



Environmental Appeal Board

Citation: *Diane Czyzewski v. Administrator, Integrated Pest Management Act*, 2024 BCEAB 16

Decision No.: EAB-IPM-24-A006(a)

Decision Date: 2024-06-03

Method of Hearing: Conducted by way of written submission concluding on May 16, 2024

Decision Type: Summary Dismissal

Panel: David Bird, Vice Chair

Appealed Under: *Integrated Pest Management Act*, SBC 2003, c. 58

Between:

Diane Czyzewski

Appellant(s)

And:

Administrator, *Integrated Pest Management Act*

Respondent

And:

City of Kamloops

Third Party

Appearing on Behalf of the Parties:

For the Appellant(s): Bronwen Scott, Representative

For the Respondent: Channing Vigier, Representative

For the Third Party: Devin Buchanan, Counsel

SUMMARY DISMISSAL

INTRODUCTION

[1] This decision addresses whether the Environmental Appeal Board (the “Board”) has the authority to hear an appeal filed by Diane Czyzewski (the “Appellant”). The Appellant filed a notice of appeal with the Board on April 15, 2024, of Pesticide Use Licence #484 (the “Licence”) issued to the City of Kamloops (the “Third Party”) on April 1, 2024, by the Administrator, *Integrated Pest Management Act* (the “Respondent”).

[2] The Licence authorizes the Third Party to use pesticides in the categories of: industrial vegetation and noxious weeds – general, landscape – general, pesticide user – non-service; and pesticide use – public land. The Licence sets a condition that any pesticide use must be performed by or supervised by a certified applicator. The Licence expires April 1, 2029.

[3] The Appellant seeks to have the Licence cancelled by the Board and seeks the following remedies:

- Stop the use of glyphosate, 2, 4-D picloram.
- Stop the use of pesticides in densely populated areas and areas where pedestrian traffic is heavy.
- Stop the use of pesticides in cemeteries, parks, playgrounds and walking trails.
- Stop the use of pesticides in areas frequented by children.
- Use alternatives to pesticides everywhere possible.
- Post everywhere pesticides are applied, including paved surfaces.
- Require that all government (municipal, provincial, federal) grounds/buildings, along with builds that have any medical services/offices be pesticide free so anyone/everyone can have access.
- Create and maintain a map of areas where residents have requested pesticide-free buffer zones around their property.
- Create a (minimum 5-year) Integrated Pest Management Plan with input from the public and community groups.

[4] In its letter of April 25, 2025, the Board notified the Respondent and Third Party of the notice of appeal received from the Appellant. The Board asked the parties to provide more information about the Licence so the Board could determine whether there was a decision that could be appealed and whether an appeal was initiated within the 30-day timeframe provided to appeal a decision under the *Integrated Pest Management Act* (the “IPMA”).

ISSUE(S)

[5] The issues before me include:

1. Is the issuance of the Licence an appealable decision under section 14(1) of the *IPMA*?
2. Should the Appellant's notice of appeal be rejected and/or the appeal summarily dismissed because the Board lacks jurisdiction?

SUBMISSIONS OF THE PARTIES

Appellant's Submissions

[6] The Appellant submits that there are many prior decisions of the Board which grant standing to private citizens to appeal permits issued under the *IPMA*. The Appellant submits that permits and licences are not distinguished, so the Board has jurisdiction to hear the appeal.

[7] The Appellant submits that the Legislature could not have intended to draft legislation that would shut out the public or that the *IPMA* would not give the public recourse regarding pesticide use in public areas. The Appellant submits that various sections of the *Environmental Management Act*, *Mines Act*, and *Wildlife Act* all support that she should be given standing and the Licence is an appealable decision.

[8] The Appellant also argues that section 11(3) of the *Administrative Tribunals Act* (the "ATA") gives the Board the discretion to waive or modify its rules in exceptional circumstances and the Third Party's use of pesticides ought to be considered exceptional circumstances warranting that the Board allow the appeal to be heard.

[9] The Appellant also explains that she has pursued other avenues to have her concerns addressed without success and the Board is her "last resort". In addition, the Appellant submits that it is in the public interest for the Board to proceed to hear her appeal.

[10] On May 28, 2024, the Appellant sent the Board additional submissions that she requested be considered. The Appellant's further submission was sent after submissions on these issues closed on May 16, 2024, and I did not consider the further submissions to be relevant to the issues of whether the Licence is an appealable decision. Since the submissions on these preliminary issues are closed, and I find the submissions are irrelevant to the issues, I declined to accept the further submission and it has not been considered as part of deciding these preliminary issues.

