Environmental Appeal Board

Citation: *West Coast Reduction Ltd. v. District Director, Metro Vancouver Regional District*, 2026 BCEAB 41

Appeal No.: EAB-EMA-25-A022

Decision Date: 2026-09-10

Method of Hearing: Conducted by way of written submissions concluding on April 7, 2026

Decision Type: Preliminary Decision

Panel: Darrell Le Houillier, Panel Chair

Appealed Under: *Environmental Management Act,* SBC 2003, c. 53

Between:

West Coast Reduction Ltd.

Appellant

And:

District Director, Metro Vancouver Regional District

Respondent

Appearing on Behalf of the Parties:

For the Appellant: Andrea Akelaitis

For the Respondent: Alyssa Bradley

PRELIMINARY DECISION ON JURISDICTION

BACKGROUND

[1] The Appellant, West Coast Reduction Ltd., holds permit GVA1197 (the "Permit"), issued by Metro Vancouver ("Metro"), as authorized under the *Environmental Management Act*, S.B.C. 2003, c. 53 (the "*EMA*") and Metro's *Air Quality Management Bylaw No. 1082, 2008* (the "Bylaw"). The Permit authorizes the Appellant to release certain contaminants into the environment, in certain concentrations and quantities, subject to certain requirements.

[2] The Permit was issued in November 2021 and was subsequently appealed to the Environmental Appeal Board (the "Board") by the Appellant. While the appeal was active, the parties from that appeal engaged in mediation in an attempt to resolve that appeal. The parties to that appeal signed a mediation agreement dated March 17, 2022 (the "Mediation Agreement"), prior to beginning mediation in April 2022.

[3] Correspondence between the parties followed and, on June 10, 2022, a draft consent order was agreed to by those parties and was submitted for the approval of the Board. The Board approved this consent order on June 16, 2022, and it was signed by all parties on June 17, 2022. The consent order, which contains terms for dismissing the 2021 appeal, is *West Coast Reduction Ltd. v. District Director, Metro Vancouver Regional District*, 2022 BCEAB 19 (CanLII) (the "Consent Order").

[4] On May 8, 2025, the Appellant applied to Metro to amend certain elements of the Permit: expiry dates for two emissions sources authorized under the Permit, ES04 and ES08 (the "Expiry Dates"). Considerable discussion ensued between the Appellant and Metro (including the Respondent, Metro's District Director) pursuant to that application.

[5] On October 7, 2025, the Respondent communicated to the Appellant that she did not consider she had jurisdiction over the Permit because the Appellant had raised the Expiry Dates in its notice of appeal which initiated the 2021 appeal and the Board issued the Consent Order with respect to that appeal. The Respondent took the position that, under section 16(3) of the *EMA* and section 15 of the Bylaw, the authority to amend the Permit now vested with the Board.

ISSUES

[6] There are two issues to be addressed in this preliminary decision. They are whether:

- the Respondent's October 7, 2025, letter contained an appealable decision to refuse to amend the Permit; and
- the Respondent has the authority to amend the Expiry Dates.

[7] The Appellant asserted the Respondent's views changed over time with respect to her jurisdiction to consider the amendment application and this indicated she was searching for a rationale to support the outcome she ultimately arrived at. There is no need for the Board to address this allegation so submissions on this point are not discussed below.

LAW

[8] Section 16 of the *EMA* grants the Respondent, as District Director appointed under the *EMA*, among other powers, the discretion to amend a permit to emit contaminants into the environment upon application from a permit holder.

[9] Section 16(3) limits that discretion. It specifies that only the Board may amend the "conditions imposed pursuant to a decision made in an appeal to the appeal board …." [1]

[10] Section 100(1) of the *EMA* grants a person who is aggrieved by a decision of a district director the right to appeal that decision to the Board.

