



Environmental Appeal Board

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DECISION NO. EAB-EMA-22-A010(a)

In the matter of an appeal under the *Environmental Management Act*, SBC 2003, c. 53.

BETWEEN:	Richmond Steel Recycling Ltd.	APPELLANT
AND:	Director, <i>Environmental Management Act</i>	RESPONDENT
BEFORE:	A Panel of the Environmental Appeal Board Linda Michaluk, Panel Chair	
DATE:	Conducted by way of written submissions concluding December 9, 2022	
APPEARING:	For the Appellant:	Robert M. Lonergan, Counsel Christopher Elrick, Counsel
	For the Respondent:	Ashley Caron, Counsel Shaun Ramdin, Counsel

DECISION ON APPLICATION FOR DOCUMENT PRODUCTION

INTRODUCTION

[1] Richmond Steel Recycling Ltd. (“RSR”) operates a metal recycling facility (the “Facility”) in Richmond, British Columbia. On January 22, 2022, RSR applied to the Director for a waste discharge authorization under section 15 of the *Environmental Management Act*, SBC 2003, c. 53 (the “Act”). On July 4, 2022, Sajid A. Barlas¹, a delegate of the Director, notified RSR of his decision to reject the Discharge Authorization Application (the “Application Decision”). RSR appealed the Application Decision to the Board on July 28, 2022. (Appeal No EAB-EMA-22-A010, “Appeal A010”).

[2] On November 17, 2022, RSR filed an application for document production.

[3] This decision addresses the application for document production in Appeal A010.

¹ For simplicity, Mr. Barlas is referred to in this decision as “the Director”.

BACKGROUND

[4] The RSR facility is located on Mitchell Island, which lies in the Fraser River (the "River"). RSR recovers recyclable metals from a variety of materials and sends the leftover material to landfills for disposal.

[5] On January 22, 2022, RSR applied to the Director for a waste discharge authorization under section 15 of the *Act*.

[6] On April 28, 2022, RSR was issued Pollution Abatement Order 111135 (the "PAO"), which RSR appealed to the Board on May 25, 2022 (Appeal No EAB-EMA-22-A080).

[7] On July 4, 2022, Sajid A. Barlas notified RSR of the Application Decision. The Ministry advised, in part, that since the PAO had been issued, approval of the discharge application was not an appropriate regulatory instrument for protecting the environment. The Director also stated that "the supporting information submitted with the preliminary application is insufficient to determine if the treatment system has been designed to capture, store, treat all the generated effluent consistently to meet BCWQG and other applicable criteria."

[8] The Grounds for Appeal A010 are briefly summarized as follows:

1. the Director failed to provide RSR with the usual review and discussion opportunities associated with discharge authorization applications, and in so doing, denied RSR a procedurally fair process and a reasonable opportunity to know and meet the case against its interest;
2. the Application Decision was unreasonable and not based on current information;
3. the Director erred in law by concluding that the subsequent issuance of the PAO effectively precluded consideration of the discharge authorization application;
4. the Director erred in concluding that the discharge of effluent currently does not meet the BC Water Quality Guidelines (the "BCWQG"), or that, following planned remedial work, this discharge would continue to fail to meet the BCWQG. Additionally, the Director erred in concluding that failure to meet the BCWQG was an appropriate basis to reject an application under section 15 of the *Act*; and,
5. the Director erred in concluding that a permit to discharge under section 14 of the *Act*, as opposed to a temporary authorization under section 15 of the *Act*, was the appropriate regulatory instrument in the circumstances.

[9] RSR requests that the Application Decision be quashed, and the Director be instructed to re-instate the Discharge Authorization Application and proceed to process that application in accordance with the Ministry's normal published processes.

[10] The grounds of appeal are relevant to this decision in so much as they set out the parameters of RSR's appeal. The merits of the appeal itself will be

determined by the Board on hearing the appeal and will not be touched upon in this decision.

[11] Following a pre-hearing conference on September 27, 2022, (the "PHC") the parties agreed that the two related appeals before the Board, Appeal A008 and Appeal A010, should remain separate, and that Appeal A010 be heard prior to A008, so long as the hearing on A008 was not delayed as a result. The parties also agreed to work together to determine whether additional documentation requested by RSR could be provided voluntarily and without an application to the Board.