Respondent's Submissions

[11] The Respondent submits that the issuance of the Licence, without any specified terms or conditions, is not an appealable decision under section 14 of the *IPMA*. The Respondent submits that section 14 of the *IPMA* sets out several things that might be a decision that can be appealed, including: specifying terms and conditions in a licence, except those prescribed by the Administrator; amending a licence; refusing to issue or amend a licence; revoking or suspending a licence; or restricting the eligibility of a licence-holder to apply for another licence.

[12] The Respondent submits that the Appellant's suggestion that the Third Party is not properly using pesticides can be addressed by the Ministry by registering complaints or reports through the publicly available website or telephone number.

Third Party's Submissions

[13] The Third Party submits that the Board should either reject the notice of appeal or dismiss it under section 31(1) of the *ATA* because the Licence is not an appealable decision. The Third Party also submits that the Appellant has failed to properly file a complete notice of appeal as required under section 22 of the *ATA* and the remedies sought by the Appellant are outside of the Board's authority to address.

[14] The Third Party submits that in this Licence, the condition prescribed by the Administrator is specifically excluded from the meaning of a "decision" under section 14(1)(b) of the *IPMA*. The Third Party notes that in review of section 14 of the *IPMA*, the issuance of a licence is not included as an appealable "decision".

[15] The Third Party notes that in *Jones v. British Columbia*, 2010 BCEAB 11 (*Jones*), the Board previously found that there is no right to appeal a permit, rather, only the terms and conditions of a permit can be appealed. In *Jones* the Board found it lacked jurisdiction to grant one of the remedies sought by that appellant.

[16] The Third Party submits the notice of appeal in this case is similar because the Appellant appears to appeal the issuance of the Licence itself, which is excluded from the Board's jurisdiction. As a result, the Third Party submits the Appellant has failed to identify an appealable decision and her appeal should be rejected.

[17] In the alternative, the Third Party submits the Board has the authority to summarily dismiss the appeal under section 31(1) of the *ATA*, on two grounds: 1) lack of jurisdiction because there is not an appealable "decision" under the *IPMA*, and 2) there is no reasonable prospect the application¹ will succeed.

¹ The *ATA* defines applicant as including appellant, a claimant or a complainant.

DISCUSSION AND ANALYSIS

Legislative Framework

[18] I begin with a discussion about the role, function and jurisdiction of the Board. This is useful so that the parties understand the scope of the Board's authority and its role in the overall scheme of the *IPMA*. This explains how and why the Board can and cannot hear certain appeals and why it cannot provide certain remedies.

[19] The Board is an independent, quasi-judicial body that decides appeals based on the evidence and arguments brought forward by parties involved in the appeal. The Board's authority is set by the Legislature through the enabling statutes and other statutes that apply to the Board operation.

[20] The Board must be satisfied that any decision being appealed falls within its jurisdiction, that the person bringing the appeal can appeal the decision, the appeal has been filed within the timeframe set by the legislation, and that the remedies sought by an appellant are within the Board's authority to grant.

[21] The Board can only address matters and issues, and provide remedies, through the powers delegated through its enabling legislation. The Board considers the wording, structure and overall scheme of its legislation in exercising its delegated authority.

The *IPMA* and the *Environmental Management Act* ("*EMA*")

[22] The Board's authority is derived from Division 1 of Part 8 of the *EMA*. Various statutes, including the *IPMA*, grant appeal rights to the Board, as constituted under the *EMA*.

[23] Section 14(2), however, expressly states that declarations, suspensions and restrictions under Division 2 of the *IPMA* are not appealable and under section 14(3) of the *IPMA*, "a person may appeal a decision under this Act to the appeal board." Section 14(6) establishes that Division 1 of Part 8 of the *EMA* applies to an appeal under the *IPMA*.

[24] Section 93(1) of the *EMA* (which is contained in Division 1 of Part 8 and so applies to the *IPMA* by virtue of section 14(6) of the *IPMA*) grants the Board the authority to hear appeals under the provisions of other enactments that allow appeals to be heard by the Board. In this case, that authority is extended to the Board by section 14(3) of the *IPMA*.

[25] Therefore, the Board is only delegated the authority to hear appeals of "decisions" made under the *IPMA* as defined by section 14(1). Contrary to the submissions of the Appellant, I find that plain, ordinary and grammatical reading of the *IPMA* and *EMA* can only be read to give the Board the authority to hear appeals of "decisions" captured under section 14(1) of the *IPMA*. Definitions of "decisions" under other enactments, or under Division 2 of the *EMA* cannot grant the Board the authority to expand its scope or range of

decisions it can hear appeals of. This concept was confirmed by the Supreme Court of Canada in *ATCO Gas and Pipelines Ltd. v Alberta (Energy and Utilities Board)*, 2006 SSC 4 (CANLII) at para. 35:

Administrative tribunals or agencies are statutory creations: they cannot exceed the powers that were granted to them by their enabling statute; they must “adhere to the confines of their statutory authority or ‘jurisdiction’; and t]hey cannot trespass in areas where the legislature has not assigned them authority.”

