Environmental Appeal Board

2007/2008

Annual Report

APRIL 1, 2007 ~ MARCH 31, 2008

BRITISH COLUMBIA
The Best Place on Earth

Environmental Appeal Board

Fourth Floor, 747 Fort Street
Victoria, British Columbia
Telephone: (604) 387-3464
Facsimile: (604) 356-9923

Mailing Address:
P.O. Box 9425
Stn Prov Govt
Victoria, British Columbia
V8W 9V1

Honourable Barry Penner
Minister of Environment
Minister Responsible for Water Stewardship and Sustainable Communities
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Honourable Mary Polak
Minister of Healthy Living and Sport
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Dear Ministers:

I respectfully submit herewith the Annual Report of the Environmental Appeal Board for the period April 1, 2007 through March 31, 2008.

Yours truly,

Alan Andison
Chair
Environmental Appeal Board

Eco Audit

The savings below are achieved when post consumer recycled fiber is used in place of virgin fiber. The 2007/2008 Environmental Appeal Board Annual Report uses 554 lbs of paper which contains 100% post consumer recycled fiber.

- **5.32** trees preserved for the future
- **2,259** gallons wastewater flow saved
- **3,767,200** BTUs energy not consumed
- **492** lbs net greenhouse gases prevented
- **250** lbs solid waste not generated

AR 07/08

Table of Contents

Canadian Cataloguing in Publication Data
British Columbia. Environmental Appeal Board.
Annual report of the Environmental Appeal Board.
-- 1990 / 91 -

Annual.
Report year ends June 30.
ISSN 11-88-021X

1. British Columbia. Environmental Appeal Board - Periodicals. 2. Environmental law - British Columbia - Periodicals. 3. Pollution - Law and legislation - British Columbia - Periodicals. I.

KEB421.A49E58 354.7110082'321 C91-092316-7

ENV126788.1192

Message from the Chair

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

The Board continues to encourage parties to appeals to resolve the issues underlying those appeals without the need for a hearing. The parties' efforts to communicate and settle disputes in a conciliatory manner produce more acceptable and lasting conclusions to these disputes.

Of the appeals that proceed to a hearing, the Board is able to draw upon a roster of highly qualified individuals, including professional biologists, agrologists, engineers, foresters, and lawyers with expertise in the areas of natural resources and administrative law, who are appointed as part-time members.

In October of 2007, the roster of members underwent a significant change for the first time in many years with the departure of three members, including the Vice-chair, Cindy Derkaz, and the addition of seven new members. I wish to thank Ms. Derkaz, Richard Cannings and Don Cummings for their lengthy service with the Board, and more importantly, their dedication, interest and their enthusiasm for the work of the Board. I wish them well in their future endeavours.

I also wish to welcome the seven new appointees to the Board. They are: Susan Beach, Monica Danon-Schaffer, Les Gyug, R.G. Holtby, Gabriella Lang, Ken Long and John Savage. The Board is extremely fortunate to have these new members appointed and I look forward to working with all of them in the coming years.

I am also very pleased that Robert Wickett has been appointed to take on the responsibilities of Vice-chair to the Board. Bob brings both experience and expertise to the position.

Finally, I would like to take this opportunity to thank all of the existing Board members, as well as the Board staff, for their hard work and dedication over the past year and for their continuing commitment to the work of the Board

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, 2007 and March 31, 2008.

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 Courthouse Library Society
- West Coast Environmental Law Library

Decisions are also available through the Quicklaw Database.

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 you have any questions or would like additional copies of this report, please contact the Board office. The Board can be reached at:

Environmental Appeal Board
Fourth Floor, 747 Fort Street
Victoria, British Columbia
V8W 3E9
Telephone: (250) 387-3464
Facsimile: (250) 356-9923

Website Address:
www.eab.gov.bc.ca

Mailing Address:
PO Box 9425 Stn Prov Govt
Victoria, British Columbia
V8W 9V1

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*. Being an adjudicative body, the Board operates at arms-length from the government to maintain the necessary degree of independence and impartiality. This is important because it hears appeals from administrative decisions made by government officials 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* which was administered by the Ministry of Health.

The Board makes decisions regarding 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 *Administrative Tribunals 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.

Appointments to the Board and the administration of the Board are governed by the *Administrative Tribunals Appointment and Administration Act*.

Board Membership

Board members are appointed by the Lieutenant Governor in Council (Cabinet) under section 93(3) of the *Environmental 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 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 length of the initial appointments and any reappointments of Board members, including the chair, are set out in the *Administrative Tribunals Appointment and Administration Act*, as are other matters relating to the appointees. This *Act* also sets out the responsibilities of the chair.

During the present report period, the membership of the Board changed. Three members' appointments expired and seven new members were appointed. The Board members during this reporting period were as follows:

The Board	Profession	From
Chair		
Alan Andison	Lawyer	Victoria
Vice-chair		
Cindy Derkaz (until October 31, 2007)	Lawyer (Retired)	Salmon Arm
Robert Wickett (from November 1, 2007)	Lawyer	Vancouver
Members		
Susan Beach (from October 30, 2007)	Lawyer	Victoria
Sean Brophy	Professional Engineer	North Vancouver
Robert Cameron	Professional Engineer	North Vancouver
Richard Cannings (until October 31, 2007)	Biologist	Naramata
Don Cummings (until October 31, 2007)	Professional Engineer	Penticton
Monica Danon-Schaffer (from October 30, 2007)	Chemical/Environmental Engineer	West Vancouver
Bruce Devitt	Professional Forester (Retired)	Esquimalt
Margaret Eriksson	Lawyer	New Westminster
Bob Gerath	Engineering Geologist	North Vancouver
R.A. (Al) Gorley	Professional Forester	Victoria
Les Gyug (from October 30, 2007)	Biologist	Westbank
James Hackett	Professional Forester	Nanaimo
R.G. (Bob) Holtby (from October 30, 2007)	Agrologist	Salmon Arm
Lynne Huestis	Lawyer	North Vancouver
Gabriella Lang (from October 30, 2007)	Lawyer	Campbell River
Katherine Lewis	Professional Forester	Prince George
Ken Long (from October 30, 2007)	Agrologist	Prince George
Paul Love	Lawyer	Campbell River
Gary Robinson	Resource Economist	Victoria
John Savage (from October 30, 2007)	Lawyer	Victoria
David H. Searle, C.M., Q.C.	Lawyer (Retired)	North Saanich
David Thomas	Oceanographer	Victoria
Stephen V.H. Willett	Professional Forester (Retired)	Victoria
Phillip Wong	Professional Engineer	Vancouver
J.A. (Alex) Wood	Professional Engineer	North Vancouver

Administrative Law

Administrative law is the law that governs public officials and tribunals that make decisions affecting the rights and interests of people. Administrative law applies to the decisions and actions of statutory decision-makers who exercise power derived from legislation. The goal is to ensure that officials make their decisions in accordance with the principles of procedural fairness/natural justice by following proper procedures and acting within their jurisdiction.

The Board is governed by the principles of administrative law and, as such, must treat all parties involved in a hearing before the Board fairly, giving each party a chance to explain its position.

Appeals to the Board are decided on a case-by-case basis. Unlike a court, the Board is not bound by its previous decisions; present cases of the Board do not necessarily have to be decided in the same way that previous ones were.

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 Community Care and Assisted Living Appeal Board, the Hospital Appeal Board and the Industry Training Appeal Board.

Each of these tribunals operates completely independently of one another. Supporting five tribunals through one administrative office gives each tribunal greater access to resources while, at the same time, reducing 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, and may appear in this Annual Report.

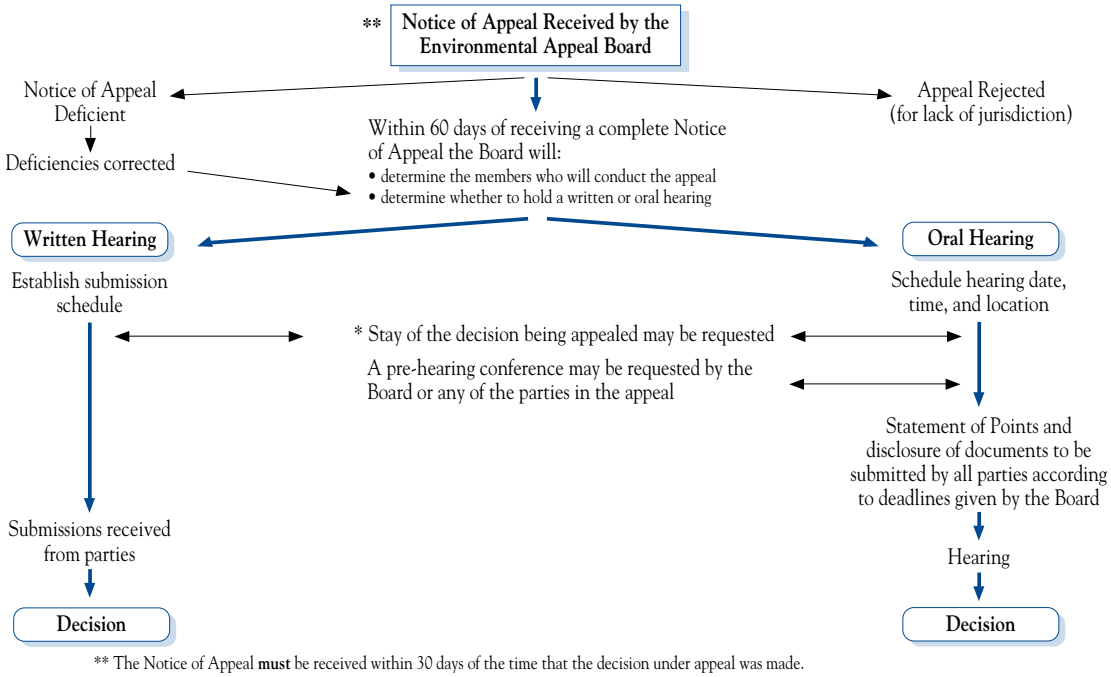
The Appeal Process

Part 8, Division 1 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*, B.C. Reg. 1/82.