[11] Section 99 of the *EMA* defines "decision" to mean:

> …
>
> (c) exercising a power except a power of delegation,
>
> (d) issuing, amending, renewing, suspending, refusing, cancelling or refusing to amend a permit, approval or operational certificate,

[12] After an appeal has been filed, section 16 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 (the "*ATA*") addresses consent orders. Subsection (1) provides, "On the request of the parties to an application, the tribunal may make a consent order if it is satisfied that the order is consistent with the enactments governing the [appeal]."[2]

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[1] Section 15 of the Bylaw contains language that is, in practical terms, parallel to the language of section 16(3) of the *EMA*. For simplicity, the rest of the decision refers only to section 16(3) of the *EMA*, but the same analysis applies with respect to section 15 of the Bylaw.

[2] Section 16(1) of the *ATA* refers to an "application," which in that statute are defined to include appeals. An application in this context does not mean an application for a consent order.

REASONS AND DECISION

Does the Respondent's October 7, 2025, Letter Contain an Appealable Decision to Refuse to Amend the Permit?

The Appellant's Submissions

[13] The Appellant argues section 99 of the *EMA* is intended to enumerate "virtually all of the various types of substantive decisions" made under the *EMA* and must be given a fair, large and liberal construction.[3] The Appellant says a denial of an application for a permit amendment under section 16 of the *EMA* amounts to a decision under section 99(d), based on an analysis of analogous provisions in a previous version of *EMA* done in *Houweling Nurseries Ltd. v. Greater Vancouver (Regional District) District Director*, 2005 BCSC 894 (CanLII) ("*Houweling*"), at para. 50. The Appellant adds that section 16 decisions can be phased decision making processes captured by section 99(d), as described at paras. 21–22 and 34–35 of *Unifor*.

[14] The Appellant referenced a three-part test described in *Revolution Organics, Limited Partnership v. Director, Environmental Management Act*, 2017 BCEAB 23 (CanLII) ("*Revolution*"), at para. 38, to determine whether an appealable decision was issued under the *EMA*. I have paraphrased the three requirements for there to be an appealable decision as:

1. there must be some exercise of authority under the legislation that relates to a subsection of section 99;
2. the contents of any letter purported to contain an appealable decision must support that such a decision was made, and that the letter does not contain information only; and
3. the analysis of the nature of the legislation and decision should support a conclusion that there was an appealable decision, and the Board should not decline jurisdiction on a "purely formal or technical basis."

[15] With respect to the first requirement, the Appellant argues that the Respondent considered whether the conditions the Appellant sought to have amended were imposed pursuant to a decision made in an appeal to the Board. The Appellant says this analysis in turn informed whether the Respondent's discretion to amend the Permit was limited by section 16(3) of the *EMA*. The Appellant says this involves a substantive assessment of the relevant permit and any Board decision pertaining to it, as described in *Beacon Pacific Properties Ltd. v. British Columbia (Ministry of Environment)*, 2022 BCEAB 12 (CanLII) ("*Beacon*"), at para. 44.

[3] The Appellant references *Unifor Local 2301 v. Rio Tinto Alcan Inc.*, 2017 BCCA 300 (CanLII) ("*Unifor*").

[16] With respect to the second requirement, the Appellant says the October 7, 2025, letter contains the information considered by the Respondent, her reasoning, and a conclusion—all hallmarks of a substantive decision. The effect of a decision is a "refusal to amend a permit," specifically described as a decision in section 99(d) of the *EMA*.

[17] Alternatively, the Appellant argues that determining the Expiry Dates were conditions imposed in an appeal is an exercise of power, other than delegation, which is defined as a decision in section 99(c) of the *EMA*. The Respondent interpreted section 16(3) and applied that interpretation to the Appellant's permit application, to arrive at a conclusion: there were portions of the Permit she could amend and portions she could not.