Is the Licence an appealable “decision” under section 14(1) of the *IPMA*?

[26] To begin my analysis, I must first consider what section 14(1) of the *IPMA* defines as a “decision”. A plain reading of section 14(1) establishes that the following are classified as a “decision” for the purposes of the *IPMA*:

- (a) making of an order;
- (b) specifying terms or conditions, except terms or conditions prescribed by the administrator;
- (c) amending or refusing to issue, amend or renew a licence, certificate or permit;
- (d) revoking or suspending a licence, certificate, permit or confirmation;
- (e) restricting the eligibility of a holder of a licence, certificate, permit or pest management plan to apply for another licence, certificate or permit or to receive confirmation;
- (f) determining to impose an administrative penalty;
- (g) determining that the terms and conditions of an agreement under section 23 (4) [*administrative penalties*] have not been performed.

[emphasis added]

[27] The Respondent submits that the Board has previously found that section 14 of the *IPMA* does not provide for an appeal of a decision to issue, or not issue, a permit, licence or certificate. I note that at paras. 8 through 10 of *Jones* the panel noted:

[8] After the Appellants provided their written submissions in support of their appeal, but prior to filing its written submissions, the Permit Holder (the MFR) questioned the Board’s jurisdiction over the appeal. It submitted that the Appellants based their appeal on the predecessor legislation, section 15 of the *Pesticide Control Act*, which allowed appeals of permits by the public. However, it pointed out that under section 14 of the new Act, the [*IPMA*] there is no right to appeal a permit per se, as it only allows an appeal of the terms or conditions of a permit. Since the Appellants did not specifically appeal any particular term

or condition of the Permit, the Permit Holder asked the Board to dismiss the appeal.

[9] The [IPMA] came into force in December of 2004 when the *Pesticide Control Act* was repealed. This appeal is the first one of its kind to be considered by the Board under the new *Act*.

[10] After considering the new appeal sections set out under section 14 of the [IPMA], the Board agreed with the Permit Holder that the Legislature has reduced the types of pesticide-related decisions that may be appealed to the Board. In a letter dated April 6, 2010, the Board concluded that section 14(1) of the [IPMA] provides a definition of an appealable "decision" and that subsection 14(1)(b) limits the Board's jurisdiction to hearing an appeal against the terms and conditions of the Permit, not the permit itself.

[28] Although prior decisions of the Board are not binding on me, I agree with and adopt the analysis in *Jones* that the enactment of the *IPMA* defines the Board's jurisdiction on appeals of permits, licences or certificates by only granting the Board the authority to hear appeals of the terms and conditions, not whether or not the permit, licence or certificate was issued.

[29] The next question is whether the condition in the Licence is appealable, or if it falls into the exception of prescribed terms or conditions by the administrator. Section 4(3) and (4) of the *IPMA* states:

- (3) The administrator may issue a licence to an applicant if satisfied that
 - (a) the application complies with subsection (2),
 - (b) the applicant meets the prescribed criteria, and
 - (c) the applicant is not subject to a restriction imposed by the administrator under section 15 (2) [*suspension and revocation*] in respect of a licence.
- (4) The administrator may specify in a licence issued under subsection (3)
 - (a) the date on which the licence expires, and
 - (b) terms and conditions, that
 - (i) are not inconsistent with the terms and conditions prescribed by the administrator, and
 - (ii) the administrator considers appropriate in the circumstances.

[30] Prescribed terms of the administrator are set out in the *Integrated Pest Management Regulation* (the "*Regulation*"). Specific to licences, Part 2, Division 2 of the *Regulation* sets out the Administrator's regulations related to licences.

[31] Section 46(1) of the *Regulation* states:

(1) For the purpose of section 5 (2) of the *[IPMA]*, the duties that a licensee providing a service using a class of pesticides prescribed in section 15 *[pesticides prescribed in relation to certified individual]* must ensure are performed by a certified individual are the following:

- (a) be present when the service is provided;
- (b) either
 - (i) perform the use, or
 - (ii) supervise, in accordance with section 59.3 *[supervision requirements]*, not more than 4 assistant applicators who perform the use.

