Introduction

Set up in 1981, the Environmental Appeal Board hears appeals from administrative decisions related to environmental issues. This Annual Report of the Environmental Appeal Board contains information about the Board, its appeal process and its decisions. It also contains recommendations, made by the Board, for legislative changes to the Statutes which govern the administrative decisions the Board hears appeals from.

In addition to giving a broad outline of how the Board works, this report will outline the types of appeals considered by the Board and how they were dealt with. The information contained in this annual report is based on the hearings which were held between April 1, 1995 and March 31, 1996. For more detailed information about the cases, summaries of all the decisions covered by this report can be found in Appendix I.

Decisions of the Environmental Appeal Board are available for viewing at the Board office and at the following libraries:

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

Decisions are also available through the Quicklaw Data Base and some decisions are reported in the *Environmental Law Digest*.

In addition, pamphlets explaining the appeal procedure under each of the relevant Acts are available through the Environmental Appeal Board Office. Also, please contact us if you have any questions or would like additional copies of this report.

Environmental Appeal Board
Fourth Floor, 836 Yates Street
Victoria, British Columbia
V8W 1L8
Telephone: (604) 387-3464
Facsimile: (604) 356-9923

The Board

The Environmental Appeal Board was created when the *Environment Management Act* was passed in 1981. It is an independent agency which hears appeals from administrative decisions made under six statutes (the "Statutes"). Five of the Statutes are administered by the Ministry of Environment, Lands and Parks. They are the *Pesticide Control Act*, the *Waste Management Act*, the *Water Act*, the *Wildlife Act* and the *Commercial River Rafting Safety Act*. The sixth statute, the *Health Act*, is administered by the Ministry of Health.

Board Membership

The Board members are appointed by the Lieutenant Governor in Council (Cabinet). The positions are part-time and none of the members are civil servants. Normally, the appointments are for a two-year term. The members are drawn from across the Province, representing diverse business and technical experience, and have a wide variety of perspectives.

During the year covered in this report, the Board membership has included doctors, lawyers, teachers, professional agrologists, professional engineers, nurses, professional biologists, biochemists and consultants.

The Board for this report period consisted of the following members:

Member	From
Chair	
David Perry	Victoria
Vice-chair	
Judith Lee	Vancouver
Current Members (as of March 31, 1995)	
Johnder Basran	Lillooet
David Brown	Gabriola
Shiela Bull	Mission
Harry Higgins	Salmon Arm
Elizabeth Keay	Victoria
Helmut Klughammer	Nakusp
Jack Lapin	Barriere
Bill MacFarlane	Revelstoke
Carol Martin	Hornby Island
Christie Mayall	Williams Lake
Laurie Nowakowski	Nelson
Bob Radloff	Prince George
Gary Robinson	Surrey
Joan Rysavy	Smithers
Elinor Turrill	Lumby
Ben van Drimmelen	Victoria

The Board Office

The Environmental Appeal Board shares its office with the Forest Appeals Commission. The office staffs nine full time employees reporting to an Executive Director. The office provides registry services, legal advice, research support, systems support, financial and administrative services, training, and communications strategies for the Board and the Commission.
The Forest Appeals Commission, set up under the *Forest Practices Code of British Columbia Act*, hears appeals from forestry-related administrative decisions in much the same way that the Board hears environmental appeals.
Supporting the Board and the Commission through one administrative office gives both tribunals access to greater resources while, at the same time, cutting down on the cost of operation and bureaucracy. With a larger staff, expertise can be shared and work can be done more efficiently.

Policy on Freedom of Information

The appeal process is public in nature. Information provided by one party must also be provided to all other parties to the appeal. Further, the hearings are open to the public.

If information is requested by a member of the public regarding an appeal, that information may be disclosed. The Board is subject to the *Freedom of Information and Protection of Privacy Act* and the regulations under that Act.

Unless the information falls under one of the exceptions in the *Freedom of Information and Protection of Privacy Act* it will be disclosed.

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

The Appeal Process

The Environment Management Act and the *Environmental Appeal Board Procedure Regulation* (the "Regulation") set out the general powers and procedures of the Board. The Board's powers and procedures are further specified in each of the Statutes.

In order to ensure that the appeal process is open and understandable to the public, the Board has developed a policy and procedures manual. It contains information about the Board itself, the legislated procedures the Board is required to follow and the policies the Board has adopted to fill in the procedural gaps left by the legislation. The manual is currently under revision.

The following is a brief summary of the appeal process. For more detailed information a copy of the Board's Policy and Procedure Manual may be obtained from the Environmental Appeal Board office.

Launching an Appeal
Notice of Appeal

To launch an appeal an appellant (the person who commences an appeal against an administrative decision) must provide a *Notice of Appeal* and deliver it to the Environmental Appeal Board office along with a cheque for $25 for each order being appealed. The Notice of Appeal must contain:

i) the reasons the appellant believes that the decision being appealed is incorrect (the grounds for appeal);
ii) what she or he wants the Board to order; and,
iii) the name and mailing address of the government officer responsible for the order.

If the Board office does not receive the appeal within a limited time period (defined in each of the Statutes) it will be unable to consider it. The exception is the *Waste Management Act* which gives the Board the power to consider extending the time period for filing an appeal.

If the Notice of Appeal is missing any of the required information, the Board will notify the appellant of the deficiencies. The Board will not take any action on an appeal until the Notice of Appeal is complete and any deficiencies are corrected. Once a completed Notice of Appeal is accepted by the Board, the Chair will:

i) decide whether the appeal is to be decided by the Board as a whole or as a panel of its members;
ii) decide whether the appeal will be conducted by way of written submissions or an oral hearing; and,
iii) establish a submission schedule for a written hearing or set the time, date and location for an oral hearing.

Once the date for a hearing or a submission schedule is set, the parties involved will be notified.

Pre-hearing Procedures
Statement of Points and Disclosure of Documents

If an oral hearing is scheduled, the parties will be asked to provide certain materials to the Board.

Disclosure of all relevant documentation in advance of the hearing is desirable so that all parties will be prepared for the hearing. The Board encourages parties to cooperate with each other in this regard.

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 requested to provide the Board, and each of the parties to the appeal, with a written Statement of Points within 10 days of the hearing. The Board also encourages parties to provide all relevant documentation in advance of a hearing so that all parties will be prepared.

A Statement of Points should be in summary form, an outline rather than a written argument, and contain:

i) the participant's objections to the respondent's decision or to the appellant's appeal;
ii) the arguments which the participant will present; and,
iii) any legal authority or precedent supporting the participant's position.

Pre-hearing Conferences

Either before or after the documentation and Statements of Points 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.

The Hearing

A hearing is a more formal process than a pre-hearing conference which allows the Board to receive the evidence it uses in making a decision.
Hearings by Written Submission

If it is determined that the hearing will be by written submissions, the submissions will be made by all parties. The appellant will be given the opportunity to provide its submissions first. The other parties will have an opportunity to receive and comment on the appellants submissions before submitting their own.

The appellants are then given a final opportunity to comment on the submissions and evidence provided by the other parties.

Oral Hearings

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

In an oral hearing, each party will have a chance to present evidence. They will have the opportunity to call witnesses and explain their 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: parties are sworn or affirmed, evidence is presented and witnesses may be cross-examined.

Parties to the appeal may have lawyers represent 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 of the Board are open to the public.

The Decision

In making its decisions the Board is called on to decide between the rights of parties and on the balance of probabilities, determine what occurred.
The Board will not normally make a decision at the end of the hearing. Instead, the final decision will be given in writing, within a reasonable time following the hearing. Copies of the decision are mailed to the parties involved and the Minister of Environment, Lands and Parks or the Minister of Health (in appeals under the *Health Act*).
Once a party has received a decision, it may wish to appeal the Board's decision. Decisions of the Board are final and the Board may not reconsider or comment on a decision once it is set down.

There are two avenues of appeal to a person subject to a decision of the Board. They are:

1. The Lieutenant Governor in Council (Cabinet) may, if it believes it to be in the public interest, change or overturn an order of the Board. This type of review is not automatic and Cabinet may choose whether or not to hear a review.
2. Someone who is unsatisfied with a Board decision may apply to the B.C. Supreme Court for Judicial Review.

Summary of Appeals

During the report period 130 appeals were filed with the Board.
Also during this time the Board issued 65 decisions. Following is a summary of the decisions issued, by Act:

Health Act

During the period covered by this report 72 appeals were filed against 64 administrative decisions under the *Health Act*.

Also during the report period, the Board issued 31 decisions under the *Health Act.* The decisions addressed appeals filed by 33 individuals and 3 groups. In all of the appeals the Respondent was an Environmental Health Officer.

Of the 31 decisions, 24 addressed appeals concerning the refusal to issue permits for the construction of a sewage disposal system and 7 concerning appeals against the issuance of sewage disposal permits. One of the permits was for the upgrade of an existing system, one for a pump-out tank disposal system, one alternative system, and the remainder were for conventional sewage disposal systems.

In 23 of the decisions the Board dismissed the appeal, 5 with recommendations and 3 with conditions on the permit. The Board allowed the appeal in 6 of the decisions in all cases issuing a permit, 3 with conditions on the permit. In 1 decision the appeal was allowed in part.
The Board issued 1 interim order. In an appeal concerning a permit to construct a wastewater holding tank. Three of the 17 Appellants appealing the permit requested a stay. The Board concluded that it does not have the statutory authority under the *Health Act* to issue a stay.