[18] With respect to the third requirement, the Appellant argues a respondent contravening section 16(3) of the *EMA* would be appealable. It follows that a decision not to make a decision because of the Respondent's application of section 16(3) should also be appealable: it cannot be that the impact of section 16(3) is appealable sometimes but not always. The Appellant says the Board confirmed in *Christine McLean v. Director, Environmental Management Act*, 2021 BCEAB 11 (CanLII) ("*McLean*"), that such decisions are appealable. The Appellant also argues the October 7, 2025, letter is about the Board's jurisdiction, and the Board should have the authority to scrutinize such an analysis, meaning it should be classified as a decision under section 99 of the *EMA*.

The Respondent's Submissions

[19] The Respondent argues the October 7, 2025, letter does not contain any appealable decision but merely directs the Appellant to the appropriate authority for the amendment of the Permit: the Board. The Respondent did not deal with the application for amendment on its merits but rather provided an administrative or informational response. The Respondent argues such decisions are not appealable, as described in *Fort Nelson First Nation v. British Columbia (Environmental Assessment Office)*, 2016 BCCA 500 (CanLII) ("*Fort Nelson*"), at paras. 42–60, and are similar to the situation described in *Sumas Environmental Services Inc. v. Director, Environmental Management Act*, 2019 BCEAB 8 (CanLII) ("*Sumas*").

[20] The Respondent argues that, as described in paragraph 70 of *McLean*, where clauses of a Consent Order are incorporated into a permit, they are not appealable. Additionally, such conditions, having been imposed by the Board, could not be amended by a decision maker in first instance. As a result, the Respondent argues the October 7, 2025, letter which expresses those views cannot be considered to be a decision under the *EMA*. The Respondent distinguishes *Beacon* insofar as it related to a discretionary decision made by a statutory decision maker, unlike the case here, where the Respondent could not choose to amend the Permit as requested.

[21] The Respondent says the Appellant's reading of the relevant statutory provisions is incompatible with the modern approach to statutory interpretation: that words must be

read "… in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."[4]

[22] In interpreting the *EMA*, The Respondent says that she has no decision-making authority provided by section 16(3) of the *EMA*: they are limitations on the Respondent's power to amend permits issued under the *EMA*. The Respondent notes this is consistent with the findings the Board made in *McLean* at para. 70 and with the Board's findings on jurisdiction in *7437 Holdings Ltd. v. British Columbia (Ministry of Environment, Lands and Parks)*, 1998 BCEAB 45 (CanLII) ("*7437*"), at paras. 38–39.

[23] The Respondent says the fact that she did not make a substantive decision means there was no decision made within the meaning of section 99(d) of the *EMA*. *Houweling* is of no assistance, according to the Director, as there had been no prior decision of the Board in that case.

[24] Furthermore, the Respondent argues that allowing a party to request an amendment of the terms imposed by a Consent Order and then appeal a refusal to issue such an amendment would render consent orders meaningless and offend the doctrine of *functus officio*, *res judicata*, abuse of process, and collateral attack.

The Appellant's Reply

[25] On the question of statutory interpretation, the Appellant notes section 16(1) expressly provides it is subject to section 16(3). Section 16(3) does not stand alone: it is triggered in consideration of section 16(1) and requires a decision maker to take some action.

[26] The Appellant argues the analysis from *7437* is distinguishable because it deals with the appealability of an abandoned permit, while the analysis from *McLean* deals with a transcription of a Board order, not any independent decision by a statutory decision maker. Further, the Appellant asserts *McLean* shows the Board should undertake a substantive review to determine whether the Consent Order imposed conditions in the Permit.

[27] The Appellant argues that, if the decision of the Respondent in this case is not appealable, she is the final arbiter of whether she or the Board has jurisdiction with respect to the Permit. Section 16(3) may be triggered by the Respondent's consideration of making a decision under section 16, if she considers there are terms imposed by a decision of the Board. In this case, the Respondent reviewed the Appellant's application for an amendment and the Consent Order and made a decision on the scope of her amendment powers under section 16 of the *EMA*.

