Appeal Board

Regulations in relation to the appeal board

105 (1) Without limiting section 138(1) [*general authority to make regulations*], the Lieutenant Governor in Council may make regulations as follows:

(a) prescribing a tariff of fees to be paid with respect to a matter within the jurisdiction of the appeal board;

(b) prescribing practices, procedures and forms to be followed and used by the appeal board;

(c) establishing restrictions on the authority of the board under section 95(1) to (4) [*costs and security for costs*] including, without limiting this,

(i) prescribing limits, rates and tariffs relating to amounts that may be required to be paid or deposited, and

(ii) prescribing what are to be considered costs to the government in relation to an appeal and how those are to be determined;

(d) respecting how notice of a decision under section 96 [*decision of appeal board*] may be given.

Environmental Appeal Board Procedure Regulation, *BC Reg. 1/82*

Interpretation

1 In this regulation

"Act" means the Environmental Management Act;

"board" means the Environmental Appeal Board established under the Act;

"chairman" means the chairman of the board;

"minister" means the minister responsible for administering the Act under which the appeal arises;

"objector" in relation to an appeal to the board means a person who, under an express provision in another enactment, had the status of an objector in the matter from which the appeal is taken.

Application

2 This regulation applies to all appeals to the board.

Appeal practice and procedure

3 (1) Every appeal to the board shall be taken within the time allowed by the enactment that authorizes the appeal.

(2) Unless otherwise directed under the enactment that authorizes the appeal, an appellant shall give notice of the appeal by mailing a notice of appeal by registered mail to the chairman, or leaving it for him during business hours, at the address of the board.

(3) A notice of appeal shall contain the name and address of the appellant, the name of counsel or agent, if any, for the appellant, the address for service upon the appellant, grounds for appeal, particulars relative to the appeal and a statement of the nature of the order requested.

(4) The notice of appeal shall be signed by the appellant, or on his behalf by his counsel or agent, for each action, decision or order appealed against and the notice shall be accompanied by a fee of $25, payable to the Minister of Finance and Corporate Relations.

(5) Where a notice of appeal does not conform to subsections (3) and (4), the chairman may by mail or another method of delivery return the notice of appeal to the appellant together with written notice

(a) stating the deficiencies and requiring them to be corrected, and

(b) informing the appellant that under this section the board shall not be obliged to proceed with the appeal until a notice or amended notice of appeal, with the deficiencies corrected, is submitted to the chairman.

(6) Where a notice of appeal is returned under subsection (5) the board shall not be obliged to proceed with the appeal until the chairman receives an amended notice of appeal with the deficiencies corrected.

Procedure following receipt of notice of appeal

4 (1) On receipt of a notice of appeal, or, in a case where a notice of appeal is returned under section 3(5), on receipt of an amended notice of appeal with the deficiencies corrected, the chairman shall immediately acknowledge receipt by mailing or otherwise delivering an acknowledgement of receipt together with a copy of the notice of appeal or of the amended notice of appeal, as the case may be, to the appellant, the minister's office, the official from whose decision the appeal is taken, the applicant, if he is a person other than the appellant, and any objectors.

(2) The chairman shall within 60 days of receipt of the notice of appeal or of the amended notice of appeal, as the case may be, determine whether the appeal is to be decided by members of the board sitting as a board or by members of the board sitting as a panel of the board and the chairman shall determine whether the board or the panel, as the case may be, will decide the appeal on the basis of a full hearing or from written submissions.

(3) Where the chairman determines that the appeal is to be decided by a panel of the board, he shall, within the time limited in subsection (2), designate the panel members and,

(a) if he is on the panel, he shall be its chairman,

(b) if he is not on the panel but a vice chairman of the board is, the vice chairman shall be its chairman, or

(c) if neither the chairman nor a vice chairman of the board is on the panel, the chairman shall designate one of the panel members to be the panel chairman.

