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ALBERTA  
ENVIRONMENTAL APPEAL BOARD  
DECISION

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Date of Decision - July 14, 1998

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

-and-

**IN THE MATTER OF** an appeal filed by Mr. Dennis Fenske with respect to Amending Approval W1075 issued to Beaver Regional Waste Management Services Commission by Mr. Wayne Inkpen, Director, Northeast Boreal and Parkland Regions, Alberta Environmental Protection.

Cite as: Fenske v. Director, Northeast Boreal and Parkland Regions, Alberta Environmental Protection *re: Beaver Regional Waste Management Services Commission*.

## **TABLE OF CONTENTS**

BACKGROUND .....	1
DECISION OF THE BOARD .....	6
CONCLUSION .....	6

## **BACKGROUND**

[1] On June 25, 1998, the Environmental Appeal Board [Board] received 3 similar Notices of Appeal (dated June 25, 1998, June 26, 1998 and one undated) from Mr. Dennis Wm. Fenske. Mr. Fenske objected to Amending Approvals No. W-1070 and W-1075 issued by Mr. Wayne Inkpen, Director of Northeast Boreal and Parkland Regions [Director], Alberta Environmental Protection [Department], to Beaver Regional Waste Management Services Commission for the construction, operation and reclamation of a Class II landfill, dated May 29, 1998. One of Mr. Fenske's Notices of Appeal<sup>1</sup> contained the following:

Under "details of the decision which I object to":

"W1075 "JIM DINNING CONSENT" prohibits directors repeal or amendment - OPERATING permit W1075 is subject of modification and a waiver 51(a) CONSENT of Health Minister Sept 18 / 94 see sec 243.1(3) and 249/85 1 (f) 2"

Under "grounds for this appeal":

"DIRECTOR INKPEN HAS NO JURISDICTION or AUTHORITY OVER "CELL #2" of the board, BOARD & OF THE MINISTER cell 2 may be a breach of the ACT, reg 249/85 1 (f) (2), among other things"

Under "relief which I request":

"BEAVER COUNTY WIDE PLEBISCITE SAME WORDING AS 1982 BY LAW 541 (enclosed) AMONG OTHER THINGS."

[2] The Board acknowledged Mr. Fenske's appeals in a letter dated June 29, 1998 and asked Mr. Fenske to clarify whether he intended to file 3 separate Notices of Appeal or whether these 3 documents were intended to comprise one Notice of Appeal. The Board further requested that Mr.

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<sup>1</sup> Notice of Appeal received June 25, 1998, dated June 26, 1998, 3 pages, entitled "Permit to Operate Ryley Regional Dump W-1075."

Fenske respond to the following three specific questions:

**“I. Your Eligibility To File A Notice of Objection Based On "Direct Affects"”**

As relevant here, section 84(1) of the Act provides that a Notice of Appeal of a Director's decision may be submitted by a person who is "directly affected" by the decision. Section 87(5) of the Act authorizes the Board to dismiss a notice of objection prior to conducting a hearing on the merits if the person who submits the notice fails to meet this "directly affected" test.

Please explain, with specific examples, how you are "directly affected" by the Director's Amending Approval W1070 / W1075.

**II. Issues Raised By Your Appeal**

In your Notice of Appeal received via fax at 2:11 p.m. you state in the details of the decision which you object to:

“W1075 “Jim Dinning consent” prohibits Directors repeal or amendment - operating permit W1075 is subject of modification and a waiver 51(a) consent of Health Minister Sept 18 / 94 see sec 243.1(3) and 249/85 1(f)2”.

Also in this particular Notice of Appeal you state as your grounds of appeal:

“Director Inkpen has no jurisdiction or authority over “cell #2” of the board. Board of the Minister cell 2 may be a breach of the Act, reg 249/85 1 (f) 2 among other things”

These descriptions are not sufficiently clear for the Board to understand the reasons for your appeal. Please clarify why you are appealing the Director's decisions and the grounds for your appeal, and list the issues that you would like to address in a potential hearing on the Approval.

It does not appear that the Board has the authority to grant the relief - a county wide plebiscite - which you request. Please see sections 91 and 92 of the *Alberta Environmental Protection and Enhancement Act* regarding the Board's decision-making authority and then clarify the relief you seek with respect to the specific Director's decision(s) which you have appealed.

