

# ALBERTA ENVIRONMENTAL APPEALS BOARD

## Decision

Date of Decision – September 28, 2012

**IN THE MATTER OF** sections 91, 92, and 95 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, and section 115 of the *Water Act*, R.S.A. 2000, c. W-3;

**-and-**

**IN THE MATTER OF** notices of appeal filed with respect to *Water Act* Approval No. 00266612-00-00 and *EPEA* Approval No. 236328-00-00 issued to Waste Management of Canada Corporation by the Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development.

Cite as: Intervenor Decision: *Cramer et al. v. Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development*, re: *Waste Management of Canada Corporation* (28 September 2012), Appeal Nos. 11-025-

027, 030, 032-035, 038-040, 043-047, 051-053, 056, 068-069, 071, 076, 100, 104-105, 107-109, 112, 147-150, 156-159, 161, and 173-ID3 (A.E.A.B.).

**BEFORE:**

Mr. Eric McAvity, Q.C., Panel Chair.

**SUBMISSIONS BY:**

**Appellants:** Lori Cramer, Chantel Cramer, Tony and Keith Cramer, Lorne Skuba, Morris Haig, Joyce Haig, Jim Panich, Sophie Panich, Clinton and Stacey Kirk, Linda Kirk, John Kirk, Hazel Lahti, Melvin Telstad, Odessa Telstad, Kevin and Carmen Ewasiw, Darwin Trenholm, Larry Sisson, Cecile Sisson, Betty and Bernie Kolewaski, and Jason Dmetruk, represented by Ms. Karin Buss, K2B Law Klimek Buss Bishop; Peggy and Edward Hilts; Cori Kuzyk; Tracy Kuzyk; Laurie and David Genert; Morris Haig; and Joyce Haig.

**Approval Holder:** Waste Management of Canada Corporation, represented by Donald Wilson, Davis LLP.

**Director:** Patrick Marriott, Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development, represented by Michelle Williamson, Alberta Justice and Solicitor General.

## **EXECUTIVE SUMMARY**

Alberta Environment and Sustainable Resource Development issued an Approval under the *Water Act* to Waste Management of Canada Corporation (WMCC) for the placing, constructing, operating, maintaining, removing, or disturbing works, in or on any land, water, or water body for the purpose of removing wetlands, constructing wetland compensation works, and managing surface water run-on and run-off for a landfill near Thorhild. An Approval was also issued to the WMCC under the *Environmental Protection and Enhancement Act* (EPEA) allowing for the construction, operation, and reclamation of the Thorhild Landfill (Class II).

The Board received 36 appeals of the *Water Act* Approval and 35 appeals of the EPEA Approval. The Board accepted 19 appeals of the *Water Act* Approval and 22 appeals of the EPEA Approval.

In response to the Notice of Hearing, the Board received an intervenor request from Mr. Frank and Ms. Donna VanDenBroek.

After reviewing and assessing the intervenor application and the responses from parties to the appeals, the Board denied the intervenor request. The Board found the VanDenBroeks would not provide any additional evidence that could not be presented by the appellants.

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	BACKGROUND .....	1
III.	SUBMISSIONS .....	2
A.	Intervenors .....	2
B.	Appellants .....	3
C.	Approval Holder .....	3
IV.	ANALYSIS.....	4
A.	Legal Basis.....	4
B.	Application.....	5
V.	DECISION.....	6

## I. INTRODUCTION

[1] This is the Environmental Appeals Board's decision on the intervenor request filed by Mr. Frank and Ms. Donna VanDenBroek. The request was in response to the Notice of Hearing published with respect to the hearing regarding approvals issued to Waste Management of Canada Corporation ("WMCC" or the "Approval Holder") for a landfill. Approvals were issued under the *Water Act*, R.S.A. 2000, c. W-3, and the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 ("EPEA") allowing for the development of the Thorhild Landfill (Class II), a landfill that accepts non-hazardous waste.

## II. BACKGROUND

[2] On September 22, 2011, the Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development<sup>1</sup> (the "Director"), issued Approval No. 00266612-00-00 (the "*Water Act* Approval") under the *Water Act* to WMCC. The *Water Act* Approval was issued for the placing, constructing, operating, maintaining, removing, disturbing works, in or on any land, water, or water body for the purpose of removing wetlands, constructing wetland compensation works, and managing surface water run-on and run-off for a landfill near Thorhild, Alberta.<sup>2</sup> On September 22, 2011, the Director also issued Approval No. 236328-00-00 under EPEA (the "EPEA Approval") to WMCC for the construction, operation, and reclamation of the Landfill where more than 10,000 tonnes of waste, not including hazardous wastes, is disposed of each year.<sup>3</sup>

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<sup>1</sup> During these appeals, the Department was named Alberta Environment and Water. However, as of May 8, 2012, the Department was renamed Alberta Environment and Sustainable Resource Development. For the purposes of this Decision, the Department will be referred to as Alberta Environment and Sustainable Resource Development ("AESRD").