Pesticide Control Act
During the period covered by this report 17 appeals were filed against 7 administrative decisions made under the *Pesticide Control Act*.
Over the same period of time, the Board issued 9 decisions under the *Pesticide Control Act*. The decisions addressed appeals filed by 8 individuals and 5 groups against 8 Pesticide Use Permits and 1 Service License. There were two instances where more than one appeal was filed against a single permit. In both of these instances the appeals were combined and one hearing was held; each person who appealed the given permit was granted full party status. Where the appeals were against a permit that had been issued, the permit holder was also given full party status.
The Respondents included: the Ministry of Environment, Lands and Parks; Deputy Administrator, *Pesticide Control Act* (4 appeals) and the Deputy Director, Pesticide Management
(1 appeal); the Canada Minister of Agriculture (2 appeals); the Ministry of Forests (2 appeals).
Of the eight permits appealed, one was for the use of Foray 48B (BtK) for European gypsy moth eradication, four allowed the application of the herbicide “Vision” for forestry purposes, and one allowed the application of “Tordon K” and “Roundup” for the purpose of noxious weed control.
The Board dismissed one appeal with amendments to the permit and allowed another appeal issuing the appropriate permit themselves.
The Board issued 6 interim orders and 1 interim decision. In the interim decision the Board allowed the permit with amendments and a final decision followed with the Board’s reasons for its decision. Four of the interim orders concerned requests for stays of the permits sought by the Appellant. The Board granted three stays and refused one. Finally, in the fifth interim order, the Board ordered an adjournment to give the Appellant and Respondent a chance to attempt negotiations before proceeding to a hearing.

Waste Management Act
Between April 1, 1995 and March 31, 1996, the Board received 18 appeals against 20 administrative decisions under the *Waste Management Act*.
Also, during this period there were 12 decisions issued under the *Waste Management Act* addressing issues raised by 17 Appellants. The Respondent in all hearings was the Deputy Director of Waste Management.

Five of the appeals related to waste permits issued, 2 to the refusal to issue waste permits, 1 to the refusal to make a decision on the Appellant's request for a pollution abatement order, 1 to the amendment of waste permits for Bee-Hive Burners, and 1 to a remediation order of a contaminated site.
Three of the appeals were allowed, 1 with conditions outlined in the permit. Three of the appeals were dismissed, 2 with amendments to the permits. One appeal was allowed in part. The remaining appeal was returned to the Deputy Director for reconsideration.
In addition the Board issued 1 interim decision and 2 interim orders. The interim decision related to the cancellation of a permit. In the interim decision the Board allowed the appeal and re-issued the permit with amendments. A full decision with reasons was issued later. The two interim orders related to requests for stays made by the Appellants. The Board granted one stay and refused the other.

Water Act
During the period covered by this report 14 appeals were filed against 10 administrative decisions made under the *Water Act*.
Also during this period the Board issued 3 decisions under the *Water Act*. The decisions addressed appeals filed by 4 individuals and 1 association. The appeals related to the issuance of 5 water licences. All 5 licences were for regulating water use; 2 for private use and 3 for hydro-electric power. In all of the appeals the Deputy Comptroller of Water Rights was the Respondent and the permit holder the Third Party.
In 2 of the Board's decisions the appeals were dismissed. The third decision addressed the issue of whether or not the Appellants had standing before the Board. The Board determined that the Appellants did not have standing and dismissed the appeal.

Wildlife Act
During the period covered by this report 10 appeals were filed against 11 administrative decisions made under the *Wildlife Act*.
Over the same period of time the Board also issued 10 decisions addressing appeals filed by 9 individuals. The Respondent in all hearings was the Deputy Director of Wildlife.
Three of the appeals related to the refusal to issue a permit for the possession of dead wildlife or parts of them, 3 to the suspension of hunting privileges, 1 to the refusal to issue a hunting permit, and 1 to the refusal to renew a permit for the possession or display of wildlife.
In eight of the decisions the appeals were dismissed, 2 with recommendations.
The Board issued 1 interim decision and 1 interim order. The interim decision addressed whether or not it was within the Board's jurisdiction to consider constitutional questions. The Board determined that it had the ability to hear constitutional questions. The interim order addressed the Appellants request for a stay. The Board granted the stay.

Recommendations

The Board is not required by legislation to make recommendations for amendments to its Statutes in its annual report. However, it is hoped that making recommendations will lead to changes in the appeal process that promote fairness, accessibility and efficiency.
The following are recommendations from the Board:

1. The Board recommends amending all its Statutes to provide:

(a) Consistent and Broad Decision-making Authority

The decision making authority of the Board should be consistent and broad. The *Waste Management Act* provides the Board with the authority "to confirm, reverse or vary the
decision appealed from, and make any decision that the person whose decision is appealed could have made, and that the Board considers appropriate in the circumstances." However, under the *Wildlife Act* the Board's powers are very limited in that it may either dismiss the appeal or send the matter back with directions. Providing the Board with the broad decision-making authority under all its Statutes, as is provided under the *Waste Management Act*, will promote consistency, lessen confusion and best utilize the expertise of the Board. Limiting the Board's powers can lead to a waste of the Board's resources.

(b) Consistent Authority to Entertain Appeals

The Board recommends that its enabling statutes be harmonized to allow any person "who considers himself or herself aggrieved by a decision" to appeal to the Board. This would include anyone who finds themselves to be

genuinely aggrieved by a decision. Giving the Board the discretionary power to decide whether an individual appealing has a genuine grievance with a decision under appeal will assist in preventing appeals which are frivolous or vexatious in nature. It will also help to avoid unduly and unfairly restricting appeal rights by giving the right to appeal to a small specific class of individuals which may prevent individuals with a genuine grievance from appealing a decision.

(c) Authority to Award Costs

The Board recommends that its enabling statutes be standardized to require the posting of a bond to cover the costs of an appeal and provide the Board the authority to award costs. Currently, under the *Pesticide Control Act* and the *Water Act* the Board may require the Appellant to deposit an amount of moneys it considers sufficient to cover the reasonable appeal expenses of the Board and the Respondent. Under the *Pesticide Control Act* the Board may also order that costs be awarded.

At present, the Board has no power to dismiss frivolous or vexatious appeals prior to a hearing. In addition, hearings themselves can be unduly lengthened when parties insist on providing evidence on irrelevant issues or on matters beyond the jurisdiction of the Board. In both of these cases, the power to award costs would act as a method of compensating parties who are unduly inconvenienced or prejudiced by vexatious appeals or unnecessarily lengthened proceedings.

In cases where appeals raise important issues of public policy or where the Respondent (agent officials) are found to have made serious errors of law or of procedure, the power to award costs would encourage parties to appeal improperly made orders.

The harmonization of the Board's Statutes will clarify the its role concerning fair administration of environmental legislation and provide a consistent approach for the appeal process.

2. The Board recommends amendments to the *Health Act*

In its decision 94/20 Douglas Lake Ranch and an Environmental Health Officer, the Board reviewed the *Health Act* and commented that neither the Act nor its regulations consider environmental sensitivity nor broad land use concerns. The Board recommended that legislative amendments should be made to give the health officer the discretion to consider environmental and land use factors in deciding whether to approve permits for sewage disposal systems. The Board also expressed concerns over the Act's failure to require an inter-agency review process to deal with environmental concerns in sewage disposal applications.

3. The Board recommends amendments to the *Water Act*

In its decision 95/13 Bill Wyett and Wendy Garbidge and Deputy Comptroller of Water Rights, the Board recommended that the *Water Act* be amended to provide that the ecological health of a water body be considered when issuing a water licence. This could be accomplished through referrals to other agencies, such as the Department of Fisheries and Oceans and the Wildlife Branch of the Ministry of Environment, Lands and Parks. Any comments or recommendations made should be incorporated into the licence.

Appendix 1 – Legislation and Regulations

The Environmental Appeal Board is established under section 11 of the *Environment Management Act*. The Act defines the structure of the Board and provides the Board with the statutory authority to hear appeals of administrative decisions made under six statutes; five are administered by the Ministry of Environment, Lands and Parks and the sixth is administered by the Ministry of Health.

Relevant excerpts from the *Environment Management Act*, the Environmental Appeal Board Procedure Regulation, and each of the Acts from which the Board entertains appeals are provided as follows:

Environment Management Act

11. (1) The Lieutenant Governor in Council shall establish an Environmental Appeal Board to hear appeals that under the provisions of any other enactment are to be heard by the board, and the board shall in relation to the appeals have the powers given to it by that other enactment.

(2) The board shall consist of a chairman, one or more vice chairmen and other members the Lieutenant Governor in Council appoints.

(3) The Lieutenant Governor in Council may appoint persons as temporary members to deal with a matter before the board, or for a period or during circumstances he specifies, and may designate a temporary member to act as chairman or as a vice chairman.

(4) A temporary member has, during the period or under the circumstances or for the purpose for which he is appointed as a temporary member, all the powers of and may perform all the duties of a member of the board.

(5) The Lieutenant Governor in Council may determine the remuneration and expenses payable to the members of the board.

(6) The chairman may organize the board into panels, each comprised of one or more members.

(7) The members of the board shall sit

(a) as a board, or

(b) as a panel of the board, and where members sit as a panel,

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

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

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

(8) The number of members that constitute a quorum of the board or a panel shall be set by regulation of the Lieutenant Governor in Council.

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

(10) In an appeal, the board or a panel

(a) may hear any person, including a person the 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, shall give that person or body full party status.

(10.1) A person or body that is given full party status under subsection (10) may

(a) be represented by counsel,

(b) present evidence,

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

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

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

(11) Where the board or a panel makes an order or decision with respect to an appeal the chairman shall send a copy of the order or decision to the minister and to the parties.

1981-14-11; 1983-10-21, effective October 26, 1983 (B.C. Reg. 393/83); 1989-25-2.

