



Environmental Appeal Board

Fourth Floor 747 Fort Street
Victoria British Columbia
Telephone: (250) 387-3464
Facsimile: (250) 356-9923

Mailing Address:
PO Box 9425 Stn Prov Govt
Victoria BC V8W 9V1

APPEAL NOS. 2002-HEA-025(a), 027(a), 028(a)

In the matter of an appeal under section 8 of the *Health Act*, R.S.B.C. 1996, c. 179.

BETWEEN:	Arrowsmith Watersheds Coalition Society French Creek Residents Association Robert Hill, dba Breakwater Enterprises Regional District of Nanaimo	APPELLANTS										
AND:	Environmental Health Officer	RESPONDENT										
AND:	Combined Forest Holdings Ltd.	THIRD PARTY										
BEFORE:	A Panel of the Environmental Appeal Board Alan Andison, Chair											
DATE:	Conducted by way of written submissions concluding on November 14, 2002.											
APPEARING:	<table border="0"> <tr> <td style="padding-right: 20px;">For the Appellants:</td> <td></td> </tr> <tr> <td style="padding-right: 20px;"> Arrowsmith Watersheds Coalition Society</td> <td>Michael Jessen</td> </tr> <tr> <td style="padding-right: 20px;"> French Creek Residents Association</td> <td>Thomas McArthur</td> </tr> <tr> <td style="padding-right: 20px;"> Regional District of Nanaimo</td> <td>John Finnie</td> </tr> <tr> <td style="padding-right: 20px;">For the Respondent:</td> <td>Terry Preston</td> </tr> </table>		For the Appellants:		Arrowsmith Watersheds Coalition Society	Michael Jessen	French Creek Residents Association	Thomas McArthur	Regional District of Nanaimo	John Finnie	For the Respondent:	Terry Preston
For the Appellants:												
Arrowsmith Watersheds Coalition Society	Michael Jessen											
French Creek Residents Association	Thomas McArthur											
Regional District of Nanaimo	John Finnie											
For the Respondent:	Terry Preston											

STANDING DECISION

APPLICATION

The Arrowsmith Watersheds Coalition Society (the "Watersheds Coalition"), French Creek Residents Association (the "Residents Association"), Robert Hill (doing business as Breakwater Enterprises), and the Regional District of Nanaimo (the "Regional District") filed separate appeals against the August 19, 2002 decision of Glenn Gibson, Environmental Health Officer (the "EHO"), Central Vancouver Island Health Region, to issue a permit to construct a sewage disposal system for a parcel of land legally described as Lot 11, Plan 1964, District Lot 156, Nanoose District (the "Property"). The Property is commonly known as the Church and Valley Road subdivision.

The EHO applied to the Board to dismiss the appeals of the Watersheds Coalition, Residents Association, and Regional District on the grounds that they are not

persons who are "aggrieved" under the *Health Act* and, as such, have no standing to appeal the issuance of the permit.

The Board has jurisdiction to consider this application under section 8 of the *Health Act*, and section 11 of the *Environment Management Act*.

All parties have had an opportunity to respond in writing to the EHO's application. All parties except Mr. Hill and Combined Forest Holdings Ltd. ("CFH"), provided submissions to the Board.

BACKGROUND

The Property is owned by CFH and is located at the corner of Church Road and Valley Road, near Parksville, B.C. CFH intends to subdivide the 1.5-hectare Property into a bare land strata consisting of 6 building lots and a shared sewage disposal field.

On June 24, 2002, Dave Anderson submitted an application on behalf of CFH for a permit to construct a sewage disposal system to service six four-bedroom houses on the Property. The proposed system is a conventional septic tank system, including 6 1000-gallon septic tanks (one for each house), all connected to a 1000-gallon pump tank followed by a 600-gallon dosing tank, with pressure distribution to a single disposal field containing 800 feet of drainage pipe. The application states that the estimated daily sewage flow from each house is 375 gallons, for a total estimated daily sewage flow of 2,250 gallons. The application includes engineering drawings of the proposed system, prepared by Qualicum Engineering Services Ltd.