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.

Appeals under the *Environmental Management Act*

The Board is established in Part 8, Division 1 of the *Environmental Management Act*. This part contains the provisions setting out the structure, organization and general powers and procedures of the Board. Additional powers and procedures are further detailed in the *Environmental Appeal Board Procedure Regulation*.

The general appeal powers and procedures set out in Part 8 of the *Act* and the *Regulation* apply to appeals filed against decisions made under the *Health Act*, the *Integrated Pest Management Act*, the *Water Act*, the *Wildlife Act*, as well as decisions made under other parts of the *Environmental Management Act*.

The decisions that may be appealed under the *Environmental Management Act* are set out in Division 2. That division states that a person "aggrieved by a decision" of a director or a district director may appeal that decision to the Board. An appealable "decision" is defined as follows:

(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) have not been performed [under section 115(4), a director may enter into an agreement with a person who is liable for an administrative penalty. The agreement may provide for the reduction or cancellation of the penalty, subject to the terms and conditions the director considers necessary or desirable].

Appeals under the *Health Act*

The only decision appealable under this enactment is a permit for an on site sewage disposal system. Since May 2005, when the *Sewerage System Regulation* came into force, permits are only required for the construction of holding tanks.

Appeals under the *Integrated Pest Management Act*

Under this *Act*, the right of appeal (those with standing to appeal) is quite broad. The *Act* states that "a person" may appeal a decision under this *Act* to the appeal board. "Decision" is then defined as:

(a) making an order, other than an order under section 8 [an order issued by the Minister of Environment];
(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) have not been performed [under section 23(4), the administrator may enter into an agreement with a person who is liable for an administrative penalty. The agreement may provide for the reduction or cancellation of the penalty, subject to the terms and conditions the administrator considers necessary or desirable].

Appeals under the *Water Act*

To file an appeal under the *Water Act*,

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 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.

Appeals under the *Wildlife Act*

Under section 101.1 of the *Wildlife Act*, a decision of a regional manager or the director that affects a licence, permit, registration of a trapline or guide outfitter's certificate, or an application for any of those things, may be appealed by the person who is affected by the decision.

Commencing an Appeal

Notice of Appeal

For all appeals, an appellant must prepare a notice of appeal and deliver it to the Board office within the time limit specified in the relevant statute. The notice of appeal must comply with the content requirements of the *Environmental Appeal Board Procedure Regulation*. It must contain the name and

address of the appellant, the name of the appellant's counsel or agent, if any, 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. Also, the notice of appeal must be signed by the appellant, or on his or her behalf by their counsel or agent, and the notice must be accompanied by a fee of $25 for each action, decision or order appealed against.

In addition, the Board requires a copy of the permit, licence, order or decision being appealed.

Generally, if the Board does not receive a notice of appeal within the specified time limit, the appellant will lose the right to appeal.

If the notice of appeal is missing any of the required information, the Board will notify the appellant of the deficiencies. The Board may refrain from taking any action on an appeal until the notice is complete and any deficiencies are corrected.

Once a notice of appeal is accepted as complete, the Board will notify the office of the official who made the decision being appealed. The decision-maker will be the respondent in the appeal.

Third Party Status

Under the *Environmental Management Act*, the Board may grant third party status to a person who may be affected by the appeal. Normally, the Board will invite the recipient of the decision under appeal, or the person holding the permit or licence which is the subject of an appeal, to become a party, if they are not already the appellant.

Participants

Under section 94 of the *Environmental Management Act*, the Board has the discretion to invite any person to be heard in the appeal. This may be done on the Board's initiative or as a result of a request.

In deciding whether to add a person as a participant in an appeal, and what level of participation to grant, the Board will consider the timeliness of the application, whether the person can bring a valuable contribution or perspective to the appeal, the prejudice, if any, to the other parties and whether the potential benefits outweigh any prejudice to the parties, whether the applicant has sufficient interest in the proceeding, whether the interest of the applicant can be adequately represented by another party, the applicant's desired level of participation, whether allowing the application will delay or unduly lengthen the proceedings, and any other factors that are relevant in the circumstances.

In all cases, a participant may only participate in a hearing to the extent that the Board allows.

Stays pending appeal

With the exception of decisions made under the *Health Act*, the Board is granted the power to stay a decision or an order pending an appeal.

A stay has the effect of postponing the legal obligation to implement all or part of the decision or order under appeal until the Board has held a hearing, and issued its decision on the appeal.

Type of Hearing

The Board has the authority to conduct a new hearing on a matter before it. This means that the Board may hear the same evidence that was before the original decision-maker, as well as receive new evidence.

An appeal may be conducted by way of written submissions, oral hearing or a combination of both. In most cases, the Board will conduct an oral hearing. However, in some instances the Board may find it appropriate to conduct a hearing by way of written submissions.

The *Environmental Appeal Board Procedure Regulation* requires the chair to determine, within

60 days of receiving a complete notice of appeal, which member(s) of the Board will hear the appeal and the type of appeal hearing.

Prior to ordering that a hearing be conducted by way of written submissions, the Board may request the parties' input.

Written Hearing Procedure

If it is determined that a hearing will be by way of written submissions, the Board will invite all parties to provide submissions. The appellant will provide its submissions, including its evidence, first. The other parties will have an opportunity to respond to the appellant's submissions when making their own submissions, and to present their own evidence.

The appellant is then given an opportunity to comment on the submissions and evidence provided by the other parties.

Finally, all parties will be given the opportunity to provide closing submissions. Closing submissions should not contain new evidence.

Oral Hearing Procedure

As noted above, the *Environmental Appeal Board Procedure Regulation* requires the chair to determine, within 60 days of receiving a complete notice of appeal, which member(s) of the Board will hear the appeal and the type of appeal hearing.

When the chair decides that an appeal will be conducted by full oral hearing, the chair is required to set the date, time and location of the hearing and notify the parties, the applicant (if different from the appellant) and any objectors (as defined in the *Environmental Appeal Board Procedure Regulation*). If any of the parties to the appeal cannot attend the hearing on the date scheduled, a request may be made to the Board to change the date.

An oral hearing may be held in the locale closest to the affected parties, at the Board office in Victoria or anywhere in the province. The Board will decide where the hearing will take place on a case-by-case basis.

Once a hearing is scheduled, the parties will be asked to provide a Statement of Points to the Board.

Statement of Points and Document Disclosure

To help identify the main issues to be addressed in an oral hearing, and the arguments that will be presented in support of those issues, all parties to the appeal are asked to provide the Board, and each of the parties to the appeal, with a written Statement of Points and all relevant documents.

The Board requires the appellant to submit its Statement of Points and documents at least 30 days prior to the commencement of the hearing. The respondent (the Government), and all other parties, are required to submit their Statements of Points and documents at least 15 days prior to the commencement of the hearing. Each party is to provide the Board, and all other parties to the appeal, with a copy of its Statement of Points and documents within the set timeframes.

The Statement of Points is, essentially, a summary of each party's case. As such, the content of each party's Statement of Points will depend on whether the party is appealing the decision or attempting to uphold the decision being appealed.

The Board asks that the following information be contained in the respective party's Statement of Points:

(a) The appellant should outline:

  (i) the substance of the appellant's objections to the decision of the respondent;

(ii) the arguments that the appellant will present at the hearing;

(iii) any legal authority or precedent supporting the appellant's position; and,

(iv) the names of the people the appellant intends to call as witnesses at the hearing.

(b) The respondent should outline:

(i) the substance of the respondent's objections to the appeal;

(ii) the arguments that the respondent will present at the hearing;

(iii) any legal authority or precedent supporting the respondent's position; and,

(iv) the names of the people the respondent intends to call as witnesses at the hearing.

Additional hearing participants that are granted party or intervenor status are also asked to provide a Statement of Points outlining the above-noted points as may be relevant to that party.

Where a party has not provided the Board with a Statement of Points by the specified date, the Board has the authority to order the party to do so.

Dispute resolution

The Board encourages parties to resolve the issues underlying the appeal at any time in the appeal process. The Board's procedures for assisting in dispute resolution are as follows:

- early screening of appeals to determine whether the appeal may be resolved without a hearing;
- pre-hearing conferences; and
- mediation, upon consent of all parties.

These procedures give the parties an opportunity to resolve the issues underlying the appeal and avoid the need for a formal hearing. If the parties reach a mutually acceptable agreement, the parties may set out the terms and conditions of their settlement in a consent order which is submitted to the Board for its approval. Alternatively, the appellant may withdraw his or her appeal at any time.

Pre-hearing Conference

Either before or after the Statements of Points and relevant documents have been exchanged, the Board, or any of the parties, may request a pre-hearing conference.

Pre-hearing conferences provide an opportunity for the parties to discuss any procedural issues or problems, to resolve the issues between the parties, and to deal with any preliminary concerns.

A pre-hearing conference will normally involve the spokespersons for the parties, one Board member and one staff member from the Board office. It will be less formal than a hearing and will usually follow an agenda, which is set by the parties. The parties are given an opportunity to resolve the issues themselves, giving them more control over the process.

If all of the issues in the appeal are resolved, there will be no need for a full hearing. Conversely, it may be that nothing will be agreed upon, or some issues still remain, and the appeal will proceed to a hearing.

Disclosure of Expert Evidence

The Board is not bound by the provisions relating to expert evidence in the British Columbia *Evidence Act*. However, the Board does require that reasonable advance notice of expert evidence be given and that the notice include a brief statement of the expert's qualifications and areas of expertise, the opinion to be given at the hearing, and the facts on which the opinion is based.

Obtaining an Order for Attendance of a Witness or Production of Documents

If a proposed witness refuses to attend a hearing voluntarily or refuses to testify, a party may ask the Board to make an order requiring a person to

attend a hearing and give evidence. Also, if a person refuses to produce particular relevant documents in their possession, a party may ask the Board to order the person to produce a document or other thing prior to, or during, a hearing.

