

2013 ABEAB 35**Appeal No. 12-033**

Appellant – Yvonne Tomlinson, **Operator** – Evergreen Regional Waste Management Services Commission, **Location** – County of St. Paul

A Notice of Appeal was received on October 16, 2012 from Ms. Yvonne Tomlinson in relation to the August 20, 2012 decision of Alberta Environment and Sustainable Resource Development (AESRD), to issue *Water Act* Licence No. 00311837-00-00 to Evergreen Regional Waste Management Services Commission (ERWMSC) for the operation of a works and the diversion of up to 1,500 cubic metres of water annually from production wells located at SW 21-056-10-W4M and SW 16-056-10-W4M for washrooms and equipment washing in relation to the Evergreen Regional Landfill (Class II), located in the County of St. Paul.

The Board received a letter from AESRD on October 25, 2012 requesting the appeal be dismissed as the Ms. Tomlinson is not directly affected, and the matter was already decided in the Board's decision EAB 08-036-038-ID1 issued February 10, 2010, wherein the appellant's husband's appeal was dismissed for not being directly affected.

After receiving and reviewing submissions, on April 3, 2013 the Board issued a decision determining Ms. Tomlinson is directly affected by AESRD's decision given her use of neighbouring properties adjacent to the landfill. The Board stated that Ms. Tomlinson is not directly affected based on her home land location as it is approximately 13 kilometres and hydraulically upgradient from the landfill site. However, based on her use of adjacent properties 2 kilometres from the landfill, if there is an impact on the groundwater or surface water regimes, there may be an impact on the water that she relies on at the properties she uses.

Cite as: Tomlinson v. Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development, re: Evergreen Regional Waste Management Services Commission (03 April 2013), Appeal No. 12-033-ID1 (A.E.A.B.).

The Board held a mediation meeting on June 25, 2013, however it did not result in a resolution of the appeal and the parties requested the Board schedule a hearing.

The Board set a schedule to receive written submissions in order to decide any further preliminary motions and also the issues that would be heard at the hearing. At the beginning of this written submission process, the Board received a request from AESRD for a reconsideration of the Board's decision finding Ms. Tomlinson directly affected. The Board set another schedule to receive written submissions from the parties which had Ms. Tomlinson providing her submission first, followed by AESRD and ERWMSC providing their submissions, and lastly Ms. Tomlinson providing final comments. AESRD objected to the process. The Board held an oral preliminary motions hearing on August 20, 2013 to hear arguments on the reconsideration request, the Board's process to receive submissions on the reconsideration request, and setting the issues for the hearing.

The Board accepted the change in the submission process and allowed AESRD and ERWMSC to present their arguments first on the reconsideration request. The Board denied the reconsideration application because no new evidence was provided. All the evidence brought forward was available at the time of the original decision and could have been brought forward at that time. The Board found no error in law or fact that would have resulted in a change in the Board's decision. The Board adjourned the preliminary motions hearing to receive written submissions on the issues for the hearing. The Board issued its reasons on October 10, 2013.

Cite as: Tomlinson v. Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development, re: Evergreen Regional Waste Management Services Commission (10 October 2013), Appeal No. 12-033-ID2 (A.E.A.B.)

On October 25, 2013 the Board received a letter from ERWMSC advising they intended to abandon the Licence and would not be providing a written submission on issues for the hearing. Given that the Licence, which is the subject of the appeal was being abandoned, the Board cancelled the submission process. On November 5, 2013, ERWMSC advised the Licence was cancelled on October 30, 2013 and the two wells that the Licence had pertained to would be used for monitoring purposes. AESRD confirmed the Licence was cancelled.

On November 12, 2013 Ms. Tomlinson withdrew her appeal, and based upon the withdrawal of the appeal, the Board discontinued its proceedings and closed its file on November 13, 2013.