Environmental Appeal Board Procedure Regulation

Interpretation

1. In this regulation

"Act" means the *Environment Management Act*;

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

"chairman" means the chairman of the board;

"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 appeals 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 times allowed by the enactment that authorizes the appeal.

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

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

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

(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 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 only 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 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 of 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 to 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.

Commercial River Rafting Safety Act

Under section 6 of the *Commercial River Rafting Safety Act*,

6. Where the registrar suspends or cancels a registration, license or permit or refuses to register or issue a license, the person may appeal to the Environmental Appeal Board established under the *Environment Management Act*, and the board may confirm the decision of the registrar or may reverse or vary it.

Health Act

Under section 5 of the *Health Act*,

5. (1) The Lieutenant Governor in Council may make regulations for the prevention, treatment, mitigation and suppression of disease and regulations respecting the following matters: …

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

(c) sewage disposal systems …

and requiring a permit for them and requiring compliance with the conditions of the permit and authorising inspections for that purpose …

(3) If a person is aggrieved by

(a) the issue or the refusal of a permit for a sewage disposal system ...

under a regulation made under subsection (1)(mm), the person may appeal that ruling to the Environmental Appeal Board established under section 11 of the *Environment Management Act* within 30 days of the ruling.

(4) On hearing an appeal under subsection (3), the Environmental Appeal Board may confirm, vary or rescind the ruling under appeal.

Pesticide Control Act

Under section 15 of the *Pesticide Control Act*,

15. (1) An appeal may be filed by any person with the board against the action, decision or order of the administrator or of any other person under this Act. …

(4) On an appeal the board may make an order it considers appropriate …

In hearing appeals against Pesticide Use Permits, the Board must decide, based on the evidence before it, whether using the pesticide in the way the permit allows will result in an "unreasonable adverse effect" on the environment.

According to the Board's interpretation of the *Pesticide Control Act* anything that negatively affects the land, air, water and/or living things has an adverse environmental impact; however, it is the degree of that impact that determines if it is unreasonable.

The Board does not rigidly assign standards which define whether an impact is "unreasonable", preferring, instead, to consider the characteristics of the site and other factors in reaching a decision. The Board considers the following questions in making their decision:

1. Will the quality of the air, land or water be impaired?
2. Will plant or animal life, or property, be injured or damaged?
3. Will any person's welfare be impaired?
4. Will plant or animal life or property be rendered unfit for use?
5. Will people lose the opportunity to enjoy their property?
6. Could the purpose of the permit be accomplished by another method with a less severe environmental risk?

7. Are there any other factors relevant to the matter under appeal which have been brought to the Board's attention?

To the Board "unreasonable" will be whatever is not suitable under the circumstances.

The pesticides that are the subject of appeals before the Board have almost always been registered by the federal government. Since such a pesticide has had extensive testing, the courts have instructed the Board to assume that a federally registered pesticide is generally safe. However, what is generally safe might not be safe in all circumstances. The Board must determine the safety of the pesticide on a permit-by-permit basis, considering the specifics of the local environment, the details of the permit and any other relevant factors.

Waste Management Act

Under section 26 of the *Waste Management Act*,

26. (1) … a person who considers himself aggrieved by a decision of

(b) the director or a district director may appeal to the appeal board.

(2) The chairman of the appeal board may extend the time for commencing an appeal to the board either before or after the time has elapsed.

Section 28 defines the powers of the Board under this Act as:

28. (3) On considering an appeal, the board may

(a) hold a new hearing,

(b) confirm, reverse or vary the decision appealed from, and

(c) make any decision that the person whose decision is appealed could have made, and

that the board considers appropriate in the circumstances.

Under Section 29 of the Act:

29. An appeal taken under this Act does not operate as a stay or suspend the operation of the decision being appealed unless the person or board to whom the appeal is taken orders otherwise.

Under Section 30 of the Act:

30. On the request of the person whose decision is being appealed, the person or appeal board considering the appeal shall permit the person who made the decision being appealed to have full party status.

The Environmental Appeal Board hears appeals from a wide range of decisions under the Act: from challenges to *Pollution Abatement Orders* to complaints about permits for sewage disposal. A variety of factors are considered depending on the type of appeal.

Water Act

Under section 9 of the *Water Act*,

9. (1) A licensee, riparian owner or applicant for a license who considers that his rights would be prejudiced by the granting of an application for a license may … file an objection to the granting of the application.

Section 38 further defines the appeal procedure by providing

38. (1.1) An appeal lies

(a) to the Environmental Appeal Board from every order of the comptroller …

(5) The appeal tribunal may, on an appeal,

determine the matters involved and make any order that to the tribunal appears just, …

Like most of the other acts, the Board hears appeals on a variety of decisions under this Act. Decisions to approve the use of water without a license, to issue a license, to refuse a license and to amend a license, are just a few of the types of decisions which could be considered. The Board considers other existing water rights, the environment and other issues in reaching its decisions.

Wildlife Act

Under section 103 of the *Wildlife Act*,

103. (1) Where the regional manager makes a decision that affects

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

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

the person may appeal the decision of the regional manager to the director.

(3) Where the director

(a) exercises the powers of a regional manager respecting the matters referred to in subsection (1),

(b) makes a decision in an appeal from a decision of a regional manager under subsection (1), or

(c) makes another decision that affects a matter referred to in subsection (1), the person aggrieved by the decision may appeal the decision of the director to the Environmental Appeal Board.

(5) In an appeal, the Environmental Appeal Board may

(a) dismiss the appeal,

(b) send the matter back to the regional manager or director with directions.

The duties of the Board are different under the *Wildlife Act* than the other acts with which the Board deals. In other acts, the Board has the specific authority to make decisions that the decision-maker whose decision is being appealed from could have made. For appeals under the *Wildlife Act,* however, the Supreme Court of British Columbia has ruled that the Board cannot substitute its opinion for the Director's, as long as the Director was lawfully exercising his discretion. The Board must determine "whether or not the Director properly exercised discretion, that is to say bona fide uninfluenced by irrelevant considerations and not arbitrarily or illegally" *(Olsen v. Walker and others, [1989] No. 2286, Duncan Registry, Huddart, J.).*

Furthermore, even when a decision can be reviewed by the Board, the Board still cannot replace the decision. Instead they must return it to the Director who made the decision to reconsider. The Board will usually attach comments indicating what factors they believe that he or she should consider.

Appendix 2 – Summaries of Environmental Appeal Board Decisions
April 1, 1995 – March 31, 1996

The following are summaries of decisions reached by the Environmental Appeal Board between April 1, 1995 and March 31, 1996. They are organized by the Act which the appeal was brought under. There are preliminary hearings reported, for which the final decisions are pending.

Commercial River Rafting Safety Act

No appeals were heard under the *Commercial River Rafting Safety Act* during the report period.

Health Act

94/15 Tim Howard and Elizabeth Madill and Environmental Health Officer

Mr. Howard and Ms. Madill purchased property on which they hoped to build a septic tank, unaware that a similar application by previous owners had been turned down, due to the thin layer of percable soil on the property. After learning of this the Appellants were told by a 3rd party that if they added fill to the site, thereby increasing the percable soil on the site, a permit for a septic tank might be granted. They did so, but the permit was refused on two occasions, the second of which they appealed.

The Board found that while it was possible that a safe system could be designed for the property, no such design had been produced and the lot was a "difficult site". It was not unreasonable for the Ministry to refuse to issue a permit. The Appellants also alleged that the decision had been arbitrary, as similar nearby lots had been granted permits. However, the Board found that this was the result of a change in government policy. Finally, the Board agreed that the Environmental Health Officer had fettered his discretion by depending upon the Capital Regional District Health Committee's "On-site Sewage Disposal Guidelines". They found that this deference to the guidelines was not unfair or unreasonable, given the input by elected and health officials into them. Also, the distinction between "native" soil and fill is not just found in the guidelines, but in the regulations. The Board upheld the decision.

94/20 Douglas Lake Ranch and Environmental Health Officer

Douglas Lake Ranch was adjacent to Hatheume Lake Resort. The resort's sewage disposal system, a sewage lagoon, trespassed on the Ranch's property and, as a result, was cancelled. Soon afterwards the resort applied for a new permit which would service an expanded resort. Although the original application would have required approval from the Ministry of Environment (Waste Management), the project was down-sized and approval was eventually given by the Ministry of Health. Douglas Lake Ranch appealed.

There were a number of grounds for appeal. However, the Board found them all to be irrelevant and/or unsupported by the evidence, with the exception of the last ~ the submission that the Ministry should have considered the Regional District's land use policies about the environmental sensitivity of the area. However, the Board reluctantly came to the conclusion that for any sewage disposal application involving less than 5000 gallons of effluent only human health need be considered; in fact, there was no legislative authority to consider the environment or the public interest. Consequently the Environmental Health Officer need not, indeed could not, consider the district's policies.

The Board recommended that regulations be passed under the *Health Act* to give officers the discretion to consider environmental impacts in approving sewage disposal permits. The Panel also expressed concerns over the Act's failure to require an inter-agency process to deal with environmental concerns in sewage disposal applications involving less than 5000 gallons of effluent/day.

94/21 William Durick and Environmental Health Officer

Mr. Durick applied for a permit to build a septic tank. His application was turned down as the system would have been too close to his house and to his neighbour's property. He appealed. The Board noted with concern that the proposed septic system was a mere 4 feet from the ground water (vertically) and agreed with the Health Officer that the proposed sewage system did not meet the requirements of the Sewage Disposal Regulation. The appeal was dismissed.