Section 93(11) of the *Environmental Management Act* and subsection 34(3) of the *Administrative Tribunals Act*, provide the Board with the power to require the attendance of a witness at a hearing, and to compel a witness to produce for the tribunal, or a party to the appeal, a document or other thing in the person's possession or control that is admissible and relevant to an issue in the appeal.

If a party wants to ensure that an important witness attend the hearing, the party may ask the Board to issue an order. The request must be in writing and explain why the order is required.

The Hearing

A hearing is a more formal process than a pre-hearing conference, and allows the Board to receive the evidence it uses to make a decision.

In an oral hearing, each party will have a chance to present evidence. Each party will have an opportunity to call witnesses and explain its case to the Board.

Although hearings before the Board are less formal than those before a court, some of the hearing procedures are similar to those of a court: witnesses give evidence under oath or affirmation and witnesses are subject to cross-examination.

Parties to the appeal may have lawyers representing them at the hearing but this is not required. The Board will make every effort to keep the process open and accessible to parties not represented by a lawyer.

All hearings before the Board are open to the public.

Rules of Evidence

The rules of evidence used in a hearing are less formal than those used in a court. The Board has full discretion to receive any information it considers relevant and will then determine what weight to give the evidence.

The Decision

In making its decision, the Board is required to determine, on a balance of probabilities, what occurred, and to decide the issues raised in the appeal.

The Board will not normally make a decision at the end of the hearing. Instead, in the case of both an oral and a written hearing, the final decision will be given in writing within a reasonable time following the hearing. Copies of the decision will be given to the parties, the participants, and the appropriate minister(s).

There is no right of appeal to the courts from a Board decision. Section 97 of the *Environmental Management Act* allows Cabinet to vary or rescind an order or decision of the Board if it is in the public interest to do so.

Alternatively, a party dissatisfied with a decision or order of the Board may apply to the British Columbia Supreme Court for a judicial review of the decision pursuant to the *Judicial Review Procedure Act*.

Costs

The Board also has the power to award costs. If the Board finds it is appropriate, it may order a party to pay all or part of the costs of another party in connection with the appeal. In addition, if the Board considers that the conduct of a party has been frivolous, vexatious or abusive, it may order that party to pay all or part of the expenses of the Board in connection with the appeal.

Legislative Amendments Affecting the Board

Effective June 21, 2007, the *Inquiry Act*, R.S.B.C. 1996, c. 224 was repealed. At the same time, a new enactment, the *Public Inquiry Act*, S.B.C. 2007, c.9, came into force. Those changes had some impact on the powers of the Board.

Specifically, the Board derived its power to summon witnesses, its contempt powers and its immunity provision from the *Inquiry Act*. With the repeal of the *Inquiry Act*, the Board no longer had those powers under that *Act*. However, the *Public Inquiry Act* amended section 93(11) of the *Environmental Management Act*, giving the Board powers under sections 34(3) and (4), 48, 49 and 56 of the *Administrative Tribunal Act*. Those sections give the Board the power to compel witnesses and order document disclosure, to maintain order at hearings, to apply to the BC Supreme Court for contempt proceedings, and to provide immunity protection for the tribunal and its members.

Recommendations

There were no issues that arose in 2007/2008 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, 2007 and March 31, 2008, a total of 40 appeals were filed with the Board against 33 administrative decisions, and a total of 36 decisions were published.

April 1, 2007 – March 31, 2008

Total appeals filed		**40**
Number of administrative decisions appealed		**33**
Appeals abandoned, withdrawn, rejected, jurisdiction/standing		**34**
Hearings held on the merits of appeals		
Oral hearings completed	10	
Written hearings completed	2	
***Total hearings held on the merits of appeals**		**12**
Total oral hearing days		**43**
Published Decisions issued		
Final Decisions		
Appeals allowed	4	
Appeals allowed, allowed in part	6	
Appeals dismissed	12	
Total Final Decisions		**22**
Decisions on preliminary matters		**10**
Other Decisions		**2**
Decisions on Costs		**2**
Total published decisions issued		**36**

*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	Waste Management	Water	Wildlife
Appeals filed during report period	17	2		6	15	
Number of administrative decisions appealed	11	2		6	14	
Appeals abandoned, withdrawn, rejected jurisdiction/standing	17		10		7	
Hearings held on the merits of appeals						
Oral hearings	1			5	4	
Written hearings					2	
Total hearings held on the merits of appeals	1			5	6	
Total oral hearing days	1			36	6	
Published decisions issued						
Final decisions	5		1	11	5	
Cost Award	1			1		
Preliminary applications	5			5		
Reconsideration						
Consent		2				
Total published decisions issued	**11**	**2**	**1**	**17**	**5**	

▲

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, 2007 ~ March 31, 2008

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, on a balance of probabilities, that the decision under appeal was made in error, or that there is new information that results in a change to the original decision, the appeal is said to be "allowed". If the appellant succeeds in obtaining some changes to the decision, but not all of the changes that he or she asked for, the appeal is said to be "allowed in part". When an appellant fails to establish that the decision was 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 matters under 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 an example of an appeal that was resolved by Consent Order in the summaries below.

It is also important to note that the Board issues hundreds of decisions each year, some of which are published and others that are not. Therefore, not all of the decisions made by the Board between April 1, 2007 and March 31, 2008 have been included in this Annual Report. Rather, a few of the Board's decisions have been summarized in this report to reflect the variety of subjects and the variety of issues that come before the Board in any given year. As has been noted in the Message from the Chair, the subject matter and the issues can vary significantly in both technical and legal complexity. The summaries have been organized according to the statute under which the appeal was filed and are listed in order of their decision number as opposed to the date the decision was released.

For a full viewing of all decisions and summaries issued during this report period please refer to the Board's web page.

Environmental Management Act and *Waste Management Act*

Note: the *Waste Management Act* was repealed and replaced by the *Environmental Management Act* in 2004. During this annual report period, the Board decided one appeal that was filed under the *Waste Management Act*.

Air quality in the Greater Vancouver Regional District – Greenhouses and wood-fired heaters

2003-WAS-004(c) Houweling Nurseries Ltd. v. District Director of the Greater Vancouver Regional District (Roger Emsley, Third Party; Corporation of Delta, Participant)

Decision Date: January 23, 2008

Panel: Alan Andison, Dr. Robert Cameron, Phillip Wong

Houweling Nurseries Limited ("Houweling") operates greenhouse facilities in Delta, BC. Houweling had been operating under an air quality permit (the "Permit") that was originally issued by the Greater Vancouver Regional District (the "GVRD") in 1985. In 1997, the Permit was amended, requiring Houweling to phase out the use of wood fuel and to instead burn natural gas in the boilers used to heat the greenhouse. In 2001, Houweling applied to the District Director of the GVRD (the "District Director") for a permit amendment to reactivate its wood-fired heaters. The District Director denied Houweling's application, and Houweling appealed the District Director's decision.

The first issue considered by the Board was whether it had the jurisdiction to decide whether the District Director had the jurisdiction to regulate emissions from Houweling's greenhouse facility. The Board found that it had the jurisdiction to consider questions of law, including the question of whether the District Director had the jurisdiction to regulate emissions from Houweling's facility.

The second issue considered was whether the GVRD had the jurisdiction to regulate emissions from wood-fired heaters used to heat agricultural operations through the issuance of permits under Air Quality Management Bylaw No. 937 (the "Bylaw"). The Board considered the legislative scheme created by the *Waste Management Act* (the "*Act*") and the *Agricultural Waste Control Regulation* (the "*Regulation*"), and found that the legislative intent was to allow the *Regulation* to provide an exemption from the general prohibition against the introduction of waste into the environment found in section 3 of the *Act*. The intent in creating the *Regulation* and the attached Code of Agricultural Practice for Waste Management (the "Code of Practice") was to establish clear standards for dealing with certain types of waste and to reduce the need for permits and other types of approvals for persons who were conducting agricultural operations. The Board found that the purpose of sections 18 and 20 of the Code of Practice was to authorize the use of wood waste as fuel for wood-fired boilers in agricultural operations and to set maximum levels for particulate emissions and opacity from those boilers. The Board concluded that the GVRD could not require a permit for those matters because they were already regulated by the *Regulation*. Therefore, permits could not be required for those matters, as long as agricultural operations complied with the standards set out in the Code of Practice.

As a result, the Panel determined that, although section 24 of the *Act* gave the GVRD broad authority over waste discharge, including air contaminants, within its region, permits in relation to the burning of wood waste in agricultural operations could only be issued by the GVRD in relation to

matters not already covered by the *Regulation* (i.e., matters other than particulate matter, opacity and odour emitted by wood-fired boilers, or the use of other fuels).

In conclusion, the Board decided that Houweling's use of its wood-fired heaters was governed by the *Regulation*, and that it did not require a permit (or permit amendment) from the GVRD to operate them in accordance with that regulation. However, the application for a permit amendment was sent back to the District Director for reconsideration of matters relating to the use of back-up fuels and any matters not covered by the *Regulation*.

Accordingly, the appeal was allowed.

2006-EMA-007(a) Darvonda Nurseries Ltd. v. District Director of the Greater Vancouver Regional District

Decision Date: July 27, 2007

Panel: Alan Andison

Darvonda Nurseries Ltd. ("Darvonda") appealed the decision of the District Director of the Greater Vancouver Regional District (the "GVRD") to issue an air quality permit (the "Permit") to Darvonda. The Permit was issued under both the *Environmental Management Act* (the "*Act*") and GVRD Air Quality Bylaw No. 937, 1999 (the "Bylaw"), and authorized air emissions from Darvonda's wood-fired heaters in its greenhouse facilities located in Langley, BC.