<sup>2</sup> The landfill has two distinct areas. In this decision, the actual land where the landfill cells will be constructed will be referred to as the "Landfill Area" and the adjoining area that includes a main access road, intersections to provide access, and a crossing of a railway right-of-way, will be referred to as the "Transportation Lands." Collectively, the Landfill Area and Transportation Lands will be referred to as the "Landfill."

<sup>3</sup> Collectively, the *Water Act* Approval and EPEA Approval will be referred to as the "Approvals."

[3] Between September 29, 2011 and November 8, 2011, the Environmental Appeals Board (the “Board”) received 36 Notices of Appeal appealing the *Water Act* Approval and 35 Notices of Appeal appealing the EPEA Approval. After reviewing submissions on preliminary matters, including which appeals are validly before the Board, the Board accepted 19 appeals of the *Water Act* Approval and 22 appeals of the EPEA Approval (collectively the “Appellants”).<sup>4</sup>

[4] In consultation with the Appellants, Approval Holder, and Director, the Board scheduled the hearing for November 13 to 16, 2012, in Edmonton. The Board published a Notice of Hearing in the Edmonton Journal, Edmonton Sun, Lamont Farm ‘n’ Friends, Redwater Review, and the Westlock News. The Notice of Hearing was provided to Thorhild County to post on its public notice board. Notice of the hearing was also posted on the Government of Alberta and Board websites.

[5] On September 4, 2012, the Board received an intervenor request from Mr. Frank and Ms. Donna VanDenBroek (the “Intervenors”). Between September 11 and 14, 2012, the Board received comments on the application to intervene from the Approval Holder and two of the Appellants.

### **III. SUBMISSIONS**

#### **A. Intervenors**

[6] The Intervenors explained they live within three miles of the Landfill. They stated they are concerned with the contamination of surface and ground water, its effects on wildlife and farm animals, loss of land value, increased nuisance animals, and possible increased taxes for road repairs caused by large trucks using secondary roads.

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<sup>4</sup> The appeal filed by the Confederacy of Treaty Six First Nations was dismissed for failing to respond to the Board and, therefore, their appeal is not considered in this decision. See: *Confederacy of Treaty Six First Nations v. Director, Northern Region, Operations Division, Alberta Environment and Water*, re: *Waste Management of Canada Corporation* (01 February 2012), Appeal No. 11-024-D (A.E.A.B.). See: *Preliminary Motions: Cramer et al. v. Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development*, re: *Waste Management of Canada Corporation* (09 August 2012), Appeal Nos. 11-025-059, 062-063, 068-071, 075-076, 100-112, 147-150, 156-161, 163-165, and 173-ID2 (A.E.A.B.).

The complete list of Appellants is attached in Appendix A. The Appellants who are members of the CCTCS and have valid appeals will be referred to as the “CCTCS” or “CCTCS Appellants” in this decision.

**B. Appellants**

[7] Mr. Lorne Skuba stated he had no concerns if the intervenor request was granted.

[8] Ms. Betty Kolewaski had no objection to the intervenor request. However, she argued that if the Intervenors were found directly affected, the Board should review the status of the other persons who filed Notices of Appeal but were dismissed.

**C. Approval Holder**

[9] The Approval Holder argued the Intervenors do not meet the requisite test. The Approval Holder stated the issue of surface and ground water, wildlife, and nuisance animals are within the scope of the issues for the hearing, but there was no indication the general concerns raised by the Intervenors differ from the Appellants' concerns. The Approval Holder stated the Intervenors' evidence would repeat or duplicate evidence presented by other parties, which would unduly delay the hearing.

[10] The Approval Holder argued there was no indication the Intervenors' participation or cross-examination would materially assist the Board, and the Intervenors did not indicate how their evidence would assist on the technical issues.

[11] The Approval Holder stated the Intervenors are located northwest of the Landfill. It explained that, given the direction of water flows in the region, there is no evidence to suggest any material hydraulic connectivity between the Intervenors' property and the Landfill. The Approval Holder stated the Intervenors' interest in the subject matter does not go beyond that which is shared by all residents in Thorhild County.

[12] The Approval Holder noted the concerns regarding land value, increased taxes, and increased traffic fall outside the Board's jurisdiction and should not be considered at the hearing.

[13] The Approval Holder stated the Intervenors have not raised any new arguments or concerns that do not duplicate the concerns set out by the Appellants, and they have not demonstrated that their participation will materially assist the Board. The Approval Holder submitted the intervenor request should be denied.



## IV. Analysis

### A. Legal Basis

[14] The Under section 95 of EPEA, the Board can determine who can make representations before it. Section 95(6) states:

“Subject to subsection (4) and (5), the Board shall, consistent with the principles of natural justice, give the opportunity to make representations on the matter before the Board to any persons who the Board considers should be allowed to make representations.”