The application also indicates that the drainage pipe in the disposal field would be laid in a series of "deep trenches." The trenches would be 48 inches deep, and would be filled with a layer of coarse sand, followed by a layer of drain rock. The drainage pipe would be laid in the top portion of the drain rock and covered by clean fill. The application states that the depth of soil on the site is over 4 feet, and the depth to the water table is over 4 feet. In addition, the application states that the proposed disposal field is:

- over 230 feet from the domestic water well serving the Property;
- over 100 feet from neighbouring water wells;
- over 100 feet from a stream or lake;
- over 50 feet from a breakout point;
- over 10 feet from domestic water lines.

On August 19, 2002, the EHO approved the application and issued the permit, subject to the following conditions:

Build to Engineer sealed design attached with trenches from 48" to 60" + . Course sand must be approved source C-33. Covenant on title reserving the sewage disposal areas is required. Prior to any of this system installation a water system approval is required. Post in accordance to the regulation. Sealed and signed as-built drawings needed for final.

On September 4, 10, 19, and 24, 2002, respectively, the Board received Notices of Appeal from Robert Hill, the Watersheds Coalition, the Regional District, and the Residents Association. In their Notices of Appeal, the Appellants request that the Board rescind the permit based on concerns about potential contamination of groundwater wells by sewage effluent from the proposed system. The Watersheds Coalition requests, alternatively, that the Board vary the permit by adding certain conditions.

In a letter dated November 8, 2002, Terry Preston, Senior EHO with the Central Vancouver Island Health Region, requested on behalf of the EHO, that the Board dismiss the appeals by the Watersheds Coalition, Regional District, and Residents Association on the basis that they have not provided "evidence that they will suffer any adverse consequences" as a result of the permit, and are not aggrieved persons under section 8(4) of the *Health Act*.

By a letter dated November 12, 2002, the Board requested that the parties provide submissions addressing the EHO's request.

The Residents Association, Regional District, and Watersheds Coalition each submit that they have standing to bring their respective appeals.

ISSUE

Whether each of the Watersheds Coalition, Residents Association, and Regional District have standing to appeal the issuance of the sewage disposal permit.

RELEVANT LEGISLATION

Section 8(4) of the *Health Act*, R.S.B.C. 1996, c.179, states:

- 8** (4) If a person is aggrieved by the issue or the refusal of a permit for a sewage disposal system under a regulation made under subsection (2)(m), the person may appeal that ruling to the Environmental Appeal Board established under section 11 of the *Environment Management Act* within 30 days of the ruling.

DISCUSSION AND ANALYSIS

Whether each of the Watersheds Coalition, Residents Association, and Regional District have standing to appeal the issuance of the sewage disposal permit.

In order for an appellant to have standing to bring an appeal, they must be a "person" who is "aggrieved" by the issuance of the sewage disposal permit, as

stated in section 8(4) of the *Health Act*. In determining this issue, the Panel has separately considered the standing of the Watersheds Coalition, Residents Association, and Regional District to bring their respective appeals.

Appellants' submissions

The Watersheds Coalition submits that section 8(4) of the *Health Act* does not define "aggrieved person." However, the Watersheds Coalition notes that Webster's dictionary defines aggrieved as: (a) troubled or distressed in spirit; (b) showing grief, injury or offense; and (c) having a grievance.

The Watersheds Coalition submits that it represents the interests of "all residents, including fauna, in the Arrowsmith watersheds." The Watersheds Coalition states that "several" of its members and "at least one" of its directors are customers of Breakwater Enterprises or the City of Parksville water utility. As customers, they consume the water delivered by those utilities, which is supplied in part by wells located a few hundred metres from the Property. The Watersheds Coalition argues that those members have a vital interest in all factors that affect their water quality. The Watersheds Coalition notes that those members may have allowed their interests to be represented by the Watersheds Coalition instead of filing individual appeals. The Watersheds Coalition also notes that many of its members are concerned about real and perceived changes, and likely deterioration of all water sources in the watershed.

The Residents Association states that Breakwater Enterprises delivers water to approximately 1400 homes in the French Creek area, thereby making the members of the Residents Association "aggrieved." In addition, the Residents Association notes that since all of the Appellants' Notices of Appeal were received in September 2002, the EHO had many weeks before November 8, 2002, to question the Appellants' standing.