94/24 Annette Faessler and Environmental Health Officer

The Faesslers wished to build a second house on their property and applied for a sewage disposal permit to build a septic tank. The Ministry of Health rejected the application since, in its view, the soil profile, evidence of a previous high water level, and past re-grading all made the site unsuitable for a septic field.

The Board accepted the evidence of the Faesslers' expert witness, and found that the soil had a relatively low clay content. The Board found that the present high water table was 24 inches below the surface, which was much lower than the required 18 inches. It agreed that there was

evidence of historic flooding, but found that this was not indicated by the present high water table. Finally, the Board found that previous disturbance of the site was unlikely to interfere with a septic field. The Board concluded that the site was suitable for a septic sewage disposal system and overturned the Health Officer's decision.

94/25 Franz R. Krimmel and Environmental Health Officer

Mr. Krimmel applied for a permit to build a sewage disposal system. It was refused on the basis that the high water table reached a level within 9 to 10 inches of the surface, that the area was subject to flooding, and that the percolation rate was over 30 minutes, all of which violated the Sewage Disposal Regulation. Mr. Krimmel made no serious effort to contradict these points and the Board upheld the decision of the Health Officer.

94/26 Ben and Berit Nyvik and Environmental Health Officer

The Nyviks purchased a property; which at the time was approved for septic system use. However, by the time the Nyviks began building their retirement home, several years later, the standards had changed and their application for permission to build a septic tank was turned down because the water table was too close to the surface. The Nyviks appealed.

The Board noted that the Health Officer applied the On-site Sewage Disposal policy, but that this was not set by regulation and consequently must be adapted to the circumstances of the case and not blindly applied. The Board found that septic tank repairs on nearby properties were the result of the age of the subdivision, and not a result of the unsuitability of the area for septic tanks. It ordered that a permit be issued with a number of conditions about the septic tank's location. The appeal was allowed.

94/27 John and Mavis Fast and Environmental Health Officer

Mr. and Mrs. Fast bought property and removed an old house and an existing septic field. Some years later they applied to put in a new septic tank, but permission was refused as the water table at certain times reached the surface. The Fasts appealed.

The Board noted that one of its members who was hearing the case, Ms. Sheila Bull, was indirectly associated with the issue, as she was the former chair of the Upper Fraser Valley Union Board of Health. However, neither party felt that this created any actual or perceived bias and the Board proceeded to hear the appeal.

The Board concluded that no one had explained to the Fasts that there must at all times be 4 feet of dry soil between ground level and the water level in order for approval for a septic tank to be given. Although this requirement can be waived, it would not be suitable to do so in this case where a septic tank would almost certainly be subject to periodic flooding, leakage and failure to operate. The appeal was dismissed.

94/28 Lorraine Hawley and Environmental Health Officer

Ms. Hawley applied for a permit to dispose of sewage into the ground for an 8-unit mobile home park on her 1 hectare property. It was refused on the grounds that there was less than the required 48 inches of native unsaturated soil to accommodate the system. She appealed.

While the Environmental Health Officer may authorize a sewage disposal system on sites where the water level is less than 48 inches deep, this authorization is entirely at his discretion. There was no evidence that the decision was made in an arbitrary or unfair way. The appeal was dismissed.

94/29 Garry Harward and Environmental Health Officer

Mr. Harward applied for permission to build a septic field 75 feet, rather than the required 100 feet, from a creek. The application was refused and Mr. Harward appealed. Although there were examples provided of permits being issued

for septic tanks closer to the stream than 75 feet, these permits were issued under old regulations. The Board heard no evidence that the requirement of a 100 feet buffer could be relaxed and found no evidence that the Health Officer had exercised his discretion improperly.

94/30 Ken Miller and Environmental Health Officer

In order to receive approval for a subdivision Mr. Miller agreed to a "no building" restrictive covenant on a lot which had problems with percolation. However, the Municipality stated in the covenant that it could be released if the Ministry of Health issued a sewage disposal permit for the land. Two years later Mr. Miller applied for such a permit and was turned down because the land did not meet the required 18 inches of permeable native soil. He appealed.

The Board agreed that the Health Officer had broad discretionary powers to authorize a sewage disposal system, and that these powers should not be fettered. However, the act requires that a permit "shall not" be issued unless certain criteria are met; these criteria may be set in the form of guiding policy. It found no evidence that the Health Officer's discretion was exercised improperly and dismissed the appeal.

94/31 Lumb and Environmental Health Officer

Mr. Lumb applied for a permit to build an on-site sewage disposal system on a lot. This application was rejected since in the opinion of the Environmental Health Officer, some of the property had less than 4 feet of native porous soil, concern over breakout points, an insufficient area for the septic field and for other reasons. Mr. Lumb appealed.

The Board noted that Mr. Lumb was proposing an alternative system, which may be approved under the Sewage Disposal Regulations provided public health concerns are met. The Board accepted testimony that there was roughly 5 feet of permeable soil over the relevant area and that the soil had good percolation. It was not, as the Environmental Health Officer had suggested, a built up absorption field. Any possible breakout point was held to be further than 50 metres from the system.

The appeal was allowed and a sewage disposal permit issued. However, the Board attached a series of conditions to the permit to further address public health and environmental concerns.

94/32 George Desrosiers and Environmental Health Officer

Mr. Desrosiers applied for an on-site sewage disposal system on his 6.4 acre property. It was turned down on grounds of high ground water levels and that the soil on the site was not "natural" soil within the meaning of the Sewage Disposal Regulation, and that consequently there was no natural soil above the groundwater levels.

The Board noted the requirement of 4 feet of permeable soil above ground water may be "relaxed" on properties over 1 acre in size. In addition, the Board found that no fill had been added to the property and the soil was at roughly the original level. Although it is true that the soil had been "moved around" in the course of normal farming operations on the land, the Board held that the soil was "natural" within the meaning of the regulation. For these reasons the Board overturned the Environmental Health Officer's decision and granted the appeal.

94/33 J.C. Lee and Environmental Health Officer

Mr. Lee applied for a sewage disposal permit for his property near Sunset Beach in West Vancouver. He wanted to construct a large residence on the site and he applied for a permit to construct a specially designed sewage disposal system composed of:

a. a septic tank;
b. a secondary treatment plant (multi-flo unit); and,
c. sewage disposal based on a marine outfall at 24 metre depth.

Further conditions included increasing the depth to 32 metres and installing an intermittent sand filter treatment system. The proposed system would reduce the bacteria count in the effluent by 99%. The Environmental Health Officer refused the permit due to a resolution of the North Shore Union Board of Health dated 1975 which said the Board "may prohibit discharge into tidal water." Mr. Lee appealed.

The Board allowed the appeal citing section 8 of the Sewage Disposal Regulation which gives powers to a local board to control discharges into tidal waters where it would constitute a health hazard. The Board was satisfied in this case that using the specially designed system, the Appellant had met this standard. The Board noted in its decision that there has to be reasonable evidence of a possible health hazard and not mere speculation about the possibilities of an accidental event or a system breakdown.

94/34 Robert Pulsford and Environmental Health Officer

Mr. Pulsford owns property in the Comox District. He applied and received two permits to construct sewage disposal systems but did not construct them and each permit expired. He then began construction in September 1992 but was forced to re-apply for sewage disposal permits, and did so in October 1992 and December 1994. The site experienced high water tables which exceeded *Health Act* minimum requirements. The Environmental Health Officer rejected Mr. Pulsford's application due to the lack of 18 inches of natural soil and the risk of break-out both of which are set by policy.

The Board upheld the Environmental Health Officer's decision by finding that sufficient soil did not exist on the property. Although the Board noted that the 18 inches requirement is only a guideline, the circumstances of heavy rainfall and the small size of the lot were reasons to abide by the policy. The Board recommended that the Appellant retain an engineer to design an effective disposal system for the site.

94/35 Reginald Clowes and Environmental Health Officer

Mr. Clowes owns a piece of property on Lake Windermere. He decided to build a new house on the property which had the same number of rooms as his old dwelling. He applied to repair or upgrade his existing sewage disposal system which was within 100 feet of the lake. His application under section 7(1) of the Sewage Disposal Regulation was rejected on the grounds that he could not comply with the 100 feet set back requirement of the Regulation.
The Board upheld the Environmental Health Officer's refusal to issue the permit. The Board found that the Environmental Health Officer had correctly decided that he had no discretion under the Regulation. However, the Board ordered the Environmental Health Officer to reconsider the Appellant's case under section 7(2) of the Regulation which gives complete discretion to the Environmental Health Officer when considering an alteration to a disposal system which was built before December 20, 1985 when the Regulation came into force.

94/36 Don Walde and Environmental Health Officer

Mr. Walde applied to construct a pump-out tank sewage disposal system on his lakefront property situated on Moyie Lake. The application was rejected on the basis that a pump-out disposal system shall not be issued unless a level of local government guarantees servicing and disposal of the waste as required by the On-Site Sewage Disposal Policy. Since the Regional District refused to accept responsibility the Environmental Health Officer refused Mr. Walde's application.
The Board upheld the Environmental Health Officer's decision. The Board found that without a government guarantee the Public Health could not be safeguarded.

94/40 Ross and Laurel Hutton and Environmental Health Officer

The Huttons own 7 acres of land in Surrey B.C. They applied for a sewage disposal system using a conventional septic tank and a built-up absorption field. Their application was rejected on the grounds that their proposal did not meet policy guidelines on groundwater, soil depth, and percolation rates.
The Board found that all of the Environmental Health Officer's determinations were based on policy interpretations of section 7(1) of the Sewage Disposal Regulation. The Board found the main reason for rejection of the application was that the water table was too close to the surface in the winter months. The Appellants failed to provide evidence that the Environmental Health Officer's adherence to policy was unreasonable. The Board, therefore, dismissed the appeal. The Board considered issuing a permit with conditions, but found it did not have enough evidence to do so.

