

February 2, 1994

IN THE MATTER OF Sections 84, 85, 86 and 87 of the Environmental Protection and Enhancement Act, S.A. 1992, ch.E-13.3, as amended;

and

AND IN THE MATTER OF an appeal filed by Fred J. Wessley dated January 17, 1994 with respect to Approval 93-IND-011 issued on December 23, 1993 by Mr. Jerry Lack, Director, Department of Environmental Protection, relative to the University of Alberta Hospitals Aberhart Biomedical Waste Incineration Facility.

**DECISION**

Cite as: Fred J. Wessley v. Director, Alberta Environmental Protection

Before: William A. Tilleman, Chair  
David H. Marko, vice-Chair  
Joan C. Copp  
Max A. McCann

## **I BACKGROUND**

Mr. Fred Wesley of Redwater, Alberta wrote a letter of objection dated January 17, 1994, which was received and filed with the Environmental Appeal Board (the “Board”) on January 19, 1994. Mr. Wesley’s objection was in response to an advertisement placed in an Edmonton newspaper by the University of Alberta Hospitals (the “Hospital”) as earlier required by Mr. Jerry Lack, Director, department of Environmental Protection (the “Department”). This direction was contained in a letter, addressed to Mr. Mohler, the Hospital’s Director of Physical Plant on December 29, 1993 by the Department when it issued approval 93-IND-011. The approval issued to the Hospital was actually an extension of an earlier approval issued to the Hospital for biomedical waste incineration. According to the terms of the extended approval which Mr. Wesley now appeals, this approval expires on March 31, 1994.

After having received Mr. Wesley’s written objection (and attached materials) on January 19, 1994, the Board issued a request in writing to Mr. Wesley to respond to the Board in writing by January 28, 1994 as follows:

*“Please describe how you are **directly affected** by the decision to renew this approval and complete the enclosed Notice of Appeal form. Please respond to both matters and return same to this office by Friday, January 28, 1994.”* (original emphasis)

Mr. Wesley received the Board’s request via courier and complied with the request, delivering his response and supplemental information, in person, on January 26, 1994.

## **II THE BOARD’S PRELIMINARY CONSIDERATIONS**

Upon receipt of a Notice of Objection filed under the *Environmental Protection and Enhancement Act*, S.A. 1992, ch. E-13.3 (the “Act”), the Board meets to review a number of preliminary matters including:

Under what section of the Act is the Notice of Objection filed?

Has it been filed within time?

Where applicable, is the appellant directly affected by the decision appealed from?

Has the matter been heard previously by another board as set out in section 87(2) of the Act?

Ultimately, the Board must determine whether it has the jurisdiction to act on the appeal and, if the Board required further information, it may request it from one of the parties to an appeal.

In this case, Mr. Wesley filed his Notice of Objection within the allowed 30 days of the Director's decision from which he appeals. The Board made a request of Mr. Wesley to comment on how he is directly affected by the decision to renew this approval.

## **II ISSUES**

The Board identifies the following issues in Mr. Wesley's appeal:

1. Are the issues which form the basis of Mr. Wesley's appeal properly before the Board?
2. Is Mr. Wesley directly affected by the Directors' decision?
3. Is the appeal filed by Mr. Wesley frivolous or vexatious?

## **IV THE EVIDENCE OF MR. WESLEY**

The evidence from Mr. Wesley came in two instalments: (1) on January 19, 1994, the Board received his written objection and a package of material explaining Mr. Wesley's position regarding the Hospital and his appeal (the "first submission"); and (2) on January 26, 1994, on its request for further information, the Board received Mr. Wesley's supplementary material (the

“second submission”).

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The essence of Mr. Wesley’s case is found in what appears to be a brief employment history with the Hospital. According to the information provided by Mr. Wesley in both submissions, he was hired by the Hospital as a 3rd class steam engineer over 10 years ago on October 17, 1983. For whatever reason, Mr. Wesley’s employment with the Hospital was terminated on November 7, 1983. For purposes of dealing with this appeal, the Board is assuming only that there has been a prior employment history between the Hospital and Mr. Wesley.