The Regional District submits that the *Health Act* does not define the requirements or characteristics of an "aggrieved person," but Webster's dictionary defines aggrieved as showing grief, injury or offense, or suffering from an infringement or denial of legal rights. In this regard, the Regional District submits that it is a local government that represents residents in its boundaries, and in this case "particularly residents of Electoral Areas F and G who live and/or conduct business in the vicinity of the proposed discharge." The Regional District states that some of these residents may have private wells or other interests in the area, and may consider themselves potentially affected by the decision to issue the permit. The Regional District states that its Board elected to appeal the decision "partly in the interests of and on behalf of their residents." The Regional District submits that if its appeal is dismissed, then an opportunity for input must be given to those residents who may otherwise have filed appeals. Similarly, the Regional District submits that the City of Parksville should be recognized as an appellant if the Regional District's appeal is dismissed.

Additionally, the Regional District submits that it assumes the role of acquiring and operating private water utilities where a need is identified and there is support for

doing so. Consequently, the Regional District argues that it has a “significant interest” in protecting the ground water resource, so that the quality of “potential” Regional District water supplies in the area of the proposed sewage system is not compromised.

Finally, the Regional District states that it, the City of Parksville, and the Town of Qualicum are participants in the Arrowsmith Water Service Joint Venture bulk water initiative, which plans to provide surface water from the Englishman River to users in areas that include the City of Parksville, French Creek, and the area served by Breakwater Enterprises. The Regional District states that this surface water supply will supplement ground water supplies in the area, and therefore, maintaining quality ground water supplies is a “critical component” of the Joint Venture system, and is of “significant importance, concern, and consequence” to the Regional District.

EHO's submissions

On behalf of the EHO, Mr. Preston submits that only Mr. Hill of Breakwater Enterprises meets the definition of “aggrieved person” in section 8(4) of the *Health Act*. He maintains that Mr. Hill, as a sole appellant, can fully address the safety issues concerning the ground water aquifers and Breakwater’s wells, which are the closest “high demand” wells to the proposed subdivision.

In reply to the Regional District’s submissions, Mr. Preston submits that the Regional District has not identified the area residents on behalf of whom it is appealing. Mr. Preston argues that this makes it “near impossible” to determine if any of these individuals are aggrieved. Mr. Preston further submits that the Regional District does not own, nor has it acquired, any water systems that are within a reasonable distance from the proposed sewage system. He maintains that no specific information or studies have been submitted to indicate how the Regional District may be adversely affected, or how the *Sewage Disposal Regulation* has been breached. In conclusion, he submits that it is not reasonable to accept that the Regional District can appeal any permit simply because they represent all of the residents of the Regional District.

Whether the Appellants meet the test for a “person aggrieved”

As previously mentioned, a right of appeal exists under section 8(4) of the *Health Act* if “a person is aggrieved” by the issuance of a sewage disposal permit. Neither the words “person aggrieved” nor “aggrieved” are defined in the *Health Act* or the *Sewage Disposal Regulation*. However, the Panel notes that similar language appears in section 44(1) of the *Waste Management Act*, which states that: “...a *person aggrieved* by a decision of a manager, director or district director may appeal the decision to the appeal board.” [emphasis added] In the context of the *Waste Management Act*, the Board has adopted the following test, as stated in *Metalex Products Ltd. v. Deputy Director of Waste Management and Gerry Wilkin* (Environmental Appeal Board, Appeal No. 96/17(b), April 24, 1997, unreported):

The courts have interpreted the phrase 'a person aggrieved' as, 'a person who has a genuine grievance because an order has been made which prejudicially affects his interests.'

This test was based on the decision of the House of Lords in *Attorney General of the Gambia v. N'Jie*, [1961] 2 All E.R. 504, where the Court stated at p. 511:

The words 'person aggrieved' are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody who is interfering in things that do not concern him; but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests.