[12] By letters dated September 8 and 29, 2022, RSR demanded that the Director produce the following categories of documents:

Category 1 – correspondence with the City of Richmond relating to the PAO;

Category 2 – email exchanges, memoranda, reports and analysis exchanged between Ministry staff and the director related to pollution concerns at, and effluent discharges from, the Facility before the issuance of the PAO;

Category 3 – email exchanges between Ministry staff or the Director and any third party, and any memoranda, reports and analysis prepared by any third party at the request or direction of Ministry staff, or the Director related to pollution concerns at, and effluent discharges from, the Facility before the issuance of the PAO;

Category 4 – other internal emails with the Director or Environmental Protection Officer Oana Enick regarding the PAO;

Category 5 – analysis, technical memorandum/reports or experts reports regarding the PAO, including any analysis, technical memoranda/reports or expert reports related to the impact of the effluent discharges from the Facility on the environment; and,

Category 6 – briefing or update materials prepared for any Ministry executive (Director, Executive Director, ADM or DM) regarding the PAO.

[13] On October 7, 2022, the Director advised that all documents in Categories 1 and 5 had been produced, and the Director refused to produce documents in Categories 2-4 and 6 as the scope of the disclosure request was overly broad.

[14] On November 17, 2022, RSR filed an application with the Board pursuant to section 34(3)(b) of the *Administrative Tribunals Act*, SBC 2004, c. 45 (the "ATA") that the Director produce further documents relevant to the decisions that lead to Appeal A010. Specifically, RSR seeks orders requesting that the Ministry produce the following categories of documents:

Category A: email exchanges, memoranda, reports and analysis exchanged between Ministry staff and the Director related to pollution concerns at, and effluent discharges from, the Facility before the issuance of the PAO and the Application Decision;

Category B: email exchanges between Ministry staff or the Director and any third party, and any memoranda, reports and analysis prepared by any third party at the request or direction of Ministry staff, or the Director related to

pollution concerns at, and effluent discharges from, the Facility before the issuance of the PAO and the Application Decision;

Category C: other internal emails with the Director or Oana Enick regarding the PAO and the Application Decision; and,

Category D: briefing or update materials prepared for any Ministry executive (Director, Executive Director, ADM or DM) regarding the PAO and the Application Decision.

[15] The Director asks that the application be dismissed.

RELEVANT LEGISLATION AND RULES

[16] The Board has the authority under section 34(3)(b) of the *ATA* to make orders to produce a document or other thing:

Power to compel witnesses and order disclosure

34 (3) Subject to section 29, at any time before or during a hearing, but before its decision, the tribunal may make an order requiring a person

(a) ...

(b) to produce for the tribunal or a party a document or other thing in the person's possession or control, as specified by the tribunal, that is admissible and relevant to an issue in an application.

[17] Section 34(3)(b) should be considered together with section 40 of the *ATA*, which states:

Information admissible in tribunal proceedings

40 (1) The tribunal may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.

(2) Despite subsection (1), the tribunal may exclude anything unduly repetitious.

(3) Nothing is admissible before the tribunal that is inadmissible in a court because of a privilege under the law of evidence.

[18] Further, Rule 16 of the Board's Rules states:

Applications for Documents

4. Before applying for an order to produce documents under section 34(3)(b) of the *Administrative Tribunals Act*, the applicant must ask the person in possession or control of the documents, in writing, to voluntarily produce the documents.

5. In addition to the requirements in Rule 16(2), an application for an order for documents must describe the attempts made to have the person voluntarily produce the documents.

ISSUE

[19] I must decide one issue in this application: whether to grant RSR's application for orders requiring the Ministry to produce certain categories of documents (i.e. Categories A, B, C and D) that pertain to Appeal A010.

DISCUSSION AND ANALYSIS

RSR's Submissions

[20] RSR submits that at this preliminary stage in a proceeding, a party must only demonstrate that the documents sought *may* be relevant to an appeal, and points to several Board decisions in support of this conclusion². RSR submits that evidence is relevant where it sheds light on a disputed matter or tends to prove or disprove a material fact in issue, and that the potential relevance of documents may also be framed in relation to the specific grounds of appeal³.

[21] RSR submits that the Category A documents are central to its appeal and should form part of the decision record. RSR alleges that the Director's decision was based on inaccurate information. Further, RSR submits that it was never advised of the case it had to meet and was denied the opportunity to know and meaningfully respond to the information that was available to the Director. These documents are necessary for RSR to be able to properly prepare for and argue the appeal.