[4] The Respondent references *Fort Nelson* at paras. 43, 98, 112, and 122.

[28] The Appellant says *Sumas* is distinguishable because the decision maker in that case exercised no decision-making power, either under legislation or regulation, but rather communicated an effect of the operation of the law.[5] In *Fort Nelson*, the relevant legislation imposed a requirement to act on the applicant First Nation, but did not require or empower the decision maker in that case to make any decision.[6]

[29] The Appellant argues paragraphs 51–51 of *Houweling* and paragraphs 30–32 of *Unifor* do not support the narrow reading of section 99(d) of the *EMA* advocated by the Respondent.

The Panel's Findings

[30] I agree with the analysis of the Board in *Revolution* that a decision is appealable if it contains an exercise of authority relating to a decision as defined in section 99 of the *EMA*, and not just the provision of information. In assessing whether a decision was made, the Board should analyse the decision and associated legislation. The parties referred to several prior court and Board decisions describing how such questions have been approached in the past.

[31] *Houweling* is a case where the Board, under legislation no longer in effect, stated it did not have jurisdiction over a refusal by the Greater Vancouver Regional District to amend an air emissions permit issued under the applicable legislation at that time. The Appellant argues this case stands for the proposition that a refusal to amend a permit is an appealable decision. I do not consider it necessary to refer to *Houweling* for that purpose: section 99(d) of the *EMA* specifies that a refusal to amend a permit falls within the definition of a "decision." The key question which remains, and which goes to the heart of the disagreement, is whether the Respondent's interpretation of section 16(3) of the *EMA* constitutes a refusal—i.e., a decision—or if the Respondent merely provided information on an operation of the *EMA*.

[32] Another case referenced is *Unifor*. While I take no issue with the statements on the law in *Unifor*, that authority is of limited use here. It is true that decision-making under the *EMA* can be phased, as described in that case. The question about whether there was any phased decision-making in this case does not advance the analysis here. Neither does the Court's statement in *Unifor* that any power to grant or amend permits is derived from the *EMA*. The question here is whether the Respondent's refusal to amend a permit because of her assessment of section 16(3) is a decision as defined in section 99.

[33] I do, however, appreciate the guidance from *Unifor* that the Board must give the *EMA* a "fair, large, and liberal construction and interpretation as best ensures the

[5] See paras. 70 and 79–82.

[6] See paras. 29–31, 43–45, and 56.

attainment of its objects."[7] I am mindful that the Board should not treat the different definitions of "decision" in section 99 as watertight compartments. I agree with that assessment and have taken that view in weighing the arguments on this issue.

[34] *Beacon* is likewise of limited assistance, insofar as it involves the exercise of discretion by a decision maker and does not grapple with the question in this situation, where the Respondent determined she did not have jurisdiction to grant a permit amendment by operation of law.

[35] *Sumas* is likewise distinct on its facts: in that case, the decision maker was not requested to make a decision and did not decline to do so. Additionally, there was not a valid permit at issue in *Sumas*. The Board concluded, at paragraph 80 of that decision, that there was no "final or substantive decision that was made under, or derived from, the [*EMA*]." At paragraph 81, the Board noted that legislative interpretation does not amount to a decision: there must be an appealable decision over which the Board has jurisdiction. This is the very question that must be decided here.

[36] *7437* is also distinguishable on its facts. It considers an abandoned permit and, as the Board commented in paragraph 39 of that decision, "An abandonment is not an amendment." The Board made clear in its reasoning that it was not considering an amendment or any denied amendment; rather, the Board, based its decision on the fact that the permit in that case had been abandoned totally and absolutely.