[32] Section 4 of the *IPMA* states:

- (1) Except as provided in the regulations, a person must not
 - (a) sell or offer to sell a pesticide,
 - (b) use a pesticide for a prescribed use,
 - (c) provide or offer to provide any service respecting pesticides, or
 - (d) purchase, directly or indirectly, a pesticide for the purpose of selling the pesticide or providing a service to any other person,unless the person
 - (e) holds the licence that is, under the regulations, required for that purpose, and
 - (f) complies with the terms and conditions in or attached to that licence.
- (2) A person may apply for a licence under this section by submitting to the administrator an application that
 - (a) is in the form specified by the administrator for the purposes of this section,
 - (b) contains the information prescribed by the administrator, and
 - (c) is accompanied by the prescribed fee.
- (3) The administrator may issue a licence to an applicant if satisfied that
 - (a) the application complies with subsection (2),
 - (b) the applicant meets the prescribed criteria, and
 - (c) the applicant is not subject to a restriction imposed by the administrator under section 15 (2) *[suspension and revocation]* in respect of a licence.
- (4) The administrator may specify in a licence issued under subsection (3)
 - (a) the date on which the licence expires, and
 - (b) terms and conditions, that

- (i) are not inconsistent with the terms and conditions prescribed by the administrator, and
- (ii) the administrator considers appropriate in the circumstances.

[33] The only condition or term in the Licence is the requirement that the use of pesticides be performed or supervised by a certified applicator. The Third Party argues that this condition falls under the exception in section 14(1)(b) because it is “prescribed by the administrator”, but she does not indicate how the condition is prescribed. As demonstrated in *Jones*, at para 129:

Section 6(4)(b) allows the administrator to specify terms and conditions in a permit. There are two limitations or qualifications on this power. The first is that those terms or conditions not be inconsistent with the terms and conditions prescribed in the *Regulation*. This is not at issue. The second is that “the administrator considers them appropriate in the circumstances.” Thus the test is whether, on a subjective assessment, the administrator believes that the terms and conditions are appropriate in the circumstances. In the Panel’s view, “appropriateness” in this context must be linked to the general requirement in section 6(3) that the Permit not cause an unreasonable adverse effect. Therefore, the question is whether the terms and conditions are appropriate in that, at a minimum, they do not cause an unreasonable adverse effect.

[emphasis in original]

Consistent with the analysis outlined in *Jones*, the question I must decide is whether the term or condition set out in the Licence is inconsistent with the terms and conditions prescribed in the *Regulation*. As in *Jones*, in this case, I find that the condition in the Licence mirrors section 46(1) of the *Regulation*: both require that a certified individual apply the pesticide or supervise its application. The second consideration is whether the condition is anything other than a prescribed condition or term. I find in the case before me that it is not.

[34] I find that the term or condition in the Licence mirrors the requirement in section 46(1) of the *Regulation*. Therefore, the only term or condition in this Licence is excluded as an appealable “decision” under section 14(1)(b) of the *IPMA*. Since it is excluded by the language of section 14(1)(b) of the *IPMA*, I am satisfied that the Board lacks the jurisdiction to hear an appeal of the terms and conditions associated with this particular Licence.

[35] However, as discussed in *Jones*, there may be terms or conditions that fall within the delegated authority of the Board to consider on appeal of other licences with different terms or conditions.

Should the appeal be rejected or summarily dismissed under section 31(1) of the ATA?

[36] Section 31(1) of the *ATA* applies to the Board by operation of section 93.1(1)(d) of the *EMA*. Section 31(1) of the *ATA* provides that the Board can dismiss an appeal any time after it is filed if it determines the appeal is not within the jurisdiction of the Board.

[37] Section 31(2) of the *ATA* states that before dismissing an appeal the Board must give the Appellant an opportunity to be heard. In this appeal, the Appellant has been given the opportunity to be heard on the issue of whether Licence is an appealable decision. Although not specifically put on notice that the potential result of the Board's adjudication on this question could result in her appeal being dismissed, I am satisfied that the Appellant was provided with full and fair opportunity to be heard on the germane issue of whether or not the Board has jurisdiction. For the purposes of section 31(2) of the *ATA*, I am satisfied that the Appellant was provided with the necessary opportunity to be heard before dismissing the appeal.

[38] In the circumstances of this appeal, I have concluded that the Board does not have jurisdiction and the appeal must be dismissed as a result.

DECISION

[39] For the all the reasons set out above, having considered all the submissions of the parties even if not specifically referenced in my decision, I find that the Licence is not an appealable "decision" for the purposes of section 14(1)(b) of the *IPMA*. Therefore, it follows that the Board lacks the jurisdiction to hear an appeal of the terms and conditions of the Licence.

[40] For these reasons, I summarily dismiss the appeal under section 31(1)(a) of the *ATA*. The Board will take no further action.

"David Bird"

David Bird, Vice Chair
Environmental Appeal Board