Darvonda objected to the Permit because it imposed emission standards that are more restrictive than those set out in the provincial *Agricultural Waste Control Regulation* (the "*Regulation*"). Darvonda requested that the Board rescind the Permit on the basis that the District Director had no authority to require Darvonda to obtain a permit. The thrust of Darvonda's argument was that, since it is an "agricultural operation" as defined in the *Regulation*, it is exempt from the requirement to obtain a permit for air emissions from its wood-fired heaters as long as it complies with the Code of Agricultural Practice for Waste Management (the "Code of Practice") set out in the *Regulation*. Darvonda argued, in the alternative, that the heating at its facilities is "comfort heating". Therefore, the District Director had no authority to require a permit regulating air emissions produced by such heating, because section 6(5)(k) of the *Act* operates to exempt emissions from comfort heating from the general prohibition against the introduction of waste into the environment.

Regarding the first issue, the Board noted that section 31(4) of the *Act* and section 4.1 of the Bylaw grant district directors discretion to issue permits for the emission of air contaminants within the GVRD. However, the Board further noted that section 14(3) of the *Act* prohibits the issuance of permits for the discharge of waste where that discharge is governed by a code of practice or a regulation. Since the *Regulation* and the Code of Practice regulate the amount of particulate matter, opacity and odour of emissions from wood-fired boilers used in agricultural operations, no permit may be issued to regulate those matters. The Bylaw is also a regulation within the meaning of section 14(3), and it too regulates the emission of air contaminants within the GVRD. But, while it overlaps with the *Regulation*, it does not conflict with it, insofar as it is possible to comply with both the Bylaw and the *Regulation*.

The Board found, however, that a district director's discretion to issue permits under the *Act* or the Bylaw cannot be exercised in a manner that conflicts or is inconsistent with section 14(3) of the *Act* or with the applicable provisions in the *Regulation*. Otherwise, the *Act*, the *Regulation* and the Bylaw could not operate together in a coherent manner, as was contemplated by the legislature. As a result, the Board found that district directors have no authority to require a permit that imposes further requirements beyond the requirements set out in the

Regulation. Where there are gaps in the *Regulation*, district directors may issue permits to fill those gaps, but they may not attempt to regulate emissions that the *Regulation* already regulates. For those reasons, the Board found that the District Director exceeded his authority in issuing the Permit, insofar as it purported to impose requirements beyond those set out in the *Regulation* with respect to the levels of particulate matter, opacity and odours emitted from the wood-fired boiler used in Darvonda's greenhouse operation.

Turning to the second issue, the Board found that Darvonda's greenhouses are heated primarily to encourage the growth and propagation of plants, and not "solely for the purpose of comfort", as contemplated under section 6(5)(k) of the *Act*. Therefore, the provision does not exempt Darvonda's greenhouses from the regulation.

Accordingly, the Board found the Permit to be without effect to the extent that it imposed emission standards that exceeded those set out in the *Regulation*, and allowed the appeal.

Adjacent lands to a contaminated site not covered by Approval in Principle to remediate contamination

2006-EMA-008(a) BC Hydro and Power Authority v. Director, Environmental Management Act (Ocean Construction Supplies Ltd. and 427958 B.C. Ltd. (dba the Super Save Group of Companies), Third Parties)

Decision Date: June 5, 2007

Panel: Alan Andison

The BC Hydro and Power Authority ("BC Hydro") appealed the decision of the Director, Environmental Management Act (the "Director"), to issue an amended approval in principle (the "Amended AIP"). The contentious amendments required BC Hydro to prepare a remediation plan and advise how it would remediate contamination that had migrated from its waterfront properties in Victoria, BC, to adjacent parcels of land owned by the Super Save Group of Companies ("Super Save"), and Ocean Construction Supplies Ltd. ("Ocean Construction"). The adjacent lands were not covered by the original approval in principle.

Although it filed the appeal, BC Hydro claimed that the Board has no jurisdiction over the appeal because the issuance of the Amended AIP is not a "decision" under section 99 of the *Environmental Management Act* (the "*Act*").

Section 99 of the Act defines decisions that may be appealed to the Board. Neither an approval in principle, nor an amended approval in principle is expressly included in the exhaustive list set out in section 99. Therefore, in order for the amended AIP to be appealable, it must be found to fit within one of the categories in the definition.

The Director argued that the Amended AIP is a permit under section 47(6) of the *Contaminated Sites Regulation* (the "*Regulation*"), which provides that an approval in principle is a "permit within the meaning of the Act for any facility" that meets the criteria listed. The Board found that an approval in principle is a permit only insofar as it applies to facilities, that are listed in subsections 47(6)(a) through (c) of the *Regulation*.

Turning to the facts in this case, the Board concluded that the amendments at stake were not concerned with a "facility" contemplated in section 47(6). Subsections 47(6)(a) through (c) provide that a facility must be covered by an existing remediation plan, whereas the contentious amendments covered a new site that was not covered by the remediation plan. Therefore, the Amended AIP does not amend a portion of an approval in principle for a facility described in section 47(6) of the *Regulation*. Thus, it cannot be deemed an appealable decision under the *Act*.

The Board then turned to the submissions made by Ocean Construction, which tried to bring

the Amended AIP within one of the other subsections of section 99. The Board found that the word "approval" in section 99 was not intended to include "approval in principle", and the Amended AIP is neither "amending an approval" within the meaning of section 99(d), nor "including a requirement or a condition in an approval" within section 99(e). The Board also found that, while section 53 of the *Act* and section 47 of the *Regulation* authorize a Director to impose or specify conditions or requirements when issuing an approval in principle, they do not authorize the addition of conditions or requirements after the approval in principle has been issued. Therefore, the Amended AIP cannot be characterized as "imposing a requirement" within the meaning of section 99(b) of the *Act*. The Board concluded that the Director had no statutory authority to amend the approval in principle after it had been issued.

Since the issuance of the Amended AIP does not fall within any of the categories set out in section 99 of the *Act*, it is not a decision for the purposes of that provision and the Board has no jurisdiction over the appeal.

Accordingly, the appeal was dismissed for lack of jurisdiction.

Registration to discharge effluent not an appealable decision

2007-EMA-004(a) & 2007-EMA-005(a) Chief Wayne Christian, on behalf of the Splatsin First Nation and Peter Kruyk and Carolyn A. Broad v. Director, Environmental Management Act (Monty Lee Andrew Willis, Third Party)

Decision Date: August 22, 2007

Panel: Alan Andison

Pursuant to the *Municipal Sewage Regulation* (the "*Regulation*"), the third party, Mr. Willis, owner of Kokanee Lodge submitted an application for registration of discharge from a sewage treatment facility adjacent to the Shuswap River. In April 2007, the Director, Environmental Management Act (the "Director") issued a letter to Mr. Willis, acknowledging receipt of the completed registration form. It stated that the registration was effective November 22, 2006, and set out a number of requirements imposed by the Director regarding the discharge, effective on the date the letter was issued. The registration under the *Regulation* granted Mr. Willis the authority to discharge treated effluent to the Shuswap River.

Two separate appeals were filed in response to the Director's letter. The Splatsin First Nation (the "Splatsin") requested that the Board rescind the registration and all of the associated requirements due to lack of consultation with First Nations. Mr. Kruyk and Ms. Broad requested that the Board prohibit the discharge to surface waters by the proposed sewage treatment facility.

As a preliminary matter, the Board requested submissions on its jurisdiction to hear the appeals. For the Board to have jurisdiction to hear an appeal of the registration, the registration must fall within one of the subsections set out in the definition of "decision" in section 99 of the *Environmental Management Act* (the "*Act*"). The Board advised the parties that it was satisfied that it had jurisdiction to hear the appeals of the additional conditions imposed by the Director, as their imposition amounts to "imposing a requirement" under section 99(b). However, the Board requested submissions from the parties regarding whether a registration itself was an appealable decision.

In order to determine whether the registration of the discharge constituted an appealable decision, the Board reviewed the process that leads to "registration", as set out in the *Regulation*, and found that the registration process does not provide a director with any decision-making power over the registration itself. Therefore, the Board concluded that mere receipt of the application for registration by the

Director did not constitute an "exercise of power" as contemplated under section 99(c) of the *Act*.

The Board then considered the Splatsin's argument that the Director's decision not to consult with First Nations was an "exercise of power" within the meaning of section 99(c) of the *Act*. The Board found that decisions regarding consultation with aboriginal people were not statutory "decisions" under section 99 that may trigger an appeal to the Board. The duty to consult arises from the honour of the Crown, which has constitutional and common law origins, whereas appealable decisions within the meaning of section 99 are statutory decisions. Therefore, actions or decisions by agents of the Crown regarding consultation may be considered by the Board only if there is an appealable statutory decision, as defined in section 99, to be considered. As a result, the Board concluded that, insofar as the Director's decision to impose additional requirements was an appealable decision, any concerns regarding consultation in the context of the imposition of these requirements were within the Board's jurisdiction. However, concerns regarding consultation in the context of the registration, which is not appealable, could not be considered by the Board.

The Board further considered Mr. Kruyk and Ms. Broad's request that the Board impose an additional requirement prohibiting the discharge of effluent to surface waters. The Board found that it had no jurisdiction to grant a remedy that would prohibit what the registration and the *Regulation* allow.

Accordingly, the Board concluded that it had jurisdiction over the appeals and any issues regarding consultation with the Splatsin, only to the extent that the appeals pertain to the additional requirements that were imposed by the Director. However, it did not have jurisdiction over the registration to discharge treated effluent from the sewage treatment plant.

Pollution prevention order regarding storage of hazardous waste

2006-EMA-012(a) Ed Ilnicki v. Director, Environmental Management Act (Peter John Singh Dhaliwal, et al., Third Parties)

Decision Date: July 12, 2007

Panel: David H. Searle, C.M., Q.C.