[37] *Fort Nelson* is likewise unhelpful. While the factual circumstances are similar, insofar as the communication at issue "… confirms the proponent's responsibility to make that determination and disavows the [decision maker]'s responsibility," that case considered a different legislative scheme and different factual circumstances. In that case, at paragraph 35, the court quotes from the decision at issue, which notes it is a response to a request for "confirmation of whether the proposed Project constitutes a reviewable project" but states that "Project proponents are responsible for making their own determination" before providing information. It is clear that, in *Fort Nelson*, the request was for information on the application of legislation and regulations. Here, Appellant applied to the Respondent to amend the Permit, which the Appellant says she had the authority to do. The Respondent argues her assessment of the applicable facts led her to the conclusion that she did not have the jurisdiction to amend the Permit as requested. The applicable factual and legal context make *Fort Nelson* of limited value in this appeal and I do not find it persuasive.

[38] Both parties referred me to *McLean*, which I do not find helpful in answering the question as to whether the October 7, 2025, letter contained a decision as defined under section 99 of the *EMA*. In *McLean*, the Board considered where a statutory decision maker incorporated elements of a consent order, which had resolved an appeal before the

[7] *Interpretation Act*, R.S.B.C. 1996, c. 238, s. 8, quoted in para. 32 of *Unifor*.

Board, into a permit issued under the *EMA*. The Board found the inclusion of those specific terms set out in the Consent Order did not amount to a decision and could not be appealed. The facts here are different: there was a request to amend terms not altered, but appearing in, the Consent Order. *McLean* does not assist me determine whether the Respondent's assessment that she lacked jurisdiction to amend these terms is a decision as defined under the *EMA*.

[39] The most persuasive authority in this case is section 99(d) of the *EMA*. It specifically includes that "refusing to amend a permit" constitutes a decision under that legislation. The October 7, 2025, letter sets out the Respondent's view that she lacked authority to amend portions of the Permit, which were a subject in the 2021 appeal. The Respondent considered the applicable law and the facts of the circumstances. She refused to amend a permit issued under the *EMA* as a result. This is a decision as defined in section 99(d).

[40] It does not matter that the Respondent declined to make the amendments sought by the Appellant because her assessment of her jurisdiction. The October 7, 2025, letter communicates the Respondent retains authority to amend some elements of the Permit but not others. Section 99(d) does not specify that refusals to amend a permit are only decisions where those refusals are on the merits of the application. To conclude that refusals to amend a permit based on an assessment of jurisdiction or on questions of law would be introducing words into the legislation that are not there. A refusal for jurisdictional reasons is a refusal and whether they are correct or incorrect in their jurisdictional analysis does not affect the appealability of that refusal.

[41] This reading of the *EMA* is consistent with the modern approach to statutory interpretation as referenced by the Respondent. I have read the language of the statute in its grammatical and ordinary sense, in its entire context and harmoniously with the scheme of the *EMA*, the object of the *EMA*, and the intention of the legislature.[8] Eliminating jurisdictional rationales from refusals to amend permits would involve adding words to the *EMA* which are not required. This would serve to limit rights of appeal where, as noted in *Unifor*, the intention of that section is to include "virtually all of the various types of substantive decisions."

[42] Additionally, considering the context of the *EMA* as a whole, I agree with the Appellant on the general appealability of section 16(3). The Appellant argued, and the Respondent did not disagree, that if a decision maker amended a permit when they should not have because of section 16(3), that issue would be appealable to the Board. It would create a discrepancy in rights of appeal based on the outcome of the decision if I were to accept the position of the Respondent: that her decision to not amend the Permit

[8] This test, described by the Respondent, is from *Rizzo & Rizzo Shoes (Re)*, 1998 CanLII 837 (SCC) and many other sources.

because of section 16(3) is not a decision and is therefore not appealable. Such a discrepancy is not contemplated by, nor called for, by the language in the statute.

[43] Furthermore, this finding is consistent with the guidance from *Unifor*, referencing the *Interpretation Act*, that I must construe the *EMA* in a "fair, large, and liberal construction and interpretation as best ensures the attainment of its objects."[9] *Unifor* indicates the intention of section 99 is to include "virtually all of the various types of substantive decisions."