[22] RSR submits that the Director's refusal to produce the documents while conceding that RSR will have "the opportunity to cross examine the decision maker at the hearing" does not hang together. If the Director may be cross-examined on matters relating to these documents, the documents are relevant and must be produced.

[23] RSR submits that the Director's position that there "is no evidence to suggest that there are internal staff emails that will cast light on the process afforded the Appellant" is not the test for document production. The Director may confirm, after a search, that there are no documents related to this ground to produce, but the

² *Seaspan ULC (formerly Seaspan International Ltd.) v. Domtar Inc.*, June 11, 2013, Decision Nos. 2010-EMA-004(a), 005(a), 006(a); and 2011-EMA-003(a) at 56 ("*Seaspan*"); see also Practice and Procedure Manual, Environmental Appeal Board, July 1, 2016 (Amended April 2019) at p. 28; *Toews v. British Columbia (Director, Environmental Management Act)*, December 3, 2014, Decision Nos. 2013-EMA-007(f) and 010(f), issued December 3, 2014, at para. 18 ("*Toews*"); *Greater Vancouver Sewerage v. British Columbia (Director, Environmental Management Act)*, January 31, 2017, Decision No. 2016-EMA-126(c) at 30.

³ *Woodland Heights Investments, Ltd. v. British Columbia (Ministry of Environment)*, July 24, 2020, Decision No. EAB-EMA-20-A002(a) at 104; *GFL Environmental Inc. v. British Columbia (Ministry of Environment)*, May 16, 2019, Decision Nos. 2018-EMA-021(b), 2018-EMA-021(c) at para. 66.

Director cannot reverse the onus and require RSR to show that such documents exist.

[24] RSR submits the Category B documents are relevant for the same reason as the Category A documents. Further, if the Director received evidence from third parties regarding pollution concerns, basic fairness requires that RSR know the case to meet and to be provided with an opportunity to review the evidence and respond.

[25] RSR submits that the Category C and D documents are relevant for the same reasons as the Category A documents.

[26] RSR submits that these documents are at the heart of the appeal and relate to whether it was appropriate for the Director to make the Application Decision. RSR is of the view that the documents exist and the Director does not suggest otherwise. RSR submits that cross-examination does not stand in place of document production.

Director's Submissions

[27] The Director submits that he provided documents to RSR on October 5, 2022. These documents consist of all the relevant documents that were before the decision-maker in making the Application Decision (the "Decision Record").

[28] The Director submits that RSR has not made a demand for documents from the Director in this proceeding.

[29] The Director submits that the determination of whether RSR's application should have been rejected and whether the matter should be sent back to the Director for reconsideration is central to Appeal A010. These issues turn on the reasons provided by the Director and whether the process provided was fair. The Director submits that these issues do not support any further document production than has already been provided.

[30] The Director submits that the categories of documents requested are extremely broad, that there is no principled basis for the demands, and it amounts to a fishing expedition.

[31] The Director submits that the Board has previously held⁴ that:

- the legal standard for document production calls for more than a hypothetical possibility that records "may" be relevant;
- the Applicant must establish it is *reasonable to suppose* that a record *may be relevant to proving or responding to an issue in the appeal*;
- a document is relevant where it tends to prove or disprove a material fact in issue or sheds light on a disputed matter;
- relevance must be assessed using issues raised in the Notice of Appeal which ensures that document producing requests do not become overly broad

⁴ *Seaspan; Emily Toews v. Director, Environmental Management Act* (Decision Nos. 2013-EMA-007(b), 2013-EMA-007(c), 2013-EMA-010(b) and 2013-EMA-010(c), 22 August 2014), at paras. 85 and 96 [*Toews* 1].

fishing expeditions, impose unnecessary delays on the appeal process, or create unreasonable burdens for the responding party.

[32] The Director submits that RSR is attempting to use S 34(3)(b) of the ATA as a form of discovery, which is not the intended purpose of the ATA. The Director submits that the requested documents are irrelevant in that none of the grounds raised provide a basis for further document production outside the Decision Record. Grounds Two, Three, Four and Five are legal questions that can only be addressed on the Decision Record, and the reasons for decision provided by the Director. Ground One, whether RSR was afforded a fair process, is also answered by reference to the Decision Record. There is no dispute on the process used by the Director to make the Application Decision; rather the question is whether the process was sufficiently fair to RSR.