[15] Section 9 of the *Environmental Appeal Board Regulation*, Alta. Reg. 114/93 (the “Regulation”), requires the Board to determine whether a person submitting a request to make representation should be allowed to do so at the hearing. Sections 9(2) and (3) of the Regulation provide:

- “(2) Where the Board receives a request in writing in accordance with section 7(2)(c) and subsection (1), the Board shall determine whether the person submitting the request should be allowed to make representations in respect of the subject of the notice of appeal and shall give the person written notice of that decision.
- (3) In a notice under subsection (2) the Board shall specify whether the person submitting the request may make the representations orally or by means of a written submission.”

[16] The test for determining intervenor status is stated in the Board’s Rules of Practice. Rule 14 states:

“As a general rule, those persons or groups wishing to intervene must meet the following tests:

- their participation will materially assist the Board in deciding the appeal by providing testimony, cross-examining witnesses, or offering argument or other evidence directly relevant to the appeal; the intervenor has a tangible interest in the subject matter of the appeal; the intervention will not unnecessarily delay the appeal;
- the intervenor in the appeal is substantially supporting or opposing the appeal so that the Board may know the designation of the intervenor as a proposed appellant or respondent;

- the intervention will not repeat or duplicate evidence presented by other parties....”

## **B. Application**

[17] As was discussed in the Board’s decision on the preliminary matters, the Board notes some of the concerns raised by the Intervenors are not within the Board’s jurisdiction, including land values, possible increased taxes, and increased traffic.<sup>5</sup>

[18] The other issues raised, contamination of surface and ground water, effects on wildlife and farm animals, and increased nuisance animals, are issues the Board will be considering at the hearing.<sup>6</sup> However, the Intervenors did not provide any indication as to what type of evidence they would bring forward to the hearing and how their evidence will materially assist the Board in determining its recommendations.

[19] The Board does not question that the Intervenors have a genuine interest in the Landfill, and it is clear they have concerns regarding the Landfill and its potential impacts, if any. One of the factors the Board must consider when determining if intervenor status should be granted is whether the proposed submission would be duplicative of the evidence of the parties. Based on the number of Appellants in these appeals, the Board believes the concerns raised by the Intervenors will be adequately represented by the Appellants. The Intervenors did not provide any information that would indicate they have different or additional evidence that would be relevant to the issues identified by the Board. Therefore, the Board denies the intervenor request.

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<sup>5</sup> Preliminary Motions: *Cramer et al. v. Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development*, re: *Waste Management of Canada Corporation* (09 August 2012), Appeal Nos. 11-025-059, 062-063, 068-071, 075-076, 100-112, 147-150, 156-161, 163-165, and 173-ID2 (A.E.A.B.).

<sup>6</sup> See: Preliminary Motions: *Cramer et al. v. Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development*, re: *Waste Management of Canada Corporation* (09 August 2012), Appeal Nos. 11-025-059, 062-063, 068-071, 075-076, 100-112, 147-150, 156-161, 163-165, and 173-ID2 (A.E.A.B.).

**V. DECISION**

[20] For the foregoing reasons the Board denies the intervenor request of Mr. Frank and Ms. Donna VanDenBroek.

Dated on September 28, 2012, at Edmonton, Alberta.

*“original signed by”*

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Eric McAvity, Q.C.  
Panel Chair

## **Appendix A**

### **List of Appellants**

#### EPEA Approval No. 236328-00-00

Cecile Sisson (11-053)	Morris and Joyce Haig (11-112)
Odessa Telstad (11-068)	Sophie Panich (11-147)
Melvin Telstad (11-069)	Cori Kuzyk (11-148)
Hazel Lahti (11-071)	Jim Panich (11-149)
Laurie and David Genert (11-076)	Larry Sisson (11-150)
Lorne Skuba (11-100)	Peggy and Ted Hilts (11-156)
Linda Kirk (11-104)	Tracy Kuzyk (11-157)
John Kirk (11-105)	Jason Dmetruk (11-158)
Kevin and Carmen Ewasiw (11-107)	Chantel Cramer (11-159)
Lori Cramer (11-108)	Betty and Bernie Kolewaski (11-161)
Tony and Keith Cramer (11-109)	Darwin Trenholm (11-173)

#### Water Act Approval No. 00266612-00-00

Lori Cramer (11-025)	John Kirk (11-040)
Chantel Cramer (11-026)	Peggy Hilts and Edward Hilts (11-043)
Tony and Mr. Keith Cramer (11-027)	Hazel Lahti (11-044)
Lorne Skuba (11-030)	Melvin Telstad (11-045)
Morris Haig (11-032)	Odessa Telstad (11-046)
Joyce Haig (11-033)	Kevin and Carmen Ewasiw (11-047)
Jim Panich (11-034)	Larry Gordon Sisson (11-051)
Sophie Panich (11-035)	Cecile Sisson (11-052)
Clinton and Stacey Kirk (11-038)	Betty Kolewaski (11-056)
Linda Kirk (11-039)	