[44] I note here that "substantive" does not mean fact-based. Substantive decisions are those which create and define rights and duties. Here, the Respondent communicated a refusal, on jurisdictional grounds, to amend the Permit under section 16(1) of the *EMA*. The Respondent based her conclusion on an assessment of law and fact, and an application of the former to the latter. Her conclusion denied the Appellant the amendment it sought. This is sufficient to qualify as a "substantive" decision and a refusal to amend the Permit. The conclusion is a decision as defined in section 99(d) of the *EMA*.

[45] I am also mindful of the Respondent's argument that a party should not be allowed to request an amendment of terms imposed by a Consent Order and then appeal a refusal to issue such an amendment. This situation would be concerning if the appeal were on the merits of whether the amendment should be issued. That is the mischief dealt with by section 16(3).

[46] This is not the case here, however. Here there is a dispute about jurisdiction, and whether the Respondent has the authority to consider such an application in the circumstances of this case. The question is, essentially, whether section 16(3) applies. This is separate from an appeal of the terms themselves and does not give rise to concerns related to *functus officio*, *res judicata*, abuse of process, and collateral attack.

[47] I also acknowledge the Respondent's argument that section 16(3) of the *EMA* does not provide any decision-making authority to her, instead constraining her decision-making authority under section 16(1). The Respondent did not point me to any persuasive authority saying that a power should be read by subsection in isolation. In fact, the Respondent argued I should exercise the modern approach to statutory interpretation. This involves reading not only the narrow test in the specific provision, but the context in the section and the *EMA* overall to determine the meaning of a specific portion. Here, section 16(1) and section 16(3) explicitly operate together. Section 16(3) limits the decision maker's authority, but that does not mean that the application of her interpretation of section 16(3) to specific facts is not a decision. The interpretation forwarded by the Respondent is inconsistent with the clear language in section 99(d), as discussed above. It is also inconsistent with the general intent of section 99, as described in *Unifor* and

[9] *Interpretation Act*, s. 8, quoted in para. 32 of *Unifor*.

discussed above. Section 99 is a section of general application to the *EMA* and is relevant to my interpretation of section 16.

[48] In closing, I note the October 7, 2025, letter may also contain a decision under section 99(c) of the *EMA*, as argued by the Appellant. I acknowledge that the subsections of section 99 are not watertight compartments but, given my findings above, I do not need to answer that question in these circumstances.

Does the Respondent Have the Authority to Amend the Expiry Dates?

The Appellant's Submissions

[49] The Appellant says the Respondent should not have considered the notice of appeal from the 2021 appeal and settlement discussions, as it is only the Consent Order, and the parties' joint application for that, which warrant consideration. The Consent Order alone contains the "conditions imposed" by the Board. Neither the request for the Consent Order nor the Consent Order address the Expiry Dates.

[50] The Appellant also argues that, should the Respondent seek to rely on privileged settlement discussions in support of her argument, the Board should not consider such discussions. Evidence that would be inadmissible in court because of privilege is inadmissible to the Board for the same reason, as described in section 40(3) of the *ATA*.

[51] The Appellant references the test for settlement privilege reiterated in *Stancor Enterprises Ltd. v. Fiorvento*, 2022 BCSC 1842 (CanLII) ("*Stancor*"), at para. 92–93, which I have paraphrased as:

a) a litigious dispute must be in existence or within contemplation;

b) the communication must be made with the express or implied intention that they would not be disclosed and were made with the purpose to achieve resolution; and

c) the purpose of the communication must be to attempt to affect a settlement.

[52] The Appellant says this test is satisfied here. First, the 2021 appeal was a litigious dispute. Communications which led up to the Consent Order "… would have a corollary express or implied intention that they would not be disclosed and were with the purpose to achieve resolution." The Appellant further argues that the mediation agreement executed between the parties indicates that all communications would be inadmissible in any legal proceeding and the parties would not compel disclosure of the fact that another party had indicated a willingness to accept a proposal from another party.

