



Province of
British Columbia

Environmental Appeal Board

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DECISION NO. 2005-EMA-008(a)

In the matter of an appeal under section 100 of the *Environmental Management Act*, S.B.C. 2003, c. 53.

BETWEEN:	G.N. (Neil) Thompson	APPELLANT
AND:	Director of Waste Management	RESPONDENT
AND:	Canfor-LP OSB (G.P.) Corp.	THIRD PARTY
BEFORE:	A Panel of the Environmental Appeal Board Alan Andison, Chair	
DATE:	Conducted by way of written submissions concluding on November 14, 2005	
APPEARING:	For the Appellant: Neil Thompson For the Third Party: Diana Valiela, Counsel	

PRELIMINARY ISSUE OF STANDING

On September 28, 2005, Neil Thompson appealed the decision of Del Reinheimer, made on behalf of the Director of Waste Management (the "Director"), Ministry of Environment, under the *Environmental Management Act*, S.B.C. 2003, c. 53, (the "Act") to issue a permit to Canfor-LP OSB (G.P.) Corp. ("Canfor") to discharge contaminants to the air from an oriented strandboard manufacturing facility (the "OSB facility") located in Fort St. John, British Columbia.

By letter dated October 5, 2005 the Environmental Appeal Board requested that Mr. Thompson provide details of how he has standing to appeal under section 100(1) of the *Act* as "a person aggrieved by a decision of a director".

The Board reviewed submissions from Mr. Thompson and Canfor on the preliminary issue of standing. The Director did not provide submissions.

BACKGROUND

On August 30, 2005, the Director issued Permit PA-17751 (the "Permit") to Canfor authorizing it to discharge contaminants to the air from the OSB facility, subject to a number of conditions. The OSB facility will use three oriented strandboard wood wafer dryers to dry cut log strands used to form boards. This will result in water vapour emissions. The OSB facility is located approximately one kilometre

southwest of the Fort St. John Airport. The Permit contains the following conditions regarding water vapour emissions:

- 2.9.1 The permittee shall continue discussions with the owners and management of the Fort St. John airport to evaluate any impacts on the operation of the airport due to water vapour from the OSB facility.
- 2.9.2 The permittee shall record concerns expressed by the owners and management of the Fort St. John airport regarding impacts of water vapour on local airport traffic and operations. A summary of those concerns, along with the results of any investigations or mitigative action by the permittee shall be submitted at the request of the Director.

Mr. Thompson appealed the Permit on the following grounds:

- The Permit fails to include specific limits on airport impacts or emissions of water vapour from the OSB facility which, due to the likelihood of increased prevalence of mist, fog, low cloud and super cooled moisture at the airfield, is a pollutant under the *Act*;
- The conditions related to future monitoring of the effects of water vapour from the OSB facility are overly vague and do not adequately protect the public from increased disruption, costs, or risks arising from any increase in poor flying weather;
- The Director did not properly direct his mind to the issues, relying on findings of the Environmental Assessment Office which were made without adequate information or expertise;
- The modeling relied upon by the Environmental Assessment Office and the Director is flawed and has little credibility in the flying community;
- The Director failed to take into account a study and other information demonstrating the inadequacy of the attempts at modeling aviation weather conditions;
- The Director did not have the expertise, or seek advice from those with expertise, to assess the disruption, costs, and safety of weather implications of water vapour emissions; and
- The Director failed to take into account that any deterioration in the quality of aviation weather will have significant impacts on the Region given the recommendation to phase out neighboring airports and increase traffic to the Fort St. John Airport.

Mr. Thompson submits that due to the likelihood that the OSB facility emissions of water vapour will increase the prevalence of mist, fog, low cloud, and super cooled moisture at the airfield, water vapour is a "pollutant" under the *Act* and should be specifically regulated as are other contaminants in the Permit. He asks the Board to overturn the Permit and direct that no permit be issued without specifically including the water content of emissions in the permit; specifying maximum emission airport impacts; paying for monitoring and reporting airport impacts;

specifying reasonable mitigation and compensation for increased costs and lost flying hours; reserving a right of the Director to require installation of instrumentation to measure inversions and locate super cooled liquid within the air traffic control zone; and, reserving a right to make the permit subject to an annual vote-of-approval.

On October 5, 2005, the Board wrote to Mr. Thompson asking him to provide details as to how he is a "person aggrieved" by the Permit. Mr. Thompson replied by a letter dated October 15, 2005 setting out his interests "as a stakeholder in the well being of those providing services at the Ft. St. John airport and their customers". Mr. Thompson submits that he is an "aggrieved person" within the meaning of the *Act*, and should be accorded standing to appeal.

