

2020 ABEAB 13

April 1, 2020

Via E-Mail or Mail

Ms. Diana Calder
(*Appellant EAB 18-011*)

Mr. Emile Saindon
Landfill Manager
Crowsnest/Pincher Creek Landfill Association
(*Approval Holder*)

Ms. Alison Altmiks
Alberta Justice and Solicitor General
Environmental Law Section
8th Floor, Oxbridge Place
9820 – 106 Street
Edmonton, AB T5K 2J6
(*counsel for the Director, AEP*)

Dear Ladies and Mr. Saindon:

Re: Decision Letter* – Crowsnest/Pincher Creek Landfill Association/EPEA Approval No. 18701-02-01/Our File No.: EAB 18-011

The Board acknowledges receipt of the attached letters dated December 26, 2019 from Ms. Calder, and letter dated January 3, 2020 from Ms. Altmiks regarding the issues for the hearing. Mr. Saindon did not provide comments in relation to the hearing issues in his December 9, 2020 letter (copy attached). The Board also acknowledges receipt of Ms. Altmiks' March 26, 2020 letter.

The Board has reviewed the correspondence from Ms. Altmiks and Ms. Calder regarding the issues. This is the Environmental Appeals Board's (the "Board") decision regarding the issues for the hearing of the appeal. This decision was made by the Board's Chair, Mr. Alex MacWilliam.

On June 23, 2018, the Director, South Saskatchewan Region, Operations Division, Alberta Environment and Parks (the "Director"), issued Approval No. 18701-02-01 (the "Approval") to Crowsnest/Pincher Creek Landfill Association (the "Approval Holder"), for the construction and maintenance of a Class II Landfill (the "Landfill") with an incinerator. On August 20, 2018, the Board received a Notice of Appeal from Ms. Diana Calder (the "Appellant"), appealing the decision by the Director to issue the Approval. On November 28, 2019, the Board proposed issues for the hearing of the appeal and requested the parties provide comments.

For a matter to be properly before the Board and be set as an issue for the hearing, the matter must be included in the Notice of Appeal, relate to the decision being appealed, and be within the Board's jurisdiction.

* *Calder v. Director, South Saskatchewan Region, Operations Division, Alberta Environment and Parks, re: Crowsnest/Pincher Creek Landfill Association* (1 April 2020), Appeal No. 18-011-DL1 (A.E.A.B.), 2020 ABEAB 13.

A. Submissions

1. Appellant

The Appellant expressed concern regarding the proposed Landfill. The Appellant submitted the area surrounding the Landfill is environmentally sensitive and questioned whether the Approval Holder or the Director have considered the impact of the Landfill and the incinerator could have on the environment and area residents.

The Appellant stated the Approval Holder disregarded the concerns expressed by area residents and did not listen to public concerns or answer questions regarding the Landfill. The Appellant said the Approval did not include procedures to inform or provide warnings to the area residents if there was an emergency shutdown of the incinerator.

The Appellant noted the Approval did not provide for ongoing testing of baseline soil and water samples from the surrounding area. The Appellant stated test results should be made public regularly.

The Appellant said the Approval failed to address the issue of toxic residues from the burning of plastics in the incinerator. The Appellant stated there did not appear to be a provision in the Approval for filters to trap particulate from the incinerator stack. The Appellant noted the wind tests for the Landfill were done in Calgary instead of on the proposed site.

The Appellant stated there was no plan in the Approval regarding possible contamination of the Oldman River and reservoir, despite the potential for an ecological disaster if such contamination occurred. The Appellant said she was concerned AEP appeared to have no interest in enforcing the Approval conditions.

2. Director

The Director submitted the Board should reword issue 1(a) of the proposed issues to provide clarity as follows:

“whether the wind data used for the air dispersion modelling was appropriate”.

3. Approval Holder

The Approval Holder did not provide submissions regarding the issues.

B. Decision

After reviewing the submissions from the Appellant and the Director, the Notice of Appeal, and the Approval, the following issues will be heard at the hearing:

1. Does the Approval Holder have an effective communication plan in place to address any concerns or issues of local residents if the incinerator commences operations?
2. Was the Director’s decision to issue an amending approval to allow the construction

and operation of an incinerator at the Crowsnest/Pincher Creek Landfill appropriate?
This includes:

- (a) whether the wind data used for the air dispersion modelling was appropriate;
 - (b) whether the Director properly considered the potential impact of the incinerator on water in the Oldman River Dam Reservoir; and
 - (c) whether the Director properly considered the potential impact of burning plastics in the incinerator on the local environment, including local residents.
3. Are the terms and conditions of the Amending Approval, with respect to the incinerator, appropriate? This includes:
- (a) the use of appropriate pollution control equipment;
 - (b) the operation of the incinerator during high winds;
 - (c) notice to local landowners during emergency shut downs;
 - (d) baseline sampling of soils and water in the area prior to the incinerator becoming operational;
 - (e) regular sampling of soils and water in the area during the operation of the incinerator;
 - (f) notice to the public of sampling results;
 - (g) a response plan in the event contamination is found in the area surrounding the incinerator; and
 - (h) sufficient conditions to ensure compliance with the Approvals.

Pursuant to section 95(5) of EPEA, the Board will not hear arguments on any other issues at the hearing.¹

C. Written Hearing

Further to the Director's request to conduct this hearing in writing, given the COVID-19 situation, an oral hearing would not be appropriate. As a result, the Board grants the Director's request for a written hearing.

Further correspondence will be forthcoming regarding the procedures and schedule for filing submissions for the written hearing.

¹ Section 95(5) of EPEA provides:

"Where the Board determines that a matter will not be included in the hearing of an appeal, no representations may be made on that matter at the hearing."

Please do not hesitate to contact the Board if you have any questions. We can be reached toll-free by first dialing 310-0000 followed by 780-427-6569 for Valerie Myrmo, Registrar of Appeals, and 780-427-7002 for Denise Black, Board Secretary. We can also be contacted via e-mail at valerie.myrmo@gov.ab.ca or denise.black@gov.ab.ca.

Yours truly,

Gilbert Van Nes
General Counsel
and Settlement Officer

Att.

The information requested is necessary to allow the Environmental Appeals Board to perform its function. The information is collected under the authority of the Freedom of Information and Protection of Privacy Act, section 33(c). Section 33(c) provides that personal information may only be collected if that information relates directly to and is necessary for the processing of this appeal.

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