[53] The Appellant says that if the Respondent wants to rely on privileged communications, an exception to settlement privilege is not appropriate, because the communications are neither necessary or relevant: only the application for the Settlement Order and Settlement Order are relevant in deciding what conditions the Board imposed.

The Appellant references *Dos Santos v. Sun Life Assurance Co. of Canada*, 2005 BCCA 4 (CanLII) ("*Dos Santos*"), at para. 20 for the proposition that a privileged communication may only be reviewed where necessary and relevant in the circumstances.

[54] In any event, the Appellant argues that unchanged elements of the Permit were not conditions imposed in the 2021 appeal. The Appellant notes that not every use of the Board's decision-making authority on permit terms brings section 16(3) of the *EMA* into play: previous cases have found that where the Board confirms a permit, section 16(3) is not engaged.[10]

The Respondent's Submissions

[55] The Respondent says that because the Appellant appealed the Expiry Dates in the 2021 appeal and the Consent Order disposed of that appeal, the Respondent has no authority to amend the Expiry Dates. Additionally, the Respondent argues that the same outcome arises from the following facts: that the Expiry Dates were an issue raised in the appeal and that the Consent Order was provided along with an updated, "clean" version of the Permit that enshrined all the terms agreed to in the Consent Order.

[56] The Respondent argues that it is not only the changed portions of the Permit which are caught by the effect of section 16(3) of the *EMA*. As the parties signed off on an updated, "clean" version of the Permit which included all terms changed under the Consent Order, the whole of the Permit cannot be amended except by the Board. Otherwise, the Appellant could effectively "… ignore the terms it did not get changed in the settlement of the 2021 appeal."

[57] The Respondent says that, to the degree it is necessary to prove the terms of settlement addressed by the Consent Order, correspondence between the parties leading up to their joint submission of the draft copy of the Settlement Order to the Board is admissible, as they did not expressly agree that it would not be.[11] The Respondent discussed that specific correspondence in submissions to the Board.

The Appellant's Reply

[58] On the question of statutory interpretation, the Appellant notes that section 16(1) expressly provides it is subject to section 16(3). Section 16(3) does not stand alone: it is

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[10] The Appellant references *Howe Sound Pulp and Paper Limited v. British Columbia (Ministry of Environment)*, 2008 BCEAB 5 (CanLII) ("*Howe Sound*"), which considered *Terry Jacks v. Deputy Director of Waste Management*, 2001 BCEAB 10 (CanLII).

[11] The Respondent references *Sayyari v. Provincial Health Services Authority*, 2023 BCCA 413 (CanLII) ("*Sayyari*"); *Union Carbide Canada Inc. v. Bombadier Inc.*, 2014 SCC 35 (CanLII) ("*Union Carbide*"), at paras. 35, 54, and 65–66; *Dos Santos*, at paras. 17–20 and 25; and *Stancor*, at paras. 95–97.

triggered in consideration of section 16(1) and requires a decision maker to take some action.

[59] The Appellant argues the issue before the Board is not about the enforcement of settlement terms, so *Dos Santos*, *Union*, and *Stancor* are distinguishable. The Appellant further argues that *Sayyari* should not be relied upon, as it involves a settlement agreement with express provisions allowing enforcement through the court, which later considered the associated settlement communications, and because the court's analysis is a "narrow point of statutory interpretation" of the *Human Rights Code*, R.S.B.C. 1996, c. 210 (the "*Code*")—which does not apply here—and contained no analysis of section 40(3) of the *ATA*, which does not apply under the *Code*.[12]

[60] In this case, the Appellant argues the parties did not provide the Board only a clean copy of the Permit as they wished it to read, they also provided a blacklined copy highlighting the changes they sought, in addition to other documents.

The Panel's Findings

[61] Having concluded that the Respondent's refusal to amend the Permit on the basis of jurisdiction is a decision as described in section 99(d) of the *EMA*, I turn to consider that decision.