(4) Within the time limited in subsection (2) the chairman shall, where he has determined that a full hearing shall be held, set the date, time and location of the hearing of the appeal and he shall notify the appellant, the minister's office, the Minister of Health if the appeal relates to a matter under the *Health Act*, the official from whose decision the appeal is taken, the applicant, if he is a person other than the appellant, and any objectors.

(5) Repealed. [B.C. Reg. 118/87, s.2.]

Quorum

5 (1) Where the members of the board sit as a board, 3 members, one of whom must be the chairman or vice chairman, constitute a quorum.

(2) Where members of the board sit as a panel of one, 3 or 5 members, then the panel chairman constitutes a quorum for the panel of one, the panel chairman plus one other member constitutes the quorum for a panel of 3 and the panel chairman plus 2 other members constitutes the quorum for a panel of 5.

Order or decision of the board or a panel

6 Where the board or a panel makes an order or decision with respect to an appeal, written reasons shall be given for the order or decision and the chairman shall, as soon as practical, send a copy of the order or decision accompanied by the written reasons to the minister and the parties.

Written briefs

7 Where the chairman has decided that a full hearing shall be held, the chairman in an appeal before the board, or the panel chairman in an appeal before a panel, may require the parties to submit written briefs in addition to giving oral evidence.

Public hearings

8 Hearings before the board or a panel of the board shall be open to the public.

Recording the proceedings

9 (1) Where a full hearing is held, the proceedings before the board or a panel of the board shall be taken using shorthand or a recorder, by a stenographer appointed by the chairman, for a hearing before the board, or by the panel chairman, for a hearing before the panel.

(2) Before acting, a stenographer who takes the proceedings before the board or a panel shall make oath that he shall truly and faithfully report the evidence.

(3) Where proceedings are taken as provided in this section by a stenographer so sworn, then it is not necessary that the evidence be read over to, or be signed by, the witness, but it is sufficient that the transcript of the proceedings be

(a) signed by the chairman or a member of the board, in the case of a hearing before the board, or by the panel chairman or a member of the panel, in the case of a hearing before the panel, and

(b) be accompanied by an affidavit of the stenographer that the transcript is a true report of the evidence.

Transcripts

10 On application to the chairman or panel chairman, as the case may be, a transcript of the proceedings, if any, before the board or the panel of the board shall be prepared at the cost of the person requesting it or, where there is more than one applicant for the transcript, by all of the applicants on a pro rata basis.

Representation before the board

11 Parties appearing before the board or a panel of the board may represent themselves personally or be represented by counsel or agent.

Health Act,
RSBC 1996, c. 179

Power to make regulations

8 (2) In addition to the matters set out in subsection (1), the Lieutenant Governor in Council may make regulations with respect to the following matters:

…

(m) the inspection, regulation and control, for the purposes of health protection provided in this Act, of

…

(ii) the location, design, installation, construction, operation and maintenance of

…

(C) sewage disposal systems,

…

and requiring a permit for them and requiring compliance with the conditions of the permit and authorizing inspections for that purpose;

…

(4) If a person is aggrieved by the issue or the refusal of a permit for a sewage disposal system under a regulation made under subsection (2)(m), the person may appeal that ruling to the Environmental Appeal Board established under section 11 of the *Environment Management Act* within 30 days of the ruling.

(5) On hearing an appeal under subsection (4), the Environmental Appeal Board may confirm, vary or rescind the ruling under appeal.

Integrated Pest Management Act, SBC 2003, c. 58

Appeals to Environmental Appeal Board

14 (1) For the purposes of this section, **"decision"** means any of the following:

(a) making an order, other than an order under section 8 [*minister's orders*];

(b) specifying terms and conditions, except terms and conditions prescribed by the administrator, in a licence, certificate or permit;

(c) amending or refusing to issue, amend or renew a licence, certificate or permit;

(d) revoking or suspending a licence, certificate, permit or confirmation;

(e) restricting the eligibility of a holder of a licence, certificate, permit or pest management plan to apply for another licence, certificate or permit or to receive confirmation;

(f) determining to impose an administrative penalty;

(g) determining that the terms and conditions of an agreement under section 23(4) [*administrative penalties*] have not been performed.