Your response to these requests will enable the Board to decide *whether* to

proceed with this appeal under section 87(5)(a)(i) and (i.2) of the Act and, if it decides to proceed, to determine which issues it will hear in the appeal. This is your opportunity to address the scope of issues for the Board to consider at the hearing. **A failure to address these matters adequately may result in the Board deciding, without further notice, that some or all of the issues raised will not be included in the appeal.**

### **III. Deadline For Responding To This Letter; Caution Re Failure To Respond**

Please provide your responses regarding the matters requested in this letter by **July 10, 1998**. You should be aware that the Board has the ability to dismiss an appeal if you do not provide us with all of the information which we need and which we seek at this time. Accordingly, please answer all of the questions as thoroughly as possible and send them to this office within the deadline. Failure to respond to this request may result in the Board's dismissal of your appeal.”

[3] Other Notices of Appeal<sup>2</sup> were received by the Board in relation to Amending Approval W1075.

[4] On June 22, 1998, the Board wrote to the Alberta Energy and Utilities Board (AEUB) and the Natural Resources Conservation Board (NRCB) requesting that both advise whether the matter was the subject of a public hearing or a review under either of their legislation. In letters dated June 26 and July 2, 1998, the NRCB and the AEUB advised that the appeals did not deal with a matter that had been the subject of a review under their respective Boards.

[5] In a letter dated July 2, 1998, Mr. Fenske responded to the Board's request for clarification. According to him:

“MY JUNE 26<sup>TH</sup> APPEAL FOR A HEARING OF AN APPEAL IS ON GROUNDS

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<sup>2</sup> Notices of Appeal received from Ms. Gertie and Mr. Rudy Mizera on June 18, 1998, Mr. Adelhardt H. Glombick on behalf of Glombick Farms on June 24, 1998, Ms. A.E. Mahlum on June 28, 1998, and Ms. Marilyn Fenske on June 29, 1998.

SECTION (2) OF THE WAIVER REGULATION 249/85 APPEARS TO PRECLUDE A LOCAL BOARD FROM WAIVING A PERMIT, A LICENSE OR APPROVAL OF THE WASTE MANAGEMENT REGULATIONS. SEC 83(2) OF 13.3: READS THE BOARD SHALL HEAR APPEALS AS PROVIDED FOR IN THIS ACT ... "OR ANY OTHER ENACTMENT". WHEN YOU COUPLE THIS WITH SEC 243.1(3) IT APPEARS TO SUPPORT THE FACT ISSUANCE OF THE PERMIT HAD TO HAVE BEEN DONE, THAT BEING THE CASE A MODIFIED PERMIT #W1075 COULD ONLY APPLY TO CELL #2, THE 255M X 240M WASTE MANAGEMENT FACILITY THE COMMISSION APPLIED FOR.

AS TO YOUR REQUEST I DETAIL SPECIFIC CONCERNS OF THIS MAY 29 /98 #W1075 DECISION, THE ESSENCE OF THE DIRECTOR'S, "REPEAL/AMENDMENT" IS A WAIVER OF HEALTH REGULATION SEC 51 (A) ANY DISCUSSION WOULD FIRSTLY ASSUME A CONTINUED ACCEPTANCE OF THAT WAIVER. THE DETAILS OF #W1075 I OBJECT TO ARE: THE FACILITY NAMED CELL #2 IS 255M X 240M. THAT FACILITY WAS NOT TO BE DEVELOPED OR RECEIVE ITS LICENCE/PERMIT UNTIL IT COMPLIED WITH THE P.H.A.A.B. CONDITIONS.

I'VE INCLUDED THE APPLICATION ANNUAL WASTE AND FINAL THICKNESS FOR CELL #2 ....EXHIBIT 50 FROM THE 94 COMMERCIAL D.A.B. HEARING.

IF I MAY TAKE LEAVE TO SUM UP THE DIRECTORS DECISION.. IT NOW APPEARS THE LOCAL BOARD CHANGED THE PROVINCIAL BOARDS' CONDITIONS THEN WAIVED THE PROVINCIAL WAIVER PERMIT ASSUMING TO VOID THE CELL 2 FACILITY, THEN THE DIRECTOR REPEALED THE WAIVED WAIVER AND COMMENCED TO AMEND THAT WAIVED WAIVER BY APPLYING IT TO ANOTHER FACILITY HE ASSUMES EXISTS? THE QUESTION IS DOES LAW ALLOW THESE THINGS, OR SHOULD THE MODIFIED PERMIT AND APPROVAL CONDITIONS BE PROPERLY CONNECTED TO CELL #2. AFTER ALL THAT'S WHAT THE COMMISSION AND THEIR OPERATOR APPLIED FOR.