[62] The view expressed in the October 7, 2025, letter is that section 16(3) of the *EMA* applies to the portions of the Permit that were addressed in the Notice of Appeal which started the 2021 appeal. This view is incorrect: it reads language into section 16(3) which does not appear there.

[63] Section 16(3) concerns "conditions imposed pursuant to a decision made in an appeal to the appeal board ...." Such a decision, as described in *McLean*, includes a consent order. However, prior to any decision being made by the Board, parties often amend their notices of appeal and at times abandon issues, which the Board never hears on their merits and which do not form part of consent orders or other final decisions of the Board. The originating forms of altered grounds of appeal or any abandoned grounds of appeal are not addressed in, let alone imposed pursuant to, a decision of the Board. A plain reading of section 16(3) leaves no ambiguity and does not include all issues ever discussed in an appeal, whether or not they are ultimately addressed by or imposed pursuant to a decision of the Board.

[64] In this case, it is the Settlement Order which governs. Any positions or representations made between the parties which led to the Settlement Order are not relevant or necessary for the Board to consider.

[12] See paragraphs 1 and 4 of *Sayyari* and section 32 of the *Code*.

[65] To the extent that the parties have argued about whether the Board can consider communications as between them because of settlement privilege, I do not need to address those arguments given this finding. I do not need to decide whether the communications are privileged and whether they should be admitted based on *Dos Santos* or other authorities. They are irrelevant to what conditions were imposed under the Consent Order.

[66] The parties also disagree about whether the inclusion of a "clean" copy of the Permit in the Consent Order means that the whole of the Permit is captured by section 16(3). It is not: section 16(3) does not say that all conditions referenced in a decision of the Board are captured by its effect, merely the conditions that are imposed by a decision of the Board. Based on a plain reading of the legislation, conditions which were the same before and after the Consent Order are not captured by section 16(3).

[67] Expanding on this analysis within the plain reading of section 16(3) in the modern approach to statutory interpretation, as described above, produces the same result. In the broader context of the legislation, the test I have described parallels the test for the appealability of conditions amended when a permit is amended. In such circumstances, as described in paragraph 40 of *Unifor*, "An appeal of a decision does not lay an existing permit open to attacks at large. The appeal must be narrowly focussed on the particular impugned decision." The correct test for whether conditions are captured in section 16(3) is whether they are imposed by the Board's decision. The underlying appeal is not captured in total by section 16(3), even if one or both parties seek to make it so.

[68] I note this conclusion is consistent with the Board's decision in *Howe Sound*, where a decision by the Board denying an appeal of a permit did not bring that permit under the effect of section 16(3). While a denial of an appeal is different from a consent order, the Respondent's position is inconsistent with the outcome in *Howe Sound*. The test I have described is entirely consistent with *Howe Sound*. This consistency in the application of section 16(3), whether it applies to a final decision or a consent order, is an indication that my interpretation of section 16(3) is consistent with the broader context of the *EMA*.

[69] It follows that it does not matter whether a clean version of the Permit was provided alongside the Consent Order. It is the terms of the Consent Order itself which govern. A blacklined version of the order is not necessary but makes for a convenient reference when assessing the conditions that have been imposed by the Consent Order.

[70] Reviewing the changes to the Permit made by the Consent Order, it is clear the Expiry Dates were unaltered. As such, they were not conditions imposed by the Consent Order and are therefore not caught within section 16(3) of the *EMA*.

CONCLUSION

[71] For the reasons provided above, I find that the Respondent's October 7, 2025, letter contains an appealable decision to refuse to amend the Permit. I also find that the Respondent has the authority to amend the Expiry Dates.

[72] In reaching these conclusions, I considered all the evidence and submissions provided by the parties, whether or not specifically referenced in this preliminary decision.

"Darrell Le Houillier"

Darrell Le Houillier, Panel Chair
Environmental Appeal Board