Mr. Ilnicki works in Abbotsford, BC, as an electrician and heavy duty equipment mechanic, and conducts a meat tray washing business and a home restoration business. In all of those activities, he uses various chemicals. In 2006, the Director, Environmental Management Act (the "Director") issued an Information Order in relation to the storage of hazardous waste found on the property on which those activities were conducted. Mr. Ilnicki appealed the decision to the Board, and the Board dismissed the appeal and confirmed the Information Order (*Ed Ilnicki v. Director, Environmental Management Act et al.* – Decision No. 2006-EMA-004(a), November 21, 2006). In August 2006, the Director issued a Pollution Prevention Order (the "Order"), which is the subject of this appeal. The Order required Mr. Ilnicki and the third parties to comply with five requirements, including the requirement to retain an independent consultant to conduct an inventory and characterization of the hazardous materials stored on the property. Mr. Ilnicki appealed the Order, and requested that the Board reverse the Order.

The Board considered four issues in this appeal. First, the Board found that, based upon the inspections and observations made by Ministry staff, the Director had reasonable grounds to issue the Order.

Second, the Board determined that the requirement in the Order to obtain independent verification of the nature of the substances found on the property was justified, based on the chemical analysis performed by Environment Canada on samples taken from some of the containers that Mr. Ilnicki was storing.

Third, the Board considered whether the materials in question could be the subject of a Pollution Prevention Order even if, as argued by Mr. Ilnicki, they cannot be properly characterized as "waste" or "hazardous waste". The Board noted that section 81 of the *Environmental Management Act* (the "*Act*") merely requires that the materials be a substance capable of causing pollution, if released. Since the materials were capable of causing pollution and were likely to be released given the manner in which they were used and stored, the Board determined that the Order was justified. Moreover, the Board noted that the acetone found on the property had been used and was "no longer used for their original purpose", and, therefore, falls within the definition of "hazardous waste" under the *Act*.

Finally, the Board rejected Mr. Ilnicki's argument that his record of "no significant spills" should exempt him from the application of the *Hazardous Waste Regulation*, and confirmed that the public policy purpose behind the *Regulation* and the Order is pollution prevention.

Accordingly, the Order was confirmed with modifications relating to compliance deadlines and the new location of Mr. Ilnicki's operations. The appeal was dismissed.

Preliminary applications for a stay: weighing aboriginal treaty rights, business interests and the public interest in the protection of the environment regarding a landfill

2007-EMA-003(a) Treaty 8 Tribal Association v. Director, Environmental Management Act (CCS Inc. doing business as CCS Energy Services, Third Party)

Decision Date: April 26, 2007

Panel: Alan Andison, Chair

The Treaty 8 Tribal Association (the "Association") appealed the inclusion of a section in an amended permit to allow CCS Inc. ("CCS") to discharge refuse to the ground at its Silverberry secure landfill located near Fort St. John. The new section authorizes CCS to handle and dispose of naturally occurring radioactive materials ("NORM"). The Association filed its appeal on behalf of six First Nations and the members of those First Nations, who are also members of the Association. It also requested a stay of that section pending a decision on the merits of the appeal. The Association argued that, if the stay was not granted, it would suffer irreparable harm to aboriginal and treaty rights and to the ability of the member First Nations to effect meaningful consultation with the Province on the matter.

In determining whether a stay ought to be granted, the Board applied the three-part test set out in *RJR-MacDonald Inc. v. Canada (Attorney General)* (1994), 111 D.L.R. 4th 385 (S.C.C.). With respect to the first element of the test, the Board found that the Association had raised serious issues to be tried, which were not frivolous, vexatious, or pure questions of law.

Regarding the second element of the test, the Board found that the evidence presented by the Association was insufficient to establish that irreparable harm to its members or their constitutionally-protected Treaty rights would occur if the application for a stay was denied. The Association provided no evidence regarding the location of the member First Nations' communities in relation to the facility. Further, no evidence was adduced to support the claim that there was wildlife around the facility and/or the transportation route or that the presence of NORM would impact animals or people in the area. The Board also found that, as the required level of consultation and the adequacy of the consultation performed in relation to the amended permit is one of the issues to be decided in the appeal, it was inappropriate to make a determination on the question of consultation in a preliminary stay application.

Turning to the third element of the test, the Board concluded that, while the Association would not suffer irreparable harm from the presence of NORM within its Treaty area or from the level of consultation that had occurred, a stay of the provision would have negative financial consequences for CCS and impact its business reputation. Therefore, the balance of convenience favoured denying a stay and, accordingly, the application was denied.

Costs application turned down

2007-EMA-004(b) Chief Wayne Christian, on behalf of the Splatsin First Nation v. Director, Environmental Management Act (Monty Lee Andrew Willis, Third Party)

Decision Date: October 17, 2007

Panel: Alan Andison, Chair

In April 2007, the Director, Environmental Management Act (the "Director") issued a letter to Mr. Willis, acknowledging receipt of a completed registration form for discharge to surface water from a sewage treatment plant located near the Shuswap River, pursuant to the *Municipal Sewage Regulation*. In the letter, the Director also imposed a number of additional requirements regarding the discharge.

The Splatsin First Nation (the "Splatsin") appealed the letter on the basis that the Province had breached its duty to consult with the Splatsin before authorizing the discharge. The Splatsin also appealed the additional requirements imposed in the letter.

The Board decided in August 2007 that it had jurisdiction to hear the appeal of the additional requirements, but that it had no jurisdiction over the appeal of the registration or the lack of consultation over the registration (see Decision No. 2007-EMA-004(a)). The Splatsin withdrew their appeal in September 2007.

Mr. Willis requested an order of costs against the Splatsin. He argued that the appeal was frivolous or vexatious.

The Board found the appeal to be neither frivolous, nor vexatious. The appeal raised serious questions, including the Province's duty to consult and the adequacy of the requirements imposed on the registration. Moreover, the Splatsin had genuine concerns relating to human health, water quality, and the effects of sewage discharge on fish and fish habitat, which were expressed in relation to the Splatsin's aboriginal rights and title. Those were substantive issues that were raised in good faith and had at least some basis in fact. Therefore, there were no special circumstances that merited an award of costs to Mr. Willis.

The application was denied.

Board decides when an oral hearing is in the public interest

2007-EMA-014(a) Donald Pharand v. Director, Environmental Management Act (Roxul (West) Inc., Third Party)

Decision Date: November 30, 2007

Panel: Alan Andison

In 1999, a permit authorizing the discharge of contaminants from a rock wool manufacturing facility located in Grand Forks, BC (the "Permit") was issued to Roxul (West) Inc. ("Roxul"). In 2007, the Director, Environmental Management Act, amended the Permit to facilitate upgrades at the facility and to include a number of additional requirements. Mr. Pharand appealed the amendments on the basis that the requirements imposed were not sufficiently stringent.

Roxul applied to the Board to have the appeal heard by way of written submissions.

The Board found that an oral hearing was required to fully and fairly decide the issues in this case. As the appeal raised technical and factually complex issues, and the parties were likely to adduce conflicting evidence, the Board determined that it would be beneficial to hear witnesses testify regarding

technical or expert reports and to observe their cross-examination. The Board also took into consideration the fact that there was a high degree of public interest in the appeal, and that many people from Grand Forks had written letters requesting a public oral hearing.

Accordingly, Roxul's application for a hearing by way of written submission was denied.

Permit to burn coal denied in stay decision

2008-EMA-001(a) Howe Sound Pulp and Paper Limited v. Director, Environmental Management Act

Decision Date: March 7, 2008

Panel: Alan Andison

Howe Sound Pulp and Paper Limited (HSPP) operates a pulp and paper mill in Port Mellon, BC. In December 2007, the Director, Environmental Management Act (the "Director") amended HSPP's permit, which authorized the discharge of air contaminants from its facilities. The amended permit did not authorize the burning of coal in HSPP's co-generation wood residue boiler at the mill. HSPP had conducted a coal burning trial using the boiler before the permit was amended, and sought to continue burning coal in the boiler to supplement its primary fuel, wood waste. HSPP appealed the Director's decision and requested a stay of the decision pending the Board's decision on the merits of the appeal.

In determining whether a stay ought to be granted, the Board applied the three-part test set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*. With respect to the first element of the test, the Board found that HSPP had raised serious issues to be tried, which were not frivolous, vexatious, or pure questions of law.

Regarding the second element of the test, the Board found that the evidence presented by HSPP did not establish that irreparable financial harm would occur if the application for a stay was denied. The evidence did not show that HSPP was likely to go out of business or suffer permanent market loss or irreparable damage to its business reputation if HSPP was unable to supplement the boiler's primary fuel with coal during the months prior to the Board's decision on the appeal. The Board also found that there was no evidence that an increase in HSPP's emissions to either the atmosphere or HSPP's landfill as a result of the inability to burn coal would cause irreparable harm to HSPP.

Turning to the third element of the test, the Board accepted, without the benefit of an assessment of the merits of the permit amendments, that the Director's amendments were *prima facie* in the public interest. The Board determined that, if a stay was denied, the potential costs to HSPP did not outweigh the public interest in the protection of the environment and public health. Therefore, the balance of convenience favoured denying a stay.

Accordingly, the application was denied. The burning of coal was denied pending a full hearing on the merits of the appeal.

Health Act

There were no decisions by the Board during this reporting period.

Integrated Pest Management Act

Alleged mishandling of a pesticide leads to licence suspension

2007-IPM-001(a); 2007-IPM-002(a)Daniel Sullivan c.o.b. Sullivan's Fumigation Services and Sullivan's Agricultural Services Inc. v. Senior Pesticide Management Officer

Decision Date: July 12, 2007

Panel: Alan Andison

Mr. Sullivan appealed the decisions by the senior pesticide management officer to suspend his pesticide user service licence (the "Licence") and pesticide applicator certificate (the "Certificate") on the basis of alleged non-compliant conduct relating to the use, handling and storage of a fumigant.

By consent of the parties, the Board ordered that the Licence be suspended until April 30, 2008, at which time Mr. Sullivan may apply for the re-issuance of the Licence or the issuance of a new licence. The Board further ordered that Mr. Sullivan provide evidence to the Ministry of Environment that he has successfully completed a specified test and training program. Finally, the Board ordered that the Certificate be suspended until August 15, 2007, at which date it shall be reinstated and endorsed with a number of specified terms.