94/41 Mountain Pacific Investments and Environmental Health Officer

The Appellant applied to install an alternate system under the Ministry of Health Innovative Design Policy for sewage disposal on a property in Shawnigan Lake, B.C. The Appellant wished to build a new home on the lot, which currently has only a pit privy system for sewage disposal. The Environmental Health Officer rejected the application on the basis that the new system could not comply with the Regulation which requires a 100 feet setback from the highwater mark of a non-tidal water body. There is a water course on the property. The Environmental Health Officer also found that the policy requirement of a backup system being necessary when using an alternative system was not met. He found the pit privy was not an adequate backup system for the Appellant's intended new dwelling.
The Board found that the water course on the property was not a non-tidal water body and therefore the Regulation had no application in the case. The Board then considered whether the Environmental Health Officer had properly exercised his discretion under 7(1) of the Regulation in
implementing the Innovative Design Policy. In particular, the Environmental Health Officer rejected the Appellant's concern that the pit privy could operate as a backup to the alternate system. The Board found the Environmental Health Officer had failed to exercise his discretion in allowing the pit privy to operate as a backup system. The Board issued the permit with conditions ensuring that the Appellant would take full responsibility for any failure of the alternate disposal system.

94/44 Terry Ekonomides and Environmental Health Officer

This was an appeal against the rejection of a sewage disposal permit application. The application was rejected because the proposed system did not comply with the Sewage Disposal Regulation. At the hearing, the Appellant abandoned his intention to install a sewage disposal field. No evidence was presented which suggested the appeal should succeed and the Board dismissed the appeal.

95/01 Cortes Island Seafood Association and Environmental Health Officer

A sewage disposal permit was issued to a third party, Triple R Land Company, to construct a package treatment plant and an absorption field incorporating a pressure distribution system. The Appellant argued the disposal system approved by the Environmental Health Officer was insufficient given the nature of the site. The Appellant's were

concerned the effluent from the system would reach their sea farming activities located in nearby Cortes Bay. The Appellant wanted additional conditions added to the permit to safeguard public health and wanted the Board to rule on the possibility of the expansion of the Permit Holder's proposed development.
The Board found that the site met the regulated requirements. The Appellant wanted additional requirements added on to the permit to ensure the protection of public health. The Board did not find enough evidence to support this contention and noted additional requirements had already been imposed on the Permit Holder. The Board said it could not rule on the speculated increase in the development but recommended that the Health Officers monitor the water quality in Cortes Bay to ensure there is no contamination.

95/05(a) Julius Bekei et al and the Chief Environmental Health Officer and South Surrey Independent School Society

A permit was issued to the South Surrey Independent School Society to construct a sewage disposal system for a proposed school. The permit was issued for the purpose of constructing a wastewater holding tank. The Board received 17 appeals against the permit from residents in the South Surrey area. Three of the Appellants requested a stay of the permit pending the hearing of the appeal.
The Board noted that section 11 of the *Environmental Management Act* directs that the Board may hear appeals which are authorized to the Board under the provisions of any other enactment and that in relation to those appeals the Board has the powers given to it by that other enactment. Unlike other enactments which apply to the Board, the *Health Act* is silent with regard to stays. On this basis, the Board concluded that there is no statutory authority for it to issue stays on appeals brought under the Health Act. The Board also considered whether it had implied authority to grant stays on appeals brought under the Health Act and concluded that it did not. The stay request was denied.

95/10 Judson and Evonne Rideout and Environmental Health Officer

Mr. Rideout applied for a permit to construct a sewage disposal system. The Environmental Health Officer wrote to the Rideouts to let them know that the permit could not be approved until the site was monitored through the winter to confirm that groundwater did not rise within 4 feet of the ground surface. On April 12, 1995, the Environmental Health Officer sent a letter to Mr. Rideout rejecting his permit as groundwater had been observed at less than four feet from the surface on a number of occasions during the winter. The Rideouts appealed this decision to the Environmental Appeal Board.
The Board dismissed the appeal. Under section 7(1) of the Health Act the Environmental Health Officer is allowed discretion where standards have not been met having "regard to safeguarding public health". The Board concluded that the Environmental Health Officer had exercised his discretion and decided, after considering the water levels and the close proximity of waterways, that the public health would not be safeguarded if the permit was granted.

95/12 Vern Pratt and Environmental Health Officer

The Appellant appealed the Environmental Health Officer's refusal to issue to him a sewage disposal permit for his property on Quadra Island. The Appellant's lot is a very small lot with a steep terrain. The Appellant hired an engineering company to design a suitable disposal system that would attempt to ensure the protection of neighbouring wells. The closest well to the proposed field is only 65 feet from the field.
The Appellant argued that the required 100 foot distance from the edge of the field to the nearest "source" of domestic water required by section 18(d) of the regulations should be measured from the edge of the field to the aquifer itself rather than to the top of the well. When measure in this manner the distance was 150 feet from the edge of the field.
The Board rejected this interpretation of the 100 foot distance. It held that the 100 foot must be measured from the disposal field to the closest point of domestic water which was not completely encased and where possible effluent break-out could occur. The Board dismissed the appeal.

95/14 Ross Chevalier and Environmental Health Officer

In November, 1993, Mr Chevalier received an offer to purchase his lot, subject to sewage disposal approval. The Environmental Health Officer rejected the application on the grounds that the sewage system would have been too close to neighbours' property lines and because the steep slope of the Appellant's property might result in the break out of effluent. After being rejected twice, the Appellant appealed to the Environmental Appeal Board.
The Board dismissed the appeal. After reviewing the evidence on the relevant regulations, guidelines, and the physical terrain of the Appellant's lot, the Board found no evidence that the Environmental Health Officer erred in exercising his discretion. Further, the Board found no evidence that the Environmental Health Officer's decision was unreasonable or arbitrary. The Board recommended that, in future, Ministry of Health staff should ensure that applicants for sewage disposal permits be fully informed that any work undertaken toward seeking approval will done at their own risk and without guarantee of the eventual issuance of a permit.

95/15 Karen Fowler et al. and Environmental Health Officer

This was an appeal of the Environmental Health Officer's decision to grant a third party a permit to construct a sewage disposal system to support a condominium development. The Appellants' concern was that effluent from the system would channel towards the aquifer that supplies their well, and contaminate their well water.
The Board considered the evidence and dismissed the appeal. In coming to this decision, the Board noted that the conditions of the permit site met or exceeded the minimum requirements set out in the regulations, including the distance to the nearest well. The Board amended the permit to allow 19 two bedroom units, rather than 20, so as to comply with the regulations governing the allowable estimated daily discharge of sewage.

95/17 Marilyn Van Nuys and Environmental Health Officer

Ms. Van Nuys applied for a permit for an on-site sewage disposal system on her property. The application was rejected by the Environmental Health Officer on the basis that the groundwater table on the site was too close to the ground surface with the consequent risk that there could be surface movement of effluent in saturated conditions. The Appellant appealed this decision to the Board.
The Board dismissed the appeal. The Board noted that if sufficient technical evidence had been presented, it might have been possible to grant the appeal with a number of conditions attached to the permit. However, because the Appellant submitted no technical evidence, the Board found it impossible to make a positive finding that the proposed sewage site would not create a public health hazard. The Board also noted that new regulations had recently been introduced to provide greater flexibility for installing sewage disposal systems on agricultural land such as the Appellant's and recommended that the Appellant apply under these new regulations.

95/18 Neil Fraser et al. and Environmental Health Officer

This was an appeal against the issuance of a sewage disposal permit to a developer.
Originally, the Permit Holder proposed a 9 unit townhouse development for their property on the shore of Shuswap Lake and was issued a permit for this purpose. The Permit Holder realized soon thereafter that if a package treatment plant was installed the required length of pipe in the sewage disposal system could be significantly reduced. A new application was made and the Permit Holder was issued a permit for a 20 unit townhouse development. The Appellants main objection was with respect to the number of housing units proposed in the sewage disposal permit application. The Appellants were also concerned with the possibility of effluent breakout from a possible future widening of an adjacent highway and other maintenance and post-installation concerns.
The appeal was allowed in part. The Board concluded that the proposed 20 unit development was too large for the proposed sewage disposal field and ordered that the permit be amended to permit a maximum of 16 units. The Board dismissed the other grounds of appeal.

95/20 Raili Martinpuro and Environmental Health Officer

The Appellant applied for a permit to construct a standard septic system. The Environmental Health Officer rejected the application. The Appellant appealed to the Board on the grounds that a 1981 approval to build a septic system on the same lot created a precedent which bound the Environmental Health Officer to re-approve her current permit application.
The Board concluded that the Appellant should only have presumed that her 1981 sewage disposal permit would be valid until the time it expired, which was six months from the date of issuance. The Board further concluded that due to shallow soil depth, and steep slope, the Environmental Health Officer was correct to deny a permit to install a septic field in the proposed manner and dismissed the appeal.

95/21 Norm and Sharie Hutton and Environmental Health Officer

The Appellants wished to build on their property and applied for a permit to install an on-site sewage disposal system utilizing a conventional septic field. The Environmental Health Officer rejected the application, on the grounds that the property's groundwater table was only 8 to 12 inches from the surface. It is Ministry of Health policy to only consider approvals subject to fill on properties of the Huttons' size where there is a minimum of 18 inches of soil above the water table. The Huttons appealed.
The appeal was dismissed. The property did not meet the current regulations under the *Health Act* and was not of sufficient size to accommodate commonly used alternate systems. There was evidence that Ministry of Transportation and Highways ditching was a possible cause of the high water table on their property and the Board recommended that the Appellants bring this to the Ministry's attention.