RSR's Reply

[33] RSR replies that the Director's test for producing documents, i.e., that the documents are relevant to the issues raised in the appeal, is overly strict. RSR argues that at the pre-hearing stage, the test is whether the documents "may be relevant", as set out by the Board in *Seaspan*:

Section 34(3) [of the ATA] should, in my opinion, be read as requiring an applicant to establish only that the documents in question are arguably or potentially relevant or, in other words, that the documents may be relevant. To set the standard higher, and require an applicant establish that a document is both relevant and admissible, outside the context of the hearing, would defeat the clear intention of s 34(3).

[34] RSR replies that their document request is not so broad as submitted by the Director in that RSR has not requested the disclosure of every document and correspondence sent by the Ministry related to RSR. RSR notes that the request relates to documents and correspondence regarding the PAO and the Application Decision and specific subject matter. This provides a specific and narrow time span for document retrieval.

[35] In conclusion, RSR replies that they must only satisfy the Panel that the documents "may be" relevant in the appeal, that RSR has met this burden, and that the Ministry has not denied their existence.

Analysis and Legal Test

[36] Document disclosure is a necessary part of the appeal process. When parties have timely access to the relevant information used to inform the decision-maker in making the impugned decision and an appellant in challenging that decision, proceedings can proceed in an orderly and efficient manner. Requiring parties to investigate the existence of categories of documents, gather and review the documents, determine their relevance to the scope of the appeal, and finally disclose, list and produce the documents (redacted where appropriate to comply with relevant privacy legislation), can be onerous and time consuming. The legal tests that have been developed through the courts and adopted and modified by previous panels of the Board serve to strike a balance between ensuring that document disclosure achieves both the purpose of providing the relevant

information to all parties and protecting those same parties from unnecessary expenditures in time and costs to disclose irrelevant or otherwise non-admissible documents. These tests help ensure that documents sought by parties are relevant to the issues under appeal, as opposed to simply pertaining to the matter as a whole so as to avoid what is colloquially known as a “fishing expedition”.

[37] This is not to say that there can be no burden placed on the parties to disclose documents. So long as they meet the legal test, simply because disclosing documents would be difficult does not limit the right of the parties to know and evaluate the evidence that is contained within those documents.

[38] In order to facilitate a review and analysis of a decision under appeal, relevant documents that pertain to that decision must be available. Frank and full document disclosure assists the parties in knowing the case they need to meet, as well as the relative strengths of the evidence that relates to that case.

[39] Document disclosure is, however, not discovery. Discovery, crucial to the process of civil litigation, involves the questioning of parties to the litigation, either through examinations for discovery or interrogatories, with the aim uncovering further information that will assist the parties in preparing their respective cases. The process of discovery is not present in appeals before the Board. Rather, parties before the Board are entitled to receive, from each other, documents that meet the test for disclosure.

[40] In addition to the Rules of the Board, the legal test for ordering the disclosure of documents is found in sections 34 and 40 of the *ATA*. A panel of the Board may order an individual “to produce for the tribunal or a party a document or other thing in the person's possession or control, as specified by the tribunal, that is admissible and relevant to an issue in an application”. If a party to an appeal seeks to have a panel of the Board make this order, the party making the application bears the onus to prove that the documents are both admissible and relevant to the appeal in which the application is made.

[41] Previous panels of the Board have rendered decisions on applications for document disclosure, notably *Emily Toews and Elisabeth Stannus v. Director, Environmental Management Act*, Decision Nos. 2013-EMA-007(f) and 010(f), issued December 3, 2014, (“*Toews 2*”), and *Seaspan*. At paragraph 18 of *Toews 2*, the Board adopted the following findings from its decision in *Seaspan*:

In paras. 56 to 64 of *Seaspan*, the Board identified the key considerations for ordering document disclosure in a pre-hearing context, as follows: (1) whether it is reasonable to suppose that the requested documents may be relevant to proving or responding to an issue in the appeal, based on the issues raised in the applicant's Notice of Appeal and (if available) statement of points; (2) whether the requested documents are admissible (i.e., whether the requested documents are subject to a recognized form of privilege); and (3) whether the person who is being asked to disclose the documents has possession and control of the documents. If there is no evidence before the Board regarding possession or control, the Board will consider the applicant's submissions on the basis of whether “the person is reasonably likely to be able to supply the information.”