The appeals were allowed, in part.

Water Act

Parties settle appeals through negotiation

2000-WAT-018(a); 2000-WAT-019(a); 2000-WAT-020(a) Alan Deflame Barnard et al. v. Regional Water Manager (Lawrence Alta Simon et al., Third Parties)

Decision Date: December 4, 2007

Panel: Alan Andison

In 2000, the Appellants filed appeals against two conditional water licences issued to Mr. and Mrs. Simon for the diversion of water from Ha Ha Creek into Bednorski Lake, and against the accompanying Engineer's order.

The appeals were held in abeyance for several years while the parties attempted to negotiate a settlement. Their negotiations were ultimately unsuccessful, so the Board commenced a hearing of the appeals in December 2007. During the hearing, the parties reached a settlement.

By consent of the parties, the Board ordered that a number of additions be made to the Engineer's order. The additions required that, until December 4, 2012, measurements of flow and water levels at Bednorski Lake be made and submitted to the Regional Water Manager for subsequent submission to the downstream licensee and the Appellants. The conditional water licences were confirmed.

The appeals of the conditional water licences were dismissed, and the appeal of the Engineer's order was allowed, in part.

2007-WAT-002(a) Fraser River Ranching Ltd. v. Assistant Regional Water Manager (Leslie L. Boomer, Third Party)

Decision Date: March 20, 2008

Panel: Alan Andison

In April 2007, the Regional Manager cancelled a conditional water licence that had been issued to Fraser River Ranching Ltd. ("Fraser River") on Harding Spring for irrigation purposes. Fraser River appealed the decision.

By consent of the parties, the Board ordered the Regional Manager to reinstate Fraser River's licensed rights, but to amend the conditional water licence. The Board also ordered the Regional Manager to amend Fraser River's final water licence on Harding Spring. In addition, the Board ordered the Regional Manager to grant Mr. Boomer a water licence for domestic purposes on Harding Spring. Finally, the Board ordered Fraser River and Mr. Boomer to share equally in the costs and labour of installing a diversion box to allow diversion from Harding Spring under the licences.

The appeal was allowed.

Licence confirmed for diversion of water for a water ski pond

2006-WAT-003(a); 2006-WAT-004(a); 2006-WAT-005(b) David Avren, Estaste of Tom Bradbury, and Mary Desmond on behalf of Glen Ellen Bentley v. Regional Water Manager (Teresa Elaine Erb, Bud and Colleen Dovey, Vladi and Shirley Vagels and Douglas J. Grant, Third Parties)

Decision Date: June 29, 2007

Panel: Robert Wickett, Bruce Devitt, David Thomas

In 2006, the Regional Manager granted a conditional water licence (the "Licence") to the applicant, Teresa Erb. The Licence permitted the construction of a water ski pond and dam on Ms. Erb's property and the diversion of water from Oasis Creek to be stored in the pond. Oasis Creek drains into Shawnigan Creek, which drains into Shawnigan Lake. The pond was to become a water ski pond, and Ms. Erb sought to develop the land around the proposed pond for the construction of homes.

The Appellants are all owners of land adjacent to Shawnigan Lake who are concerned that the construction of the water ski pond will result in the degradation of their community.

The Board considered two issues. The first one pertained to the "no evidence" motion made by Ms. Erb, requesting that the appeals of Ms. Desmond and the estate of Mr. Bradbury be dismissed for lack of evidence. The second issue was whether the Regional Manager had jurisdiction to issue the Licence on the basis that it was for a "land improvement purpose" within the meaning of section 1 of the *Water Act* (the "*Act*").

Turning to the first issue, the Board noted that Appellants bear the burden of evidence in an appeal. Appellants must lead evidence that either the decision was flawed in law or fact, or that the process leading to the decision was flawed.

Ms. Desmond argued that the proposed plan for the development had changed from the date of the original application and, therefore, that a new licence application should be made. She also submitted that the Licence lacked conditions requiring monitoring of quality and quantity of water in the water ski pond. The Board found that there was nothing in the evidence to suggest that the Licence was materially different from the original application. Similarly, the Board found no evidence to support her claim that the dugout could become contaminated and that contaminated water could discharge into Shawnigan Lake. Therefore, there was nothing in her evidence or submissions to establish that there was a legal error, that the decision was wrong in fact, or that there was a flaw in the process leading to the decision. As a result, her appeal was dismissed.

Mr. Damant, on behalf of the estate of Mr. Bradbury, expressed concerns about the diversion of Shawnigan Creek for use in the water ski pond, and with the lack of provisions in the Licence for preventing harm to Shawnigan Lake residents. The Board found that the complaints contemplated future events which could not be the foundation of an appeal. Moreover, no evidence was adduced to support the assertion that there was an appreciable risk to the downstream owners that the Regional Manager should have considered. Therefore, the appeal was dismissed.

The Board then turned to the second issue, which was raised in Mr. Avren's appeal. Mr. Avren noted that the Licence was granted for a "land improvement purpose", and he argued that a water ski pond is not a "land improvement purpose" as defined in section 1 of the *Act*. Mr. Avren deemed the term "land" to refer only to the land immediately impacted by the impoundment of water, and not to the surrounding land.

The Board found that there was nothing in the *Act* to give effect to Mr. Avren's restrictive reading of the word "land" in the phrase "land improvement purpose." The legislature intended to give the Regional Manager sufficient latitude to grant a licence in circumstances where the purpose of the licence is for the improvement of land, whether that land is the land to be flooded by the impoundment, or whether it is other land owned by the applicant. The Board also found that because the water ski pond would increase the utility of Ms. Erb's land, it is an "improvement" of the land and serves as a valid purpose for the granting of a licence. Therefore, the Regional Manager's decision to issue the Licence was confirmed and Mr. Avren's appeal was dismissed.

In summary, all three appeals were dismissed.

Stream changes confirmed subject to conditions to protect hydrology and species at risk

2006-WAT-007(b); 2007-WAT-001(b) 0707814 BC Ltd. v. Assistant Regional Water Manager (City of Abbotsford, Third Party; Western Canada Wilderness Committee, Henk Saltink, Participants)

Decision Date: January 10, 2008

Panel: Alan Andison, Richard Cannings, J.A. (Alex) Wood

In 2006, the Regional Manager refused an application by 0707814 BC Ltd. (the "Appellant") for an approval to "make changes in and about a stream" under section 9 of the *Water Act*. The Appellant had applied to infill a wetland and a ravine on its property in Abbotsford BC, in order to construct a road for the purposes of a residential development. The application was refused on the grounds that it would negatively impact the habitat of at least four provincially or federally listed species at risk found in the wetland area of the property: the Pacific Waterleaf (a plant), the Red-legged Frog, the Oregon Forestsnail, and the Pacific Sideband (a snail). The Appellant filed an appeal of that application.

After the Appellant's original application was refused by the Regional Manager, the Appellant submitted a revised application for an approval to fill in the ravine only. The Regional Manager also refused that application, on the grounds that it would "impact the hydrological regime and the functioning ecosystem of high value in a destructive and irreparable manner." The Appellant also appealed that refusal.

The Appellant asked the Board to approve its revised application, with certain additional conditions. The Appellant also requested that the Board order the Regional Manager to pay the Appellant's costs associated with the appeals.

Although the Appellant decided not to pursue its first appeal, it did not withdraw that appeal because the Appellant submitted that its first appeal may be relevant to its application for costs.

The Board considered two issues. The first issue was whether the design of the proposed infilling would protect the hydrological regime of the area. The Board determined that it could offer protection, if three additional conditions regarding design flows for the site were added to the proposal.

The second issue was whether the design of the proposed infilling addressed the environmental damage that would result from the proposed works. The Board accepted the Regional Manager's evidence that four species at risk inhabited the property and could be impacted by the application. The Board also confirmed that the impact of a proposal on species at risk is a relevant consideration and that the overall weight to be given to this matter depends on the gravity and magnitude of the impact on the species. The Board found that, given the level of current and future development in surrounding areas, the species at risk identified (with the exception of the Pacific Waterleaf) were unlikely to persist on the property, even if the application was denied. The Board also noted that the proposal actually included certain protections for those species, which increased the likelihood of some of them surviving on the property. Therefore, the Board found that the proposal would not have an irreparable impact on the species at risk identified, and that it addressed the environmental damage that would result from the proposed works.

As a result, the Board found that it was appropriate to grant the application, subject to a number of conditions to protect the site's hydrological regime and the species at risk identified. Accordingly, the Board sent the matter back to the Regional Manager with directions to issue an approval to the Appellant, and to include the conditions specified by the Board.

Accordingly, the appeal of the original application was dismissed, and the appeal of the revised application was allowed. The application for costs was denied.

Ranch ordered to restore a stream channel that was unlawfully diverted by a previous owner

2006-WAT-010(a) Double 00 Ranch Ltd. v. Assistant Regional Water Manager (Linda Olsen, Leonore M. Scheck and Patrick G. Scheck, Allan Fridlington and Ernest Fridlington, David R. Wootten and Gertrude M. Wootten, Third Parties; Green Mountain Ranch Co. Ltd., Quesnel Timber Management Ltd., Beaver Pass Excavating Ltd., CN Railway, Ministry of Transportation, Allan Thideman and Ruth Thideman, Ralph Zwicker, Don Tibbles, Participants)

Decision Date: September 10, 2007

Panel: David Searle, C.M., Q.C., Don Cummings, Gary Robinson

In 2006, the Regional Manager issued an order under section 88 of the *Water Act* requiring Double 00 Ranch Ltd. ("Double 00") to restore a stream channel located on Double 00's property. Double 00 had purchased the property from Mr. Olsen, who had excavated a diversion ditch on the property to intercept Kersley Creek without lawful authority. Double 00 sought a reversal of the order.