95/26 Archie and Lottie Schanowski and Environmental Health Officer

The Appellants appealed the issuance of a sewage disposal permit for the lot adjoining their property. The Permit Holder had plans to build two three-bedroom houses on his property which were to be serviced by the conventional sewage disposal system approved by the permit.
The Appellants' main concern in the appeal was that the proposed new development would cause adverse environmental effects. However, the Board concluded from the evidence that the proposed sewage disposal system

complied with all the standards in the Sewage Disposal Regulation. The Board upheld the permit and dismissed the appeal.

Pesticide Control Act

94/11(a) Linda Armstrong and Canada (Minister of Agriculture)

An interim decision was issued amending the pesticide use permit for spraying against gypsy moths because the spraying program was to commence within 2 to 3 weeks of the hearing date.

94/11(b) Linda Armstrong and Canada (Minister of Agriculture)

Ms. Armstrong appealed a decision to issue a pesticide use permit for use against gypsy moths. She was concerned about possible effects on human health and non-target wildlife. She also argued that the impact of an established population of gypsy moths was fairly low.

The Board noted that when pesticides have been registered by the federal government the Board is required to assume that the pesticide is generally safe. Further, in light of expert testimony, the Board found that there was no proven health risk from the use of the pesticide. The Board also concluded the financial consequences of an established gypsy moth population in B.C. were enormous. However, the Board was concerned that the recommendations of the Chilliwack Pesticide Control Committee and the Environmental Protection Branch of Environment Canada had not been addressed in the permit, and amended it to include them. The appeal was dismissed.

94/12(a) Treaty 8 Tribal Association and Deputy Administrator of the *Pesticide Control Act*

The Deputy Administrator of the *Pesticide Control Act*, issued Pesticide Use Permits to two forest companies to apply pesticides over Treaty 8 Tribal Association territory. The Association appealed. The Deputy Administrator and the Association jointly requested an adjournment from the Board while they attempted to negotiate a solution. This application was opposed by the Permit Holders.

The Board noted that previous Board and court decisions required that the Crown consult with Aboriginal peoples when aboriginal rights are likely to be affected, and that the level of consultation would be evaluated by the Board when the hearing proceeded. Consequently, it was appropriate to allow every opportunity for consultation before the hearing. The adjournment was allowed.

94/12(b) Treaty 8 Tribal Association and Deputy Administrator of the *Pesticide Control Act*

The Appellants had requested and been granted stays against Pesticide Use Permits pending the outcome of this appeal. The stays expired on June 30, 1995. The Association requested that the stays be extended until the Board had concluded the matter. The Board found that the Permit Holders would suffer significant economic loss should the stays be continued. The Board also concluded that the Appellants had failed to offer evidence that they would suffer irreparable harm should the permits be used. The Board decided that the balance of convenience favoured the Permit Holders and it decided not to extend the previously granted stays.

94/13(a) Johanne Rensmaag et al. and Deputy Administrator, *Pesticide Control Act* et al.

In a decision, dated June 17, 1992, the Board ordered the Deputy Administrator to determine buffer zones and require that they be included in future pesticide use permits. This was not done when the permit was renewed. The Appellant appealed an amendment to the permit which set out limited buffer zones as inadequate, and requested a stay to prevent spraying until the matter was heard.

While the Board did not find a risk of irreparable harm to Ms. Rensmaag's health, it was alarmed that the Deputy Administrator seemed to have ignored its previous order. In order to preserve the fair administration of justice the Board granted the stay.

94/19 Northwest B.C. Coalition for Alternatives to Pesticides et al. and Deputy Administrator of the *Pesticide Control Act* and British Columbia Minister of Forests

The Ministry of Forest applied to the Deputy Administrator for a series of Pesticide Use Permits for the application of herbicides on forest lands. The permits were granted.

The Appellants objected to the permits on a number of grounds including: "health effect, effects on the environment, failure to consult with First Nations, failure to consider alternative methods, and habitat effects." The Board found that most of these concerns were either outside its jurisdiction or were adequately addressed. However, it did agree that concerns about wildlife and habitat were not adequately reflected in the permits.

The Appellants further objected to the procedure used to issue the permits on two grounds. They felt that the role of one government advisor created a perceived and actual conflict of interest, since he was involved both in the application process on behalf of the Ministry of Forests and in advising the Deputy Administrator on whether to accept the applications. Secondly, they submitted that the decision to issue the permits was made without complete information. The Board agreed with both of these submissions. It then considered the appropriate remedy, rejecting

the possibilities of revoking the permits altogether (which would force the Ministry of Forests to begin the process from scratch), and of returning the matter to the Deputy Administrator (who, it was felt, might have prejudged the matter). The Board decided to consider and issue the appropriate permits itself.

94/37 Tswataineuk First Nation and Deputy Administrator *Pesticide Control Act* and International Forest Products Ltd.

The Deputy Administrator issued a permit to International Forest Products Ltd. (Interfor) to apply the Herbicide "Vision" in the Kingcome Inlet area of B.C. The Tswataineuk First Nation appealed the permit and requested that a stay be granted against the permit. Interfor voluntarily offered to stay the pesticide application pending a negotiated settlement with the Appellant. Such a settlement was not possible and Interfor withdrew their voluntary stay. The Appellant objected and requested that the Board reconsider the stay request.

The Board refused to grant the stay request. It found that the balance of convenience favoured Interfor since they have an obligation to carry out a silviculture program under the *Forest Act* and would suffer substantial economic loss. The Board found that the Appellant did not offer evidence of any negative impact the spray program would have on their traditional activities.

95/03 Robson Alternatives to Pesticides and Deputy Administrator of the *Pesticide Control Act* and B.C. Forests

The Deputy Administrator granted a multi-year permit to the Ministry of Forests to apply "Tordon K" and "Round-up" in the Robson Valley District. Robson Alternatives to Pesticides appealed the permit and requested that the Board grant a stay against the use of the permit. The Deputy Administrator did not object to a stay provided it was done after the Ministry had completed its summer spray program. The Ministry did object saying a stay would put them in violation of the *Weed Control Act* if the stay were issued before the end of August.

The Board granted a stay finding no objection by the parties as long as it took effect after August 30, 1995.

95/04 Robson Alternatives to Pesticide and Deputy Administrator of the *Pesticide Control Act* and Slocan Forest Products

The Deputy Administrator issued a multi-year permit to Slocan Forest Products Ltd. (Slocan) to apply the herbicide "Vision" in the Valemont area of B.C. by aerial spray or backpack sprayer. Robson Alternatives to Pesticides appealed the permit and requested that the Board grant a stay against the use of the permit.

The Board granted a stay to take effect after September 8, 1995, since it was found that there was no evidence of irreparable harm to Slocan if the stay was granted after that date.

Waste Management Act

94/14 Houston Forest Products (Trustee) Ltd. and Deputy Director of Waste Management

Houston Forest Products held a waste permit which allowed it to burn wood waste from its mill in Houston, B.C. The Ministry of Environment, Lands and Parks, responding to growing health concerns, installed a particulate monitoring system and requested that the company contribute to the cost. Later, the Ministry amended the permit to require the company to take over half of the financial responsibility for the monitoring system. The company appealed, alleging that the Deputy Director lacked jurisdiction to make such an amendment, and that there was no evidence that the monitoring was needed to protect the environment.

The Board found that the Regional Manager has a broad legislative responsibility to protect the environment and that this duty is accompanied by the powers to do so. Consequently, he was found to have the necessary jurisdiction and to have acted in compliance with the *Waste Management Act* and its regulations. In addition, the Board found that while there was a growing concern over the health effects of particulate matter, there was not enough data to evaluate the degree and source of the problem. By requiring monitoring the Ministry was obtaining this information, and the Board felt that this was necessary to ensure that the environment was protected. However, the Board felt that it was excessive to require HFP to pay half the cost of the monitoring. The amount was reduced to 1/3 and the appeal was dismissed.

94/16 (a) Sechelt Indian Band and Deputy Director of Waste Management

The Board issued an interim decision reversing the decision of the Deputy Director to cancel a waste permit authorizing effluent discharge to the Georgia Strait. The interim decision was issued because the Board was concerned about the potential health and environmental impacts as a result of sewage leaking from failed tile fields.

94/16 (b) Sechelt Indian Band and Deputy Director of Waste Management

A permit was issued to the Sechelt Indian Band authorizing effluent discharge to the Georgia Strait for a proposed housing and marina development. A local ratepayers association appealed the decision. The Deputy Director upheld the appeal and cancelled the permit on the finding that the local governments in the area were involved in a liquid

waste management planning process and were planning to extend local sewers to the permit area. The Sechelt Indian Band appealed that decision to the Board.
The Board allowed the appeal and ordered the Deputy Director to re-issue the permit. The Board found that the Deputy Director had made inquiries after the hearing before him and had considered additional information without inviting the parties to the appeal to respond or comment, thus breaching the rules of natural justice. Further, the Board concluded that the original permit approved by the Regional Waste Manager adequately protected the environment.

94/39 Rustad Bros. and Company Ltd., Northwood Pulp and Timber, Houston Forest Products Ltd. and Deputy Director of Waste Management

The Appellant companies all employed Bee-Hive Burners to burn waste wood from their sawmills. In May 1992, the Ministry of Environment, Lands and Parks developed a policy to phase out this type of burning called "Smoke Management In the Nineties". The policy recommended the phaseout of all Bee-Hive type burners by January 1, 1996. The Regional Waste Managers sent letters to all the Appellants advising that their permits were amended to include the phaseout requirement by December 31, 1995. The companies appealed the amended permits to the Board.
The Board held that the Regional Waste Managers failed to properly exercise their discretion (under the *Waste Management Act*) by simply following the Ministry policy. The Board thus sent the matter back to the Regional Waste Managers for reconsideration.