In his first submission, Mr. Wessley objected to the incinerator approval, among other reasons, because he wanted some “...visible proof (that) it is operator friendly as well as environmentally friendly, when by some miracle the plant was able to run in low gear.” He went on to reference aspects of his employment, including his apparent termination “for advizing (sic) on the mechanical inadequacies of the physical plant.” He also quoted what he referred to as the “Boilers & Pressure Vessels Act: ch. 4 (1975)” relative to the “Authority of Engineers Certificate of Competency.” Mr. Wessley’s first submission also went on to state: “Since I am no longer a employee at the hospital, but a participant in the Medicare Program and a Tax Payer I feel that I was discharged unfairly ...I was not given a specific reason for my discharge, this is why I am taking this method to finding out what?????” Apparently, the “method” to which Mr. Wessley refers is his appeal to this Board.

In his second submission, Mr. Wessley objected to the “semi-charred and semi-burnt biomedical waste” and wanted certain performance tests with accurate monitoring “with a resulting heat balance (to prove) justification of the facility.” He also provided several comments in his response to the Board’s request for information relative to how he was directly affected by the Director’s decision to extend the Hospital’s approval.

## **V      DECISION OF THE BOARD**

The Board has carefully reviewed the appeal and submissions of Mr. Wesley. Before

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proceeding with the appeal, the Board must address the issues before it, namely:

1. Are the issues which form the basis of Mr. Wesley's appeal properly before the Board
2. Is Mr. Wesley directly affected by the Director's decision? And
3. Is the appeal filed by Mr. Wesley frivolous or vexatious?

**(1) Are the issues properly before the Board?**

Section 87(2) of the Act states:

*Prior to conducting a hearing the Board may in accordance with the regulations determine which matters included in the notices of objection properly before it will be included in the hearing of the appeal...*

The regulations make it clear that not every appeal that is filed will result in a hearing. Section 1(f)(I) of the *Environmental Appeal Board Regulation*, Alta. Reg. 114/93, states as follows:

*"party" means*

- (i) *the person who files a notice of objection that results in an appeal...*  
(emphasis added)

Further, section 7 (1) of the same regulation states:

*Subject to section 87(2) and (5) of the Act, where the Board makes a determination to proceed with the notice of objection...(emphasis added)*

Further, section 20 (1) of the same regulation states:

*Where an application for an award of final costs is made by a party, it shall*

*be made at the conclusion of the hearing, if any...*(emphasis added)

Thus, it is clear that the Board does not have to proceed to a hearing unless the appeal raises issues relevant to the Act and places them properly before the Board. In the case

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of Mr. Wessley, and assuming he was directly affected, the fundamental circumstances of his appeal relate primarily to issues surrounding his employment at the Hospital in the fall of 1983 and these issues are 10 years old. Moreover, without evidence of a clear relationship to the environment, these issues are beyond the statutory jurisdiction of the Board.

For example, in Mr. Wessley's first submission he states "...I find it hard to accept my [employment] dismissal without knowing the specific reason." In his second submission he raises further concerns: "I applied for the position as 3rd class steam engineer -- physical plant competition #200--90 advertised in the local newspaper "the Edmonton Journal[""] on September 3, 1983; this advertisement does not mention "incinerator" and or hazardous biomedical waste burning with other burnables."

There are similar examples throughout both of Mr. Wessley's submissions which make it clear to the Board that his primary concerns relate to his perceived poor treatment by the Hospital in connection with his employment and termination more than 10 years ago. Presumably he has, or has had, other avenues to deal with those concerns. This Board is not the forum for such issues.

**(2) Is Mr. Wessley directly affected?**

Even if the issues raised in Mr. Wessley's appeal were properly before the Board, the Act requires Mr. Wessley to be directly affected by this decision.