[underlining added]

[42] I adopt and rely on the reasoning above for the purposes of deciding whether to grant the present application.

[43] In summary, document disclosure is a vital part of any appeal, and orders for disclosure of documents are treated seriously and are not made as a matter of course. If an application for disclosure of documents is made by a party to an appeal, that party bears the onus, on a balance of probabilities, to prove that the documents should be disclosed. If the party cannot do so, the application for disclosure must fail.

[44] In assessing any application for disclosure of documents, I find I must consider:

1. if the documents are relevant to the current appeal by being capable of proving or disproving a material fact in issue or shedding light on a disputed matter, based on the stated grounds of appeal;
2. if an individual has the documents in their possession or control; and,
3. if the documents are admissible, by assessing if the documents are protected by an established form of privilege.

[45] In considering these factors, I am able to determine that the parties have the relevant information before them, while protecting the parties against unnecessary disclosure of documents such as is found in fishing expeditions.

Panel's Findings

[46] In deciding this preliminary application, I will first consider whether each requested category of documents may be relevant to proving or responding to an issue the appeal, based on the issues raised in RSR's Notice of Appeal and the subsequent submissions. I will then consider whether the Director has possession or control of the requested documents, and whether a form of privilege may apply to the requested documents.

[47] As noted by the parties, the Board has consistently found that procedural fairness requires that parties have access to relevant documents to properly prepare and effectively argue their respective cases to the Board. Indeed, while the Board's Practice and Procedure Manual sets out that parties are required to disclose documents they are going to rely upon in advance of a hearing—at least 30 days for the appellant and at least 15 days for the respondent—the Board also undertakes pre-hearing case management which attempts to facilitate the voluntary disclosure of relevant information. Either party may request the voluntary disclosure of documents from another party, and indeed must do so before making an application for disclosure, which may also be made by any party. The procedural requirements for disclosure, as well as the availability of further disclosure, exists, in part, so that parties can be prepared at the hearing and the matter can proceed in an orderly and efficient manner.

[48] RSR contends that the categories of documents requested are relevant to the issues under appeal. The Director contends that all documents relied upon by the Director have been produced, and that the relevance of the other, overly broad, information requested has not been demonstrated.

[49] As an assessment of the necessity for document disclosure requires consideration of the issues under appeal, and therefore capable of being proved or disproved, I will deal with this application by reviewing the Grounds of appeal individually. I will apply the legal test to each of the requested categories of documents for each of the grounds and will set out my findings in this same manner.

Ground One:

[50] RSR alleges in Ground One that the Director failed to provide RSR with the usual review and discussion opportunities associated with discharge authorization applications, and as a result, RSR was denied a procedurally fair process and a reasonable opportunity to know and meet the case against its interest. The Director submits that Ground One is answered by the Decision Record documents.

[51] I find that the process used by the Director to make the Application Decision is not disputed by the parties. Rather, the issue is whether the process used was fair to the RSR. Based on this ground of appeal and considering the previous disclosure of the Record Documents, RSR has not demonstrated that the requested documents are relevant to this ground of appeal. The additional documents requested by RSR will not assist in establishing whether the process used in this case was procedurally fair. I find no basis for ordering the production of the information referenced in any of the Categories.

Ground Two:

[52] Under Ground Two, RSR alleges that the Application Decision was unreasonable and not based on current information. The Director submits that this is a legal question that can be answered by reference to the Decision Record and that the other requested material is irrelevant.

[53] I agree that Ground Two is a question that, on its face, can be informed by the Record Decision. I find that RSR has not provided any pleading or argument that forms the basis for an order from this Panel as to how any of the documents sought may prove or disprove this ground of appeal. Based on this ground of appeal, in considering the information previously disclosed, RSR has not demonstrated that the requested documents are relevant to this ground of appeal. I find no basis for ordering the production of the information referenced in any of the Categories.

Ground Three:

[54] RSR alleges, in Ground Three, that the Director erred in law by concluding that the subsequent issuance of the Order effectively precluded consideration of the discharge authorization application. The Director submits this is a legal question that can be answered by reference to the Decision Record and that the other requested material is irrelevant.