In *Ian Cook v. Environmental Health Officer*, [2000] B.C.E.A. No. 59 (Q.L.) (hereinafter *Cook*), the Board considered the meaning of "aggrieved" in light of the purposes of the *Health Act* and the *Sewage Disposal Regulation*. The Board adopted the following test in *Cook* for determining whether a person has standing to bring an appeal under section 8(4) of the *Health Act*:

...the Board notes that in deciding whether a person is aggrieved, consideration must be given to the objects and purposes of the *Health Act* as it relates to sewage disposal systems. In other words, a person will not be considered aggrieved simply because *any* interest of his or hers has been prejudicially affected. The nature of the interest that has been prejudicially affected must be sufficiently linked to the purposes of the *Health Act* and the *Sewage Disposal Regulation*.

In determining the purpose of the *Health Act* in relation to sewage disposal systems, the Board notes that section 8(2)(m) of the *Health Act* states that:

...the Lieutenant Governor in Council may make regulations with respect to...the inspection, regulation and control, *for the purposes of health protection* provided in this Act, of...sewage disposal systems.
[emphasis added]

Furthermore, section 25 of the *Health Act* states that:

A common sewer or system of sewerage must not be established or continued unless there is maintained with it a system of sewage purification and disposal that *removes any menace to public health*...[emphasis added]

The Board also notes that the specific design requirements of sewage disposal systems are contained in the *Sewage Disposal Regulation*, which sets out design parameters such as: septic tank capacities; estimated sewage flow rates; allowable materials for sewage disposal system components; absorption field sizing; septic tank and absorption field

setbacks from property lines, wells, buildings, etc.; soil requirements; and a number of other design parameters.

Hence, in the Board's view, the purpose of the *Health Act* and the *Sewage Disposal Regulation* is to ensure that on-site sewage disposal systems are properly designed and installed to adequately protect and safeguard the public health.

In the above context, the Board finds that in order for a person to be considered aggrieved by the issuance of a sewage disposal permit, there must be a possibility that the person's health could be negatively impacted, or that a health risk could be created on the person's property. As such, residency and proximity are relevant factors to take into account when assessing whether a person is aggrieved. A negative impact in this context may include the possible contamination of drinking water, the potential "breakout" of inadequately treated effluent onto adjoining properties, or any other situation that could present a health risk. Each individual case must be assessed on its own merits to determine whether the Appellant is someone who is aggrieved in the above context.

This Panel adopts the approach taken in *Cook*. The Panel has applied this test in determining whether each of the three Appellants in this case is a "person aggrieved" under section 8(4) of the *Health Act*.

As stated above in *Cook*, one of the primary purposes of the *Health Act* and the *Sewage Disposal Regulation* is to ensure that on-site sewage disposal systems are properly designed and installed to adequately protect and safeguard the public health. The Panel notes all three of the Appellants in question have raised concerns about the potential for the proposed system to cause ground water contamination. In this regard, the Panel notes that the proposed system will be located above an aquifer that supplies ground water to a number of domestic wells. The parties seem to agree that the wells operated by Breakwater Enterprises are the nearest domestic wells to the Property. However, it is clear that other domestic wells not operated by Breakwater Enterprises also draw water from this aquifer. It is also clear that domestic wells located within the boundaries of the Regional District, and which supply domestic water to at least some members of the Residents Association and the Watersheds Coalition, rely on this aquifer. Consequently, the Panel finds that each of the 3 Appellants in question represents the interests of people who could be negatively impacted if the proposed system does not adequately protect public health. As such, the Panel finds that it is reasonable to expect that each of the Appellants represent residents or members whose health interests could be directly affected should the proposed system cause contamination of the aquifer.

For these reasons, the Panel finds that the three Appellants are persons aggrieved for the purposes of these appeals. Accordingly, their standing is confirmed.

DECISION

In making this decision, the Panel of the Environmental Appeal Board has considered all the relevant documented evidence before it, whether or not specifically reiterated here.

For the reasons set out above, the Panel concludes that the Watersheds Coalition, Residents Association, and Regional District are persons that are aggrieved within the meaning of section 8(4) of the *Health Act*, and have standing to appeal the issuance of the sewage disposal permit.

Accordingly, the application to dismiss the three appeals for lack of jurisdiction is denied.

Alan Andison, Chair
Environmental Appeal Board

November 18, 2002