Mr. Wessley indicates that he is appealing under section 84 (1)(a)(v) which permits an appeal to be submitted.

*by the approval holder or by any person which is directly affected by the Director's decision...(emphasis added)*

The Board asked Mr. Wessley to comment on the threshold question of how he is

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“directly affected” by the Director’s decision. In his opinion, he is affected under several of the following theories, summarized from statements made in his second submission:

- (a) He is directly affected because the Hospital’s representatives misrepresented the employment position by not disclosing to him the hazards of which they were aware;
- (b) he is also directly affected by fiscal concerns. According to Mr. Wessley, if the incinerator costs more to burn in an inefficient manner (as he claims it was running), he will pay a larger share of taxes than he would otherwise pay; and,
- (c) he feels he is *indirectly* affected from a health perspective because he lives in Redwater (approximately 65 km northeast of Edmonton). However, Mr. Wessley feels that if he were to become a patient in the hospital, he could then be directly affected.

The Act requires that a person be “directly affected” by a decision to appeal to the Board. The Board believes that the definition of which persons are “directly affected” is flexible and will depend upon the circumstances of each case. The Board cannot find a sufficiently close link with Approval 93-IND-011, the environmental effects of that approval, and Mr. Wessley’s appeal. The closest effect from the allegations made by Mr. Wessley and the environment is a health effect but in this case health effects, according to his own evidence, are still indirect. Again he lives in Redwater, Alberta, which is approximately 65 kilometres northeast of Edmonton. Whether or not he becomes a patient of the hospital at some time in the future is speculative and accordingly not relevant to this appeal.

The allegations made by Mr. Wessley are not sufficient to satisfy the “directly affected” test in

this case or to relate them to this approval. Accordingly, Mr. Wessley has no standing to appeal the decision of the Director to renew the Hospital's approval.

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**(3) Is Mr. Wessley's appeal frivolous or vexatious?**

Even if Mr. Wessley's appeal places proper issues before the Board, and even if he is directly affected, is this appeal frivolous or vexatious?

According to section 87(5)(a)(I) of the Act"

*The Board may dismiss a notice of objection if it considers the notice of objection to be frivolous or vexatious'*

*Black's Law Dictionary* (5th ed.) defines frivolous as:

*frivolous appeal: One in which no justiciable question has been presented and the appeal is readily cognizable as devoid of merit in that there is little prospect that it can ever succeed [citing Brooks v. General Motors Assembly Division Mo. App. 527 S.W. 2d 50, 53].*

Given that the essence of Mr. Wessley's appeal relates to employment and occupation safety or health matters, and that these issues arose 10 years ago, the Board does not see how the appeal could be presented in any fashion that could give this Board jurisdiction.

Further to the point, at the end of Mr. Wessley's first submission, he makes the statement:



*If I do not hear from you in 30 days I will have to assume that [the Environmental Appeal Board is] part of this alleged cover up scheme as well and I will approach others at a higher level Whom are interested in Hospital and Medicare costs in the Province of Alberta.”*

Among other things, this Board has no relationship with “Hospital[s] and Medicare” in Alberta. The Board finds the statements made by Mr. Wessley regarding a cover up scheme to be frivolous or vexatious.

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## **VI CONCLUSION**

This appeal is dismissed. In making this decision, the Board has carefully considered all of the supporting evidence submitted by Mr. Wessley whether or not his evidence was specifically referenced herein. The issues raised by Mr. Wessley in this appeal are not properly before this Board. The Board also finds that Mr. Wesley is not directly affected by Approval 93-IND-011. Finally, the Board finds the appeal by Mr. Wessley to be either frivolous or vexatious. Any one of these findings would be sufficient to dismiss Mr. Wessley’s appeal.

Dated on February 2, 1994 at Edmonton, Alberta.

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William A. Tilleman, Chair

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David H. Marko, Vice-chair

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Joan C. Copp, Board Member

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Max A. McCann, Board Member