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ALBERTA  
ENVIRONMENTAL APPEAL BOARD  
  
DECISION

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Date of Decision - October 20, 1998

**IN THE MATTER OF** Part 3 of the *Environmental Protection and Enhancement Act*, (S.A. 1992, ch. E-13.3);

**-and-**

**IN THE MATTER OF** an appeal filed by Ms. Marilyn Fenske, on August 13, 1998, with respect to Beaver Regional Waste Management Services Commission Ryley Landfill - Site Drainage Works - #26835

Cite as: Fenske v. Manager, Alberta Environmental Protection, *re: Beaver Regional Waste Management Services Commission*.

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## BACKGROUND

[1] This appeal concerns an Interim Licence, issued by Mr. A. Archampong, who is Manager of the Regional Support Branch, Parkland Region, Natural Resources Service, Alberta Environmental Protection. Mr. Archampong issued the Interim Licence on July 28, 1998, under section 18 of the *Water Resources Act*, S.A. 1980, c. W-5. The Interim Licence authorizes the “Beaver Regional Waste Management Services Commission” (“the Commission”) to construct facilities for storing and diverting surface runoff, in conjunction with a storm water management plan for a “Class II landfill” operated by the Commission.<sup>1</sup> The landfill is located in the County of Beaver, roughly one kilometre northeast of Ryley, Alberta, and roughly 50 kilometres southeast of Edmonton.

[2] The Commission’s need for the storage and diversion activities covered by the Interim Licence appears to have been generated by the Commission’s proposed expansion of the landfill. That expansion was approved by Alberta Environment, by Amending Approval No. W1075, on May 29, 1998, under the *Environmental Protection and Enhancement Act* (“EPEA”), S.A. 1992, ch. E-13.3.

[3] On August 13, 1998, Ms. Marilyn Fenske faxed the Alberta Environmental Appeal Board (“the Board”) a letter indicating her desire to “appeal” the Interim Licence. In her letter, Ms. Fenske stated, among other things, that she does “not like the idea of [the Commission] being able to piece meal their application for expansion and associated licenses to various departments. I believe this expansion and associated licenses should be looked at as a whole as these decisions are affecting the same people that have appealed these amendments.”

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<sup>1</sup> Section 1(j) of the Alberta Waste Control Regulation, AR 192/96, defines the term “Class II” as a landfill used for the disposal of “waste, not including hazardous waste.” Section 1(l) defines “waste” broadly as “any solid or liquid material or product or combination of them,” other than oilfield waste or recyclables, that is intended to be treated or disposed of or stored for later treatment or disposal.

[4] Ms. Fenske lives and farms next to the landfill and claims that the surface drainage authorized by the Interim Licence will harm her land. Ms. Fenske is not just concerned about surface drainage; she is one of several people who have raised several environmental concerns in appeals of the Amending Approval. Those appeals, which were filed under section 84(1)(a)(iv) of *EPEA*,<sup>2</sup> are still pending.

[5] In a letter dated August 24, 1998, the Board explained to Ms. Fenske that the Board appeared to lack jurisdiction to hear her appeal of the Interim Licence. However, the Board's letter stated that Ms. Fenske could respond to the Board's explanation, before the Board would make a final decision on whether to dismiss the Interim Licence appeal. The Board subsequently received responses from Ms. Fenske, and from counsel for the Manager and the Commission.

#### **THE BOARD'S LIMITED JURISDICTION**

[6] As the Board explained in its August 24, 1998 letter to Ms. Fenske, the Board was created by *EPEA*, which means that the Board has jurisdiction—i.e. legal authority—to do only that which *EPEA* authorizes it to do. Section 84(1) of *EPEA* provides a list of the specific categories of Alberta Environmental Protection decisions which can be appealed to the Board. That list does not include decisions to issue Interim Licences under the *Water Act*. At this time, the Board cannot hear appeals of any decisions other than the ones listed in section 84(1). Therefore, the Board lacks jurisdiction to hear Ms. Fenske's appeal of the Interim Licence.

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<sup>2</sup>

EAB Nos. 98-231 - 98-234. Section 84(1) grants the Board jurisdiction to hear appeals of several categories of Alberta Environment decisions, including Amending Approvals.

[7] In her initial response to the Board's August 24, 1998 letter, Ms. Fenske did not disagree that Interim Licences are absent from the list of Alberta Environment decisions which can be appealed to the Board. However, she nevertheless argued that the Board should hear her appeal of the Interim Licence because the surface water drainage problem which the Licence addresses was "created" by the Amended Approval. As mentioned above, Ms. Fenske and others have already appealed that Amended Approval to the Board.<sup>3</sup>

[8] In its September 23, 1998 response to Ms. Fenske's letter, counsel for the Manager implied that the landfill's surface drainage would not harm Ms. Fenske's land. In subsequent letters, Ms. Fenske disputes this factual claim. However, the Manager's counsel argued first and foremost that the Board lacked the legal authority to hear Ms. Fenske's Interim Licence appeal.<sup>4</sup> The Board agrees with this argument.

[9] The Board is sympathetic to Ms. Fenske's policy position, that Alberta Environment should have considered all environmental aspects of the Commission's proposed landfill in a single proceeding, rather than address those aspects in a piece-meal fashion in several distinct proceedings. However, the apparent merit of Ms. Fenske's policy does not provide the Board with legal authority to consider her appeal of the Interim Licence. That authority must be provided by a statutory provision, and no such provision exists.

[10] In its August 24, 1998 letter, the Board stated that, if it ultimately decided to dismiss Ms. Fenske's Interim Licence appeal, it would nevertheless consider, at a later date, whether it should address her underlying concerns with that Licence in the context of its hearing of her appeal

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<sup>3</sup> Ms. Fenske asks: "How can [the Board] hear [an appeal of the Amending Approval] that has created the [surface drainage] problem without hearing from the Albert Environment department [responsible for issuing the Interim Licence] that must deal with the consequences" of the Amending Approval? September 6, 1998 Fenske letter, at 2.

<sup>4</sup> In a September 24, 1998 letter faxed to the Board, the Commission stated that it adopted the Manager's position.

of the Amended Approval for the Commission's landfill expansion. The issues that could potentially be added to that hearing are: (1) Should the Alberta Environment Director who issued the Amended Approval have considered whether the landfill expansion would cause adverse surface drainage impacts; and, if yes, (2) Did the Director adequately consider any such impacts in his decision to issue the Amended Approval?

[11] The Board stands by its August 24, 1998 letter. When the Board decides which issues it should consider in its hearing on the merits of the appeals of the Amended Approval, it will consider *whether* to include the surface drainage issues listed in the prior paragraph.

## CONCLUSION

[12] The Board lacks jurisdiction to hear Ms. Fenske's appeal of the Interim Licence. Hence, that appeal is dismissed.

Dated on October 20, 1998, at Edmonton, Alberta

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Dr. William A. Tilleman