94/22 7437 Holdings Ltd. and Deputy Director of Waste Management

The Appellant company applied for a permit from the Ministry of Environment, Lands and Parks to deposit waste onto a site adjacent to the Fraser River and Burns Bog. The permit was refused by the Assistant Regional Waste Manager on the grounds that the proposed landfill did not comply with the Landfill Criteria for Municipal Solid Waste Management and because of environmental concerns. This decision was appealed to the Deputy Director, who upheld the original decision. The Appellant appealed the Deputy Director's decision to the Environmental Appeal Board. During the course of the hearing before the Board, the parties submitted a draft permit to the Board that addressed many of the Ministry's concerns.
The Board ordered the Regional Manger to issue a permit in the form of the draft permit but directed that the Regional Manager amend the permit to incorporate the findings of the Board concerning issues raised by the Deputy Director.

94/38 Endeavour Developments Ltd. and Deputy Director of Waste Management

This was an appeal against a March 10, 1995 decision of the Deputy Director to refuse a waste management permit to Endeavour Developments Ltd. for ground disposal of sewage from a proposed 138 unit mobile home park. The Respondent was concerned the proposed discharge would raise the water table, cause flooding in a nearby creek and result in effluent break-out causing harm to the environment. The Deputy Director also noted that the Ministry of Environment, Lands and Parks has adopted a precautionary approach to pollution and that the issuance of permits for new discharges before long-term development and liquid waste management strategies are in place would be inconsistent with this principle.
The Board allowed the appeal in part. The Board ordered the Deputy Director to issue the permit but attached a number of conditions, including reducing the number of units to be served by the permit from 138 units to 100 units. While the Board agreed that the preferable route for protection of the environment was integration of the proposed development's sewage disposal system with an existing liquid waste management plan for the area, it was beyond the jurisdiction of the Deputy Director to require that a plan be in place before granting a permit.

95/07(a) Almforest Akiengesellschaft and Deputy Director of Waste Management

The Appellant's company owns an abandoned mine. Liquid mercury was found to be leaking into an adjacent stream called Erie Creek. The Appellant was ordered to undertake a two phase environmental assessment on their property to determine the degree of mercury pollution. The order was appealed to the Board with an application that the order be stayed pending the decision of the Board. In determining whether to grant the stay application, the Board considered the balance of convenience and whether there would be irreparable harm to the Appellants if the stay was not granted.
The Board refused the stay application. The Board concluded that the expected expenditure of $20 000 to complete the assessment did not represent irreparable financial harm to the Appellants and that the balance of convenience favoured the protection of the environment.

95/08 Darcy McPhee and Deputy Director of Waste Management

This was an appeal from a decision of the Deputy Director of Waste Management holding that the Assistant Regional Waste Manager's refusal to make a decision on the Appellant's request for a pollution abatement order did not constitute a "decision" under the *Waste Management Act*.

The Appellant argued that the refusal to make a decision constituted a decision under section 25(b), which defines "decision" as including "an exercise of a power". The Appellant submitted that the refusal to make a decision constituted such an exercise of power.
The Board dismissed the appeal. Having examined the statutory context in this case, the Board concluded that if a refusal to make a decision was meant to be included under the section 25 definition of "decision", the legislature would have specifically stated this in the section.

95/09(a) Lamford Forest Products, Manning Jamison Ltd. and Deputy Director of Waste Management

On September 7, 1995, the Appellants requested the Board to stay Pollution Abatement and Prevention Orders against property which they formerly owned, pending the outcome of their appeal to the Board.
The Board granted stays to the Appellant and the Third Party. In coming to this decision the Board considered the test of irreparable harm and the balance of convenience. The Board concluded that the Deputy Director had not proved that granting the stays would result in irreparable harm to the environment. Further, the Board concluded that the balance of convenience in these instances favoured granting the stays to the Appellant and third party.

95/09(b) Lamford Forest Products, Manning Jamison Ltd. and Deputy Director of Waste Management

The Appellant, Lamford Forest Products, sold the property on which their sawmill operated to Maning Jamison Ltd. The Regional Manager ordered both Lamford and Manning Jamison to clean up the site. They appealed the orders to the Deputy Director who upheld the Regional Manager's order. Although not expressly provided for in the contract of sale, Lamford argued that the low purchase price reflected an agreement that Manning Jamison would be solely responsible for remediation of the property. Lamford asked that the orders against them be vacated, or in the alternative, apply only to the extent that Manning Jamison had insufficient assets to comply with the order.
The appeal was dismissed. The Board found that the intent of section 22 and 22.2 of the *Waste Management Act* was to give the Regional Manager a very broad discretion in making remediation orders. The Board upheld the Deputy Directors decision that the orders issued by the Regional Manager were a proper exercise of discretion. The Board also rejected Manning Jamison's claim that a foreshore lease had not been properly conveyed to them and that they were thus not responsible for one of the cleanup orders.

95/19(a) Lee and Patsy Granberg and Deputy Director of Waste Management

The Appellant appealed a decision of the Deputy Director to order that certain terms and conditions be placed against their sewage disposal permit. The Appellant applied for a stay of a number of the requirements pending the outcome of the appeal. Weith the agreement of the Deputy Director, the Board had already granted the Appellants stays on the more onerous requirements. The Deputy Director objected to a stay being granted against several other conditions. The Board considered the balance of convenience, including the possibility of irreparable harm, and concluded that the balance of convenience with respect to the remaining permit requirements favoured the Appellants' complying with these requirements. Thus, the Board denied the Appellants' stay request in part.

95/24 Taylor Environmentally Concerned Citizens, Peace Valley Environmental Association, Northern Environmental Action Team and Deputy Director of Waste Management

Bennett Remediation Services applied for three permits to construct and operate an incinerator to treat contaminated materials. The permits were issued by the Ministry. Three Appellant environmental groups appealed to the Board on the grounds that the permits, as issued, did not adequately protect the local environment.
The Board held that the three permits should be issued but that two of the permits be amended. The Board added two conditions to the air discharge permit to include activated charcoal filtration in the process and to delay operation until a local beehive burner ceased operation. The Board decided that two conditions should be added to the short term storage permit such that all test records be kept on site for two years and that conditions relating to prohibited materials be included. The Board added another condition to the short term storage permit requiring an on-site laboratory capable of comprehensive testing and characterization of feedstock prior to any incineration.

Water Act

94/42 Ron and Peg Waldron and Deputy Comptroller of Water Rights

Richard Zammuto was granted a Conditional Water Licence for the diversion and use of 500 gallons of water per day from McGovern Spring. Ron and Peg Waldron appealed the decision, fearing that the works required to utilize this licence would result in the expropriation of some of their land pursuant to section 24 of the *Water Act*. The Appellants appealed on the grounds that the Deputy Comptroller of Water Rights erred in declining to consider alternative sources of water and in determining that the availability of alternative water sources was an irrelevant consideration. The Board concluded from the provisions of the *Water Act* that the Deputy Comptroller acted within his discretion by not considering alternative sources of water when considering an application for a water licence. The Board concluded that the Deputy Comptroller had chosen the most practicable source and dismissed the appeal.

95/06 Allied Tsimshian Tribes Association and Deputy Comptroller of Water Rights and Synex Energy Resources

The Deputy Comptroller granted water licenses to Synex for a hydroelectric project on Brown Lake. The Allied Tsimshian Tribes Association (ATTA), on behalf of the Gitzaklaal Tribe, appealed these licenses claiming that their aboriginal rights would be adversely affected.

The Board found that the ATTA did not have standing under the *Water Act* to appeal the issuance of the water licenses. The *Water Act* was interpreted to have specific standing provisions as provided in section 38. The only parties who can be granted standing to commence an appeal are a licensee, a riparian owner or an applicant for a license. The Board did not find any evidence that the Gitzaklaal Tribe qualified as one of these parties. The appeal was dismissed

95/13 Bill Wyett, Wendy Harbridge and Deputy Comptroller of Water Rights

The agent for eleven property owners applied for domestic water licences which would permit water to be removed from a local creek. Senior water licence holders downstream objected to this application. They maintained that permitting the withdrawal of water upstream would prevent them from receiving their licensed water requirements. The Regional Water Manager refused the licence application but the Deputy Comptroller allowed an appeal of that decision, concluding there was sufficient water to grant the additional licences based on updated stream flow records and new water availability criteria for assessing water use.

Before the Environmental Appeal Board the Appellants contended that unless the new domestic water licences were cancelled they would experience increased shortages of water from the creek. The Board dismissed the appeal. The Board was satisfied that there was sufficient water in the creek to fulfill the demands of all licensees at most times and that the Appellants, as senior licensees, would receive priority in times of shortage.

Wildlife Act

93/23 Joe Turner and Assistant Deputy Director of Wildlife

Mr. Turner, a practitioner of Chinese Medicine, applied for a permit allowing him to possess bear gall bladders. Because of concern about black bears being killed for their gall bladders the *Wildlife Act* and its regulations make it an offence to possess bear gall bladders except as provided by a licence or permit. The clear purpose of this legislation is to prevent the killing of bears for a single body part, and the Regional Manager refused to override this intention without evidence that bear gall bladders were part of a valid medical treatment.

The Board endorsed the Regional Manager's approach and found that the decision was made within his discretion. It therefore dismissed the appeal. In addition, it recommended that action be taken against individuals who possessed ointments and other medicines which contained bear gall bladder parts and not just people trafficking in the actual gall bladders.