(2) A declaration, suspension or restriction under section 2 [*Act may be limited in emergency*] is not subject to appeal under this section.

(3) A person may appeal a decision under this Act to the appeal board.

(4) The time limit for commencing an appeal of a decision is 30 days after the date the decision being appealed is made.

(5) On appeal must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the *Environmental Management Act*.

(6) Subject to this Act, an appeal must be conducted in accordance with Division 1 [*Environmental Appeal Board*] of Part 8 of the *Environmental Management Act* and the regulations under that Part.

(7) The appeal board may conduct an appeal by way of a new hearing.

(8) On an appeal, the appeal board may

(a) send the matter back to the person who made the decision being appealed, 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.

(9) An appeal does not act as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

Water Act, RSBC 1996, c. 483

Appeals to Environmental Appeal Board

92 (1) Subject to subsections (2) and (3), an order of the comptroller, the regional water manager or an engineer may be appealed to the appeal board by

(a) the person who is subject to the order,

(b) an owner whose land is or is likely to be physically affected by the order, or

(c) a licensee, riparian owner or applicant for a licence who considers that their rights are or will be prejudiced by the order.

(1.1) Despite subsection (1), a licensee may not appeal an order of the comptroller or a regional water manager to cancel in whole or in part a licence and all rights under it under section 23(2)(c) or (d).

(2) An order of the comptroller, the regional water manager or an engineer under Part 5 or 6 in relation to a well, works related to a well, ground water or an aquifer may be appealed to the appeal board by

(a) the person who is subject to the order,

(b) the well owner, or

(c) the owner of the land on which the well is located.

(3) An order of the comptroller, the regional water manager or an engineer under section 81 [*drilling authorizations*] may be appealed to the appeal board by

(a) the person who is subject to the order,

(b) the well owner,

(c) the owner of the land on which the well is located, or

(d) a person in a class prescribed in respect of the water management plan or drinking water protection plan for the applicable area.

(4) The time limit for commencing an appeal is 30 days after notice of the order being appealed is given

(a) to the person subject to the order, or

(b) in accordance with the regulations.

(5) For the purposes of an appeal, if a notice under this Act is sent by registered mail to the last known address of a person, the notice is conclusively deemed to be served on the person to whom it is addressed on

(a) the 14th day after the notice was deposited with Canada Post, or

(b) the date on which the notice was actually received by the person, whether by mail or otherwise,

whichever is earlier.

(6) An appeal under this section

(a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the *Environment Management Act*, [now *Environmental Management Act*] and

(b) subject to this Act, must be conducted in accordance with the *Environment Management Act* [now *Environmental Management Act*] and the regulations under that Act.

(7) The appeal board may conduct an appeal by way of a new hearing.

(8) On an appeal, the appeal board may

(a) send the matter back to the comptroller, regional water manager or engineer, with directions,

(b) confirm, reverse or vary the order being appealed, or

(c) make any order that the person whose order is appealed could have made and that the board considers appropriate in the circumstances.

(9) An appeal does not act as a stay or suspend the operation of the order being appealed unless the appeal board orders otherwise.

Appeals to Environmental Appeal Board

101.1 (1) The affected person referred to in section 101(2) may appeal the decision to the Environmental Appeal Board established under the *Environmental Management Act*].

(2) The time limit for commencing an appeal is 30 days after notice is given

(a) to the affected person under section 101(2), or

(b) in accordance with the regulations.

(3) An appeal under this section

(a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the *Environmental Management Act* and

(b) subject to this Act, must be conducted in accordance with the *Environmental Management Act* and the regulations under that Act.

(4) The appeal board may conduct an appeal by way of a new hearing.

(5) On an appeal, the appeal board may

(a) send the matter back to the regional manager or director, 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.

(6) An appeal taken under this Act does not operate as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

BRITISH COLUMBIA

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