The Board determined that orders made pursuant to section 88 of the *Water Act* run with the land, and, therefore, the Regional Manager had jurisdiction to issue an order to Double 00 regarding unauthorized works performed by the previous owner. The Board also found that Double 00 was not an "innocent purchaser", insofar as they knew or ought to have known of the diversion, yet proceeded with the purchase of the property without obtaining a copy of the required authorization. Therefore, Double 00 was

properly named in the order.

The Board found that there was sufficient basis for the order. Aside from the general authority to issue an order for an unauthorized diversion, the diversion contributed to downstream sediment load, and hence to some problems in the watershed that needed to be addressed. Therefore, the Board confirmed the issuance of the order.

However, the Board determined that the Regional Manager should have taken more time to discuss the matter with Double 00, provided a copy of the professional report which was the basis for the order, and provided longer time frames for compliance. The Board also found that the requirement in the order to restore the bed load and flow conditions leaving the property to what they were before the diversion was unfair and unreasonable. There had been changes to the flows onto the property which were not the sole responsibility of Double 00. As a result, the Board varied the order to require restoration that would eliminate or mitigate the effects of the unauthorized diversion, and extended the timeline for completion of the restoration.

The appeal was allowed, in part.

Conditions added to a licence to mitigate potential adverse effects of a hydroelectric project

2006-WAT-012(a) Gordon Planedin v. Deputy Comptroller of Water Rights (Powerhouse Developments Inc., Third Party)

Decision Date: October 31, 2007

Panel: Margaret Eriksson, Don Cummings, Bruce Devitt

Mr. Planedin owns and operates a family campground and RV park (the "Campground Property") at the bottom of Cascade Falls near Christina Lake, BC, and jointly owns a second riparian property ("Lot 2"). In 2006, the Deputy Comptroller of Water Rights (the "Deputy Comptroller"), Ministry of Environment, issued a conditional water licence (the "Licence") to Powerhouse Developments Inc. ("PDI"). The Licence allowed PDI to divert water from the Kettle River at the top of Cascade Falls and to construct works in connection with a "run of the river" hydroelectric project. The hydroelectric project had previously been approved under the *Environmental Assessment Act*. However, a separate licence under the *Water Act* was required to divert the water. Mr. Planedin appealed the Deputy Comptroller's decision and asked that the Licence be rescinded.

The Board first considered whether the water diversion and related works authorized by the Licence would have a negative impact on the Campground Property and Lot 2. The Board found that the placement of the tailrace, which directs water from the project's powerhouse back into the stream channel, and part of the works approved under the Licence may have a negative physical impact on the Campground Property and/or Lot 2 if not designed properly. Therefore, the Board added a condition to the Licence, directing PDI to ensure that the final design of the tailrace will mitigate potential negative impacts on the water flows and the sandy cut-bank. Another condition was added to require PDI to develop a monitoring plan to assess potential changes to the Cascade Cove beach area and to recommend mitigative actions.

The Board then considered whether Mr. Planedin, as an owner of riparian property, had a "right" under the *Act* to economic survival and not to be driven out of business or have the quiet use and enjoyment of his property diminished by the project authorized by the Licence. The Board considered the meaning of the word "rights" in the context of section 92(1)(c) of the *Act*, and whether the "rights" referred to were limited to riparian rights. The Board

determined that it did not need to address the issue, as the Environmental Assessment Certificate (the "Certificate") that was issued to PDI included a number of conditions to mitigate Mr. Planedin's concerns in relation to his quiet use and enjoyment of his property. Moreover, although the Board concluded that economic impacts may be relevant to a decision under the *Act*, the economic losses that Mr. Planedin sought protection from were purely speculative.

Next, the Board considered whether the diversion of water would impact the appearance of Cascade Falls. The Board determined that the preservation of aesthetic values was outside the purview of the *Act*. Additionally, the Board found that riparian rights to the use and flow of water in a stream had been extinguished by the *Act*.

Finally, the Board considered whether the Deputy Comptroller's discretion had been fettered by the environmental assessment process and the issuance of the Certificate. Although the Deputy Comptroller was part of the team that provided briefings and comments to the Minister during the environmental assessment process, and his Minister signed the Certificate and the Order-in-Council, the Board was satisfied that he retained independent discretion to issue or refuse PDI's water licence application. He took into account legitimate and relevant considerations under the *Act* in deciding to issue the licence, and the terms and conditions of the Licence are fair and reasonable and will protect the water resource.

Accordingly, the Deputy Comptroller's decision was confirmed, subject to two minor amendments to the Licence. The appeal was allowed, in part.

Wildlife Act

Hunting licences cancelled as a result of unlawful hunting and guiding activities

2005-WIL-010(a) Jeffrey Scouten v. Deputy Director of Wildlife

Decision Date: January 22, 2008

Panel: Robert Wickett

Mr. Scouten appealed the decision of the Deputy Director of Wildlife (the "Deputy Director"), Ministry of Environment, to cancel his hunting licence and to declare him ineligible to hunt or obtain or renew a hunting licence for a period of 25 years. The decision arose out of an undercover investigation concluded in 2000, and Mr. Scouten's subsequent conviction in Provincial Court for various offences under the *Wildlife Act*, including illegal possession of wildlife parts (bighorn sheep and cougar) and illegally acting as a hunting guide.

Mr. Scouten asked the Board to reduce or eliminate the period of ineligibility. Two issues were raised in the appeal. The first issue was whether the Deputy Director took into account irrelevant factors, including a number of other charges for which Mr. Scouten was acquitted. The second issue was whether the period of ineligibility should be eliminated or reduced in the circumstances.

Regarding the first issue, the Board found that the Deputy Director did not consider any irrelevant factors when making his decision. The Board concluded that the Deputy Director properly considered the evidence based on the information that was before him at the time. However, the Board considered the matter anew, with the benefit of hearing from both Mr. Scouten and the Deputy Director, and reached its own conclusions about

the evidence for the purposes of determining the appropriate period of ineligibility.

Turning to the second issue, the Board found that it was appropriate to consider not only the offences for which Mr. Scouten was convicted, but also his admissions in respect of a number of other offences as aggravating factors, as they showed a flagrant disregard for wildlife laws. However, in light of the factual uncertainty surrounding these unproven offences and previous Board decisions wherein periods of ineligibility were considered, the Board found that a 25 year period of ineligibility was excessive. Therefore, the Board upheld the Deputy Director's decision to cancel the hunting licence but reduced the period of ineligibility to 17 years.

The appeal was allowed, in part.

2006-WIL-003(a) Erwin Adolf Klapper v. Deputy Director of Wildlife

Decision Date: June 11, 2007

Panel: Alan Andison

Mr. Klapper appealed the decision of the Deputy Director of Wildlife (the "Deputy Director"), Ministry of Environment, to cancel his hunting licence and to declare him ineligible to hunt or obtain or renew a hunting licence for a period of 11 years. The licensing decision arose out of an undercover investigation in 2000 and Mr. Klapper's subsequent conviction in Provincial Court for various serious offences under the *Wildlife Act* and the *Firearms Act*.

Mr. Klapper asked the Board to reduce or eliminate the period of ineligibility. Two issues were raised in the appeal: first, whether the Deputy Director took into account all relevant factors when imposing the period of ineligibility, and second, whether the period of ineligibility should be reduced in the circumstances.

Regarding the first issue, the Board found that the Deputy Director failed to take into account the inconvenience and costs of Mr. Klapper's dispute with the Canada Customs and Revenue Agency and other government agencies, which arose directly out of the wildlife investigation, and the extreme impact of those investigations and unfounded charges on Mr. Klapper's personal life.

Turning to the second issue, the Board considered whether Mr. Klapper's unique circumstances ought to have been taken into consideration in determining the period of ineligibility. The Board rejected Mr. Klapper's claim that he was unfamilar with Canadian hunting laws and with the consequences of breaking these laws. The Board found that, while specific deterrence ought not to be given much weight given the high price Mr. Klapper had already paid for his behaviour, general deterrence was a particularly important factor. Therefore, the period of ineligibility must reflect the seriousness of Mr. Klapper's offences. Finally, the Board found that the delay between Mr. Klapper's convictions and the cancellation of his hunting privileges was significant enough to be taken into account when deciding the period of ineligibility.

The Board determined that a period of ineligibility of 11 years properly reflects the seriousness of the offences, their effect on wildlife resources, and an appropriate level of deterrence. The Board then considered the mitigating factors present in the case, including Mr. Klapper's age, the fact that he had shown remorse and suffered serious financial and personal consequences, the delay before the Deputy Director's decision was made and the fact that the Deputy Director had given great weight to unproven allegations of violations of the *Wildlife Act*. On that basis, the Board determined that the period of ineligibility should be reduced to six years.

Accordingly, the appeal was allowed, in part.

2006-WIL-017(a) Rod Parkin v. Assistant Director, Fish and Wildlife Branch

Decision Date: October 11, 2007

Panel: David Searle, C.M., Q.C.

Mr. Parkin appealed the August 9, 2006 decision of the Assistant Director, Fish and Wildlife Branch, Ministry of Environment (the "Ministry"), to cancel his hunting licencing privileges for 6 years and require him to successfully complete the Conservation Outdoor Recreation Education program prior to reinstatement of his hunting privileges.

The decision arose out of a 2003 undercover investigation and Mr. Parkin's subsequent convictions in Provincial Court for guiding without a guide outfitter's licence and for unlawful possession of dead wildlife; coyote, red fox, Fisher, pine marten, lynx and muskrat. The licence cancellation was back-dated to commence on April 20, 2004, to account for the two-year delay between the time when the Ministry advised Mr. Parkin that licencing action would be taken and the issuance of the decision.

Mr. Parkin asked the Board to eliminate the period of ineligibility.

The Board found that the cancellation of Mr. Parkin's hunting licencing privileges for 6 years was appropriate. Mr. Parkin was clearly guilty of "acting as a guide", as defined in the *Wildlife Act*, without a guide outfitter's licence. Moreover, the Board found that the number and type of dead wildlife which Mr. Parkin unlawfully possessed was particularly disturbing, and this evidence was not in dispute.