[55] I agree that Ground Three is a question that, on its face, can be informed by the Record Decision. In answering the question posed by ground three of this appeal, it is anticipated that the parties will present their analyses of the relevant legislation, supported by the modern principles of statutory interpretation. I find no evidence, based on the submissions of the parties in this matter, as to how the disclosure and production of documents may assist either party in conducting this

legal analysis. Based on this ground of appeal, in considering the information previously disclosed, RSR has not demonstrated that the requested documents are relevant to this ground of appeal, as the underlying facts to this ground of appeal do not seem to be in dispute. I find no basis for ordering the production of the information referenced in any of the Categories.

Ground Four:

[56] In Ground Four, RSR alleges that the Director erred in concluding that the discharge of effluent currently does not meet the BCWQG or that following planned remedial work, this discharge would continue to fail to meet the BCWQG. RSR additionally alleges that the Director erred in concluding that failure to meet the BCWQG was an appropriate basis to reject an application under section 15 of the *Act*. The Director submits this is a legal question that is answered by the Decision Record documents and that the other requested material is irrelevant.

[57] I agree that Ground Four is a question that, on its face, can be informed by the Record Decision.

[58] Ground Four of this appeal contains two interrelated bases for appeal within it. The first basis is that the Director erred in concluding that the discharge of effluent currently does not meet the BCWQG, or that, following planned remedial work, this discharge would continue to fail to meet the BCWQG. The second basis is that the Director erred in concluding that failure to meet the BCWQG was an appropriate basis to reject an application under section 15 of the *Act*.

[59] The second basis of appeal under Ground Four is a question of law. As such, I anticipate that the parties in the appeal will advance arguments related to the lawful authority of the Director to reject an application on the grounds alleged. As this is a legal question to be answered, and as RSR has not demonstrated that any documents that could be produced pertaining to this ground are capable of proving or disproving a material fact in issue, there is no basis for an order to produce documents.

[60] Pertaining to the first basis of appeal under Ground Four, this is a mixed question of fact and law. This ground of appeal is focused on the conclusion of the Director that the effluent produced by the Facility did not meet the BCWQG, nor would it, after the completion of the planned remedial work. After considering the submissions of the parties to this appeal, it is clear to me that the Record Documents contain the information which could be used to prove or disprove this ground of appeal. Based on this ground of appeal and considering the previous disclosure of the Record Documents, RSR has not demonstrated that the requested documents are relevant to this ground of appeal. As RSR bears the onus of proving this, on a balance of probabilities, I find no basis for ordering the production of documents in relation to either basis of appeal under Ground Four of the appeal in any of the Categories.

Ground Five:

[61] RSR alleges, in ground Five, that the Director erred in concluding that a permit to discharge under section 14 of the *Act*, as opposed to a temporary authorization under section 15 of the *Act*, was the appropriate regulatory

instrument in the circumstances. The Director submits this is a legal question that is answered by the Decision Record documents and that the other requested material is irrelevant.

[62] I agree that Ground Five is a question that, on its face, can be informed by the Record Decision.

[63] Based on this ground of appeal, in considering the information previously disclosed, RSR has not demonstrated that the requested documents are relevant to the appeal. RSR has not advanced any persuasive argument that there are any documents that would inform whether the authorization under section 15 would be a suitable or the most appropriate process, given the circumstances that existed at the time the decision was made. I find no evidence, based on the submissions of the parties in this matter, as to how the disclosure and production of documents may assist either party in proving, disproving, or otherwise demonstrating that a decision under section 14 of the Act is a more appropriate regulatory tool than a decision under section 15 of the Act, or vice versa. As I have found in my analysis of ground three of this appeal, I anticipate that the parties will present their analyses of the relevant legislation, supported by the modern principles of statutory interpretation in answer to this ground of appeal. I find no basis for ordering the production of the information referenced in any of the Categories.

[64] In summary, I find that, based on the issues raised in RSR's Notice of Appeal and the subsequent submissions, RSR has not demonstrated that the requested categories of documents are relevant to proving or responding to the issues in the A010. I therefore dismiss the application to produce further documents in the A010.

[65] As I have found that no documents within any of the categories of any Ground of appeal are relevant, it is not necessary for me to consider whether the Director is in possession or control of any of these documents, or whether any form of privilege may apply to these documents.

CONCLUSION

[66] For the reasons above, I deny RSR's application for document production for EAB-EMA-22-A010.

[67] In deciding this preliminary application, I have considered all evidence and submissions provided to the Board, whether or not specifically mentioned in this preliminary decision.

"Linda Michaluk"

Linda Michaluk, Panel Chair
Environmental Appeal Board

January 24, 2023