SEC. 243.1 (3) PUTS THESE ACTIVITIES UNDER THE HEALTH ACTS NON REPEALED WASTE MANAGEMENT REGULATIONS. I TAKE SOLACE IN THE PRE-AGGRIEVED DIRECTLY AFFECTED STATUS OF ..250/85. AN, "OTHER ENACTMENT" ( 83 (2)OF 13.3)"

[6] In a letter dated July 2, 1998, the Board wrote to Mr. Fenske requesting that he further clarify and address the issues in question, namely, how he is directly affected by the Amending

Approval, his grounds for appeal and the relief he requests. Mr. Fenske was explicitly asked to be as “specific and clear as possible,” and attention was drawn to the fact that “a failure to address these matters adequately may result in the Board deciding, without further notice, that some or all of the issues raised will not be included in the appeal.”

[7] In a letter dated July 4, 1998, Mr Fenske responded to the Board’s request for further information and clarification. In answering the “directly affected” question, Mr. Fenske wrote:

“MY JUNE 2 LETTER EXPLAINED HOW DISPUTE REPEAL OF 250/85 WASTE MANAGEMENT OF CELL #2 LANDFILL SEEMS TO CONTINUE UNDER THE HEALTH ACT AS PER 243.1 (3). AND REG. 249/85 SEC (2) SAYS THE LOCAL BOARD MAY NOT WAIVE ANY OBLIGATION TO AN OPERATING PERMIT. I HAD DIRECTLY AFFECTED STATUS UNDER THE HEALTH BOARD APPEAL OF #W 1075 AND THIS IS THE SAME PERMIT TO MY MIND IT WOULD STAND THAT I’M STILL, “DIRECTLY AFFECTED”. FACT IS I’VE ATTENDED ALL THE HEARINGS AND MEETINGS TO MODIFY PERMIT TO OPERATE #W 1075....”

Mr. Fenske went on to state that:

“AS TO THE RELIEF I SEEK, IN THIS CASE JUSTICE IS MERELY SETTING THE RECORD STRAIT, THAT WOULD BE ITS OWN REWARD.”

[8] On July 10, 1998, Mr. Fenske supplied for the Board a document entitled “A Paper on Alberta Politics by Dennis Fenske”. This documentation did not provide any further clarification to any of the issues in which the Board wished to have addressed.<sup>3</sup>

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<sup>3</sup> The leading paragraph of that document states:

“IT WAS NOVEMBER THE EIGHTH 1923 WHEN A FEW BOYS DOWN AT A MUNICH BEER HALL DECIDED THE NEXT DAY THEY’D TAKE A WALK TO THE WAR MINISTRY. . . . [The final paragraph concludes with]: THE PHILOSOPHY OF MR. GIOVANNI GENTILE IS OF COURSE CONTRARY TO THAT LEGISLATED IN COUNTRIES LIKE: THE UNITED STATES OF AMERICA AND CANADA, WHO OF COURSE CONTENTED THE INDIVIDUAL NOT BE SUBORDINATE TO THE STATE. HISTORY ULTIMATELY RECORDED THE ABUSIVE, WELL INTENTIONED, ACTIONS OF ADOLPH AND BENITO AS TRAGIC. EEE???”

**DECISION OF THE BOARD**

[9] Mr. Fenske's Notice(s) of Appeal does not meet any of the criteria related to standing necessary for this Board to continue its jurisdiction. He has not, to the Board's satisfaction, raised specific environmental matters related to Amending Approval W1075. Furthermore, in response to the relief requested, Mr. Fenske has asked for a county-wide plebiscite - a relief which the Board has no authority to grant - and "justice" by setting the record straight. The Board has no authority to set the record straight, given the matters that he seeks to correct.

[10] The Board's letters of June 29 and July 2, 1998, clearly warned Mr. Fenske that failure to adequately clarify and address the issues in question may result in dismissal. Mr. Fenske has not replied adequately to the Board's request under section 85 and has otherwise failed to establish any basis for proceeding with his appeal.

**CONCLUSION**

[11] These appeals are, therefore, dismissed.

Dated on July 14, 1998 at Edmonton, Alberta.

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Dr. William A. Tilleman