However, the Board found that it made no sense to back-date the cancellation by two years, as Mr. Parkin held and used a hunting licence during the two years preceding the decision. But the Board granted Mr. Parkin a credit for the 6 month period following his conviction when he did not hunt because he believed that the Court had suspended his hunting privileges. Consequently, the Board found that the appropriate period of cancellation was 6 years, less 6 months credit, beginning on the date of issuance of the Assistant Director's decision.

Accordingly, Mr. Parkin's hunting licencing privileges were cancelled for 5 ½ years. The appeal was dismissed.

A First Nation owner of guide outfitter privileges can decide who may guide hunters on its behalf

2006-WIL-018(a) Michael David Winger v. Regional Manager (Akisqnuk First Nation, Third Party)

Decision Date: April 12, 2007

Panel: David Searle, C.M., Q.C.

Michael David Winger appealed a decision of the Regional Manager of Environmental Stewardship, Kootenay Region, Ministry of Environment (the "Ministry"), refusing to renew Mr. Winger's guide outfitter licence and refusing to reissue to him a guide outfitter certificate. The certificate and licence would have given Mr. Winger the exclusive right to guide hunters in the territory described in the certificate, which consisted of a large area in the east Kootenays. Mr. Winger requested that his licence be renewed and a new certificate be issued to him.

Mr. Winger first applied for a licence and certificate for the territory in 2005, after the previous holder of the certificate had decided to relinquish it to Mr. Winger. When the Akisqnuk First Nation (the "First Nation") learned of the proposed transfer, it advised the Regional Manager that it was the beneficial owner of the guiding privileges, and that it had not consented to the transfer. The Regional Manager advised Mr. Winger and the previous certificate holder to meet with the First Nation to resolve the matter. The parties subsequently reached an interim agreement, whereby the First Nation generally consented to Mr. Winger guiding in the

territory until January 31, 2006. In August 2005, the Regional Manager issued a licence and certificate for the territory to Mr. Winger, both of which expired on January 30, 2006.

The interim agreement contemplated further discussions between the parties regarding the territory, but no new agreement with the First Nation was reached before Mr. Winger's certificate and licence expired. After Mr. Winger filed his applications with the Ministry, the First Nation entered into a contract with another guide to manage the territory on their behalf. The First Nation advised the Regional Manager of its decision in May 2006. In August 2006, the Regional Manager denied Mr. Winger's applications on the basis that Ministry records confirmed that the First Nation was the beneficial owner of the guiding privileges, and as such it had the right to designate a person to hold the certificate and licence on its behalf. Mr. Winger filed an appeal with the Board.

The Board found that Mr. Winger should have understood the nature of the First Nation's interest in the guiding privileges, given the clear language in the interim agreement. Additionally, the Board held that a regional manager should consider the interests and wishes of a beneficial owner, which was the First Nation in this case. The Board concluded that, given the First Nation's decision to choose a different guide to manage the territory, the Regional Manager properly refused Mr. Winger's applications. The Board further found that, although Mr. Winger was not given a formal opportunity to be heard before the Regional Manager denied the applications, there was no requirement to do so under the circumstances, and any defects in the Regional Manager's process were cured by the appeal process.

The appeal was dismissed.

Disabled hunter applies for a permit to hunt from a motor vehicle

2006-WIL-019(a) Brian Chanski v. Regional Manager

Decision Date: August 29, 2007

Panel: Cindy Derkaz

Mr. Chanski applied for a permit to exempt him from the prohibition against discharging firearms from a motor vehicle, as set out in the *Wildlife Act* and from the *Motor Vehicle Prohibition Regulation* (the "*Regulation*"), which designates hunting areas in which motor vehicles may not be operated. The application was based upon his physical disability. The Regional Manager, Environmental Stewardship (the "Regional Manager"), denied the application on the basis that Mr. Chanski had not provided "sufficient justification to allow for an exemption." Mr. Chanski appealed the Regional Manager's decision.

The Board found that there were errors in the Regional Manager's decision-making process. More specifically, the analysis of Mr. Chanski's application was inconsistent with Ministry policy and lacking in fairness. Moreover, the reasons the Regional Manager provided for his decision were insufficient.

The Board further found that the medical information that Mr. Chanski provided supported a finding that he suffered from a severe disability which impeded his ability to walk while carrying a firearm. As a result, the Board determined that he should be accommodated by the issuance of a permit to hunt using a motor vehicle in closed areas. However, the Board determined that it did not have sufficient evidence to determine how Mr. Chanski should be accommodated, and, in particular, which closed areas should be included in the permit. In addition, the Board found that the medical evidence did not support the issuance of a permit authorizing him to shoot from a motor vehicle.

Mr. Chanski argued that the Regional Manager's decision to deny him the permit, and failure to accommodate him as a disabled person, amounted to discrimination on the basis of physical disability. However, the Board found that there was insufficient legal argument before it to issue a decision based on human rights law.

Turning to the question of remedy, the Board determined that, because the permit period at issue had expired on March 31, 2007, the matter could not be sent back to the Regional Manager with directions. However, the Board advised that it expected that its decision would provide the Regional Manager with guidance in assessing and deciding Mr. Chanski's 2007 application.

Accordingly, the appeal was allowed, in part.

2007-WIL-009(a) Brian Chanski v. Regional Manager

Decision Date: March 7, 2008

Panel: Gabriella Lang

In May 2007, Mr. Chanski applied for a permit to exempt him from the prohibition against operating a motor vehicle in areas closed to motor vehicles, as set out in the *Motor Vehicle Prohibition Regulation*, which designates hunting areas in which motor vehicles may not be operated. The application was based upon his physical disability. The Regional Manager, Environmental Stewardship (the "Regional Manager"), issued a permit granting Mr. Chanski access to four of the thirty-six closed areas Mr. Chanski had requested access to. Mr. Chanski appealed the Regional Manager's decision on the basis that the Regional Manager failed to accommodate him as a disabled hunter by not granting all of the exemptions he had requested. Mr. Chanski also applied for costs.

The Board confirmed that regulatory bodies have a duty, under human rights legislation and judicial decisions, to accommodate persons with disabilities, unless they can establish that accommodation would result in undue hardship. In the context of disabled hunters seeking to use a motor vehicle to hunt in areas that have been closed to motor vehicles, this involves balancing the rights of the disabled hunter against the reasons for the closure. Closures may be motivated by the goals of reducing hunting pressure on wildlife, or protecting the environment from impacts associated with motor vehicle use, for example.

Turning to the case at hand, the Board found that Mr. Chanski's application was not sufficiently specific about the roads he wished to be granted vehicle access to, the species to be hunted and the timing of hunts for the Regional Manager to assess the extent to which the requested closed areas would have been impacted by motor vehicle access. However, the Board also found that the Regional Manager's decision to grant access to four of the thirty-six closed areas requested, without providing reasons for that decision, did not amount to reasonable accommodation. The Regional Manager should have assessed each of the closed areas identified in Mr. Chanski's application and should have determined on a case-by-case basis whether accommodating Mr. Chanski would have resulted in undue hardship in each area. The Regional Manager should also have provided reasons when denying access to a particular area.

Turning to the question of remedy, the Board determined that, although the Board had the jurisdiction to make a new decision in relation to the permit, it was unable to do so based on the information that was available. Neither party had provided sufficient information for the Board to make a new decision on the thirty-two remaining closed areas. Therefore, the matter was sent back to the Regional Manager with directions to consult with Mr. Chanski about the specific hunting locations, species and hunting times, and to issue a new permit within two weeks of Mr. Chanski providing the required information.

Accordingly, the appeal was allowed. The application for costs was denied on the basis that there were no special circumstances in this case to warrant an order for costs.

Summaries of Court Decisions Related to the Board

There were no court decisions issued on judicial reviews or appeals of Board decisions.

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 the sections of the *Environmental Management Act* and the *Environmental Appeal Board Procedure Regulation* which establish the Board and set out its general powers and procedures.

Also included are the appeal provisions contained in each of the five statutes which provide for an appeal to the Board from certain decisions of government officials: the *Environmental Management Act*, the *Health Act*, the *Integrated Pest Management Act*, the *Water Act* and the *Wildlife Act*.

The legislation contained in this report is the legislation in effect at the end of the reporting period (March 31, 2008). Please note that legislation can change at any time. An updated version of the legislation may be obtained from Crown Publications.

Although not provided below, it should be noted that in addition to decisions of government officials, Part 3 of the *Environmental Management Act* gives district directors and officers appointed by the Greater Vancouver Regional District certain decision-making powers that can then be appealed to the Board under the appeal provisions in the *Environmental Management Act* referenced below. In addition, the *Oil and Gas Commission Act*, S.B.C. 1998, c. 39 (not reproduced) allows the Oil and Gas Commission to make certain decisions under the *Water Act* and the *Environmental Management Act*, and those decisions may be appealed in the usual way under the appeal provisions of the *Water Act* and *Environmental Management Act*, as set out below.

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) For the purposes of an appeal, sections 34(3) and (4), 48, 49 and 56 of the *Administrative Tribunals Act* apply to the appeal board.

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) 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) 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) 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), 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) 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 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 charged with the administration of the *Financial Administration Act*.

(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

(A) septic tanks,

…

(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 continued under section 93 of the *Environmental 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;

(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) have not been performed.

(2) A declaration, suspension or restriction under section 2 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) An 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 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 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 *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.

(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.

Wildlife Act,

RSBC 1996, c. 488

Reasons for and notice of decisions

101 (1) The regional manager or the director, as applicable, must give written reasons for a decision that affects

(a) a licence, permit, registration of a trapline or guide outfitter's certificate held by a person, or

(b) an application by a person for anything referred to in paragraph (a).

(2) Notice of a decision referred to in subsection (1) must be given to the affected person.

(3) Notice required by subsection (2) may be by registered mail sent to the last known address of the person, in which case, 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.

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
The Best Place on Earth