94/17 Thomas Stanway and Assistant Deputy Director of Wildlife

Mr. Stanway shot a cougar which was about to attack his hunting partner. He then applied for a permit to keep the body, but the permit was refused. He appealed.

The Ministry agreed that Mr. Stanway's behaviour had been exemplary but argued that the legislation intended permits to be given under these types of circumstances only in exceptional situations. The Board noted that it could only overturn the Assistant Deputy Director's decision if it found that the decision was not a lawful exercise of discretion. There was no evidence here that Mr. Stanway was treated unfairly and the Board dismissed the appeal.

94/18(a) Bill Boucas and Deputy Director of Wildlife

Mr. Boucas was charged and convicted of three violations under the *Wildlife Act* and its regulations after he killed a female grizzly bear out of season using bait. Soon afterwards the Deputy Director of Wildlife suspended his licence and required him to complete the Conservation and Outdoor Recreation Education (CORE) examinations before obtaining a new licence. Mr. Boucas appealed, arguing that s. 25(2) of the Act violated the principles of fundamental justice and therefore his rights under section 7 of the Canadian Charter of Rights and Freedoms. In this preliminary decision the Board was asked to consider its ability to consider constitutional questions.

The Board looked to the courts for direction on this question. The first step was to consider whether the Board had jurisdiction over the parties, the subject matter and the remedy sought. In this case it clearly did. Secondly, the Board considered whether it had explicit or implied authority to determine questions of law. In its opinion both the *Environment Management Act* and the *Wildlife Act* gave it explicit authority to do so. For these reasons, along with a variety of other factors, the Board ruled that it had the ability to hear constitutional questions.

94/18(b) Bill Boucas and Deputy Director of Wildlife

On September 23, 1989, Mr. Boucas killed a female grizzly bear. Mr. Boucas was charged and convicted of offences under the *Wildlife Act* and its regulations. Under section 25 of the *Wildlife Act*, the Deputy Director cancelled the

Appellant's hunting privileges for 3 years and ordered that Mr. Boucas complete the C.O.R.E. examinations before being eligible to obtain a hunting licence. Mr. Boucas appealed the order.
The Appellant contended that the Deputy Director erred in his decision by considering irrelevant matters, exercising bias against the Appellant and failing to provide the Appellant a proper opportunity to be heard. The Appellant also submitted that the *Wildlife Act* violated section 7 of the Canadian Charter of Rights and Freedoms on the basis that it gave the Director an unfettered discretion to suspend a licence for any cause and that it further violates the principle of fundamental justice as there are no guidelines to govern the discretion of the Director or his delegate. The Board rejected the Appellant's arguments and dismissed the appeal.

94/23 Paul Stone and Deputy Director of Wildlife

Mr. Stone found a dead male Rocky Mountain bighorn sheep and applied to the Ministry for permission to keep the head. This application was refused as the Ministry required 5 mature male heads for educational purposes, but had only 2. Mr. Stone appealed, alleging inconsistency and unfairness.
By the time the appeal reached the Environmental Appeal Board the government had acquired 6, perhaps 7, mature male sheep heads. In spite of this new evidence, the Board found no evidence of either inconsistency or unfairness. The Board dismissed the appeal.

94/47 Richard McLoughlin and Deputy Director of Wildlife

Mr. McLoughlin is disabled and requires a motorized vehicle to assist him in hunting. Mr. McLoughlin applied for a permit to hunt from his motorized vehicle in the Muskwa-Kechika region in northeastern B.C. The area is easily damaged by motor vehicles and is renowned for its dense game population. The Deputy Director denied the Appellant's permit application for the reason that there is a two year moratorium on the use of motor vehicles in the area so as to minimize impact on the area while a land use plan is developed.
Mr. McLoughlin argued that the Deputy Director improperly exercised his discretion in denying the permit and discriminated against him pursuant to section 3 of the *B.C. Human Rights Act*. The Board decided it had the jurisdiction to consider the *B.C. Human Rights Act*. The Board considered a number of cases and concluded that while denying Mr. McLoughlin amounted to discrimination, there was bona fide and reasonable justification for the discrimination in these circumstances. The Board dismissed the appeal.

95/02(a) Edward Boyd and Deputy Director of Wildlife

The Appellant owns and operates a reptile zoo and held several permits which authorized him to keep poisonous reptiles. When one of these permits expired he applied to the wildlife branch for another permit and was denied. The Deputy Director upheld the decision and ordered Mr. Boyd to transport the reptiles out of the country, deliver them to another valid Permit Holder or euthanize them. Mr. Boyd appealed to the Board and applied for a stay of the order pending the conclusion of his appeal.
The Board granted a stay on the grounds that the order would force Mr. Boyd to get rid of his reptiles leaving him nothing to appeal.

95/16 Edward Boyd and Deputy Director of Wildlife

The Board heard an appeal against the decision of the Deputy Director of Wildlife to refuse to renew a permit to Mr. Boyd to keep, possess or display wildlife, specifically poisonous reptiles, and an order that Mr. Boyd dispose of all wildlife in his possession within 30 days.
At the appeal, the Board heard evidence that Mr. Boyd had previously moved the reptiles without a permit. Further, the Board heard evidence that Mr. Boyd had failed to acquire African antivenim serum necessary to protect against snake bites, a necessary condition of his permit. The Board found that Mr. Boyd had not exercised due diligence in attempting to procure antivenim serum. The Board concluded that the Deputy Director's decision not to re-issue the permits was reasonable because the Appellant had failed to show sufficient regard to the reasonable conditions imposed on him and had breached those conditions on a continuous basis. The Board upheld the Deputy Director's decision but recommended that Mr. Boyd be given 90 days to dispose of his wildlife. The appeal was denied.

95/11 Fred Fleming and Assistant Deputy Director of Wildlife

Mr. Fleming was convicted in provincial court of shooting a cow moose out of season. Upon receiving notice of Mr. Fleming's conviction, the Assistant Deputy Director suspended his hunting license and ordered him to complete the C.O.R.E. examination prior to having his license renewed. Mr. Fleming appealed this decision to the Board where he argued that he did not shoot the cow moose intentionally.
The Board found that it had no authority to alter a finding of guilt from the provincial court and thus found as a fact that Mr. Fleming had wilfully shot the cow moose. The Board further found that Mr. Fleming did not attempt to find the wounded cow moose, and did not attempt to contact the proper authorities to inform them that there was a wounded animal in the bush. For these reasons the Board upheld the decision of the Deputy Director and denied the appeal.

95/23 Alfredo Batista and Deputy Director of Wildlife

The Appellant killed a mule deer out of season. After doing so, he deliberately tried to mislead the conservation officer as to the deer's whereabouts and when it had been killed. The Appellant was convicted under the *Wildlife Act* and fined $500. In addition to this, the Deputy Director exercised his discretion under section 25(2) of the *Wildlife Act*, cancelling the Appellant's hunting privileges for one year and ordering him to complete the C.O.R.E. program prior to being eligible for a hunting licence. Mr. Batista appealed that decision, contending it was overly harsh in the circumstances.

The Board dismissed the appeal. The Board noted that the Deputy Director has a duty to protect wildlife in the province and held that the sanctions he imposed were in proportion to the offences which were committed by the Appellant.

Appendix 3 – Summaries of Court Decisions related to the Board

Mark and Cynara De Goutiere v. Environmental Appeal Board **(1995)**

This was an application was made to the B.C. Supreme Court under the *Judicial Review Procedure Act* to set aside a decision of the Environmental Appeal Board.

The petitioners, the De Goutieres, owned property adjacent to a property owned by Albacho Industries. Albacho Industries applied to the Ministry of Health for a permit for construction of a package treatment plant to be located four metres from the petitioners' property line. The permit was issued. Two days after the permit was granted the petitioners drilled a well on their property directly adjacent to the proposed location of the newly permitted package treatment plant. The petitioners' appealed the permit to the Environmental Appeal Board on the grounds that the septic system was too close to their well and was in violation of the *Health Act* Regulation.

The Board upheld the permit on the basis that when the permit that was granted the petitioners did not have a well on their property. The court noted that prior to the permit being issued the petitioners had advised the Environmental Health Officer several times of their intention to drill a well on their property. From this, the court concluded that the Environmental Health Officer could not have been satisfied at the time the permit was issued that the ultimate use of the package treatment plant would not violate the *Health Act* regulations. The court held that procedural fairness required the Environmental Health Officer, and the Board, to take into consideration the rights and expressed intention of the adjacent property owners in deciding whether the permit should be issued. The court set aside the Board's decision and quashed the permit.

Michael Wilson v. Environmental Appeal Board **(1995)**

This was an application to the B.C. Supreme Court under the *Judicial Review Procedure Act* for a determination of the interpretation of the notice provisions of section 103(3.1) and 103(3.2) of the *Wildlife Act*.

Mr. Wilson, the petitioner, was subject to a decision of the Deputy Director of Wildlife. The notice of the decision of the Deputy Director was sent to the petitioner by registered mail on November 9, 1994. The petitioner sent a Notice of Appeal which came to the attention of the Environmental Appeal Board on December 19, 1994. The Board rejected the appeal as out of time. The petitioner sought a declaration that his Notice of Appeal was delivered within the 30-days limitation period set out in section 103(3.2) of the *Wildlife Act*.

The *Wildlife Act* provides that service by Registered Mail is deemed to be served 14 days from the day that it is mailed. Therefore, the court held that the 30 day limitation period did not commence until the 14 days for Registered Mail service has expired. The partitioners therefore filed his appeal to the Board within the limitation period allowed.

The Board was ordered to hear the appeal.