By letter dated October 31, 2005, Canfor submits that Mr. Thompson has not shown that he is a "person aggrieved" pursuant to the *Act* with respect to the decision to issue the Permit, and that it is not appropriate to grant him standing to appeal. Canfor further submits that Mr. Thompson has provided no evidentiary basis to support his assertions that the Permit prejudicially affects his personal interests.

RELEVANT LEGISLATION

The following section of the *Act* is relevant to the preliminary issue:

Appeals to Environmental Appeal Board

100 (1) A person aggrieved by a decision of a director or district director may appeal the decision to the appeal board.

ISSUES

The preliminary issue to be determined is whether Mr. Thompson is a "person aggrieved" under the *Act* and, therefore, has standing to bring the appeal.

DISCUSSION AND ANALYSIS

The test applied by the Board in determining whether a person has standing to bring an appeal under section 100(1) of the *Act* is whether the person "has a genuine grievance because an order has been made which prejudicially affects his interests." This test is from the decision of the House of Lords in *Attorney General Gambia v. N'Jie*, [1961] 2 ALL E.R. 504, where the Court stated as follows:

The words "person aggrieved" are of wide import and should not be subjected to a restricted 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.

This test for standing has been consistently applied by the Board in a number of cases¹ dealing with the discharge of emissions under the current *Environmental Management Act* as well as its predecessor statute the *Waste Management Act*.

Mr. Thompson does not dispute the application or interpretation of this test as stated above but argues that he is “aggrieved” and thus fits within it. The Panel must determine whether Mr. Thompson has disclosed sufficient evidence to allow the Panel to reasonably conclude that the issuance of the Permit to Canfor has or will prejudicially affect his interests.

Mr. Thompson states his interests as a “person aggrieved” to be “as a stakeholder in the well being of those providing services at the Ft. St. John airport and their customers” and more specifically:

- a) As an active Airports Electrician: the likelihood that emissions will increase costs and loss of revenue to the airport, it’s tenants and customers which will likely result in reduced opportunities to be contracted to do work at the airport.
- b) As a retired Crash Rescue Firefighter: increased concern because of risks of a fatal aircraft incident, stresses of being reminded of accident scenes attended in the past and possible delays in take-off to respond to search and rescue activity.
- c) As a retired Weatherman: increased concern regarding expected disruption to Fort St. John air traffic and community.
- d) As a retired Pilot and citizen supportive of aviation and Search and Rescue activities: frustration of being unable to explain to the uniformed that the textbook behaviour of an air mass is dramatically affected by pollution which results in unreliable aviation forecasts, serious airframe icing issues, and general disruption.
- e) As an area Resident living about 3 kilometres downwind from the OSB facility and continuing to fly in an out of the airport, the potential delays in take-off and concerns for landing on return into unexpectedly bad flying conditions and the potential for a fatal incident.

He further submits that the decision “violates my right to have SOME level of government properly review, assess and endorse, (with appropriate credentials) the maximum acceptable impacts a proposal of this magnitude is allowed to have on aviation interests.”

¹ See *Ajah Azreal v. Regional Waste Manager and Nexterra Energy Corp.* (Appeal No. 2004-WAS-004(a), June 12, 2004) [*Azreal*]; *Gurmeet Brar v. Deputy Director of Waste Management and District of Invermere* (Appeal No. 97-WAS-09(c), March 11, 1998) [*Brar*]; *John Keays and Paddy Goggins v. Assistant Regional Waste Manager and MB Paper Limited* (Appeal No. 97-WAS-10(a), November 17, 1997) [*Keays and Goggins*]; *Dave Stevens v. Regional Waste Manager* (Appeal No. 2001-WAS-030, February 28, 2002) [*Stevens*]; *Phillip Fleischer and Paddy Goggins v. Assistant Waste Manager and Macmillan Bloedel Limited* (Appeal No. 97-WAS-11(a), November 17, 1997) [*Fleischer*]; *Houston Forest Products Co. v. Assistant Regional Waste Manager and West Fraser Mills* (Appeal No. 99-WAS-06(c), 08(c) and 11(c)-13(c), February 3, 2000) [*Houston*].

Canfor submits that the *Act* “does not provide a right of appeal to everyone whose sensibilities may be offended by government decisions. Rather, standing should be granted only to those people whose personal rights and interests are genuinely affected.” Canfor argues that while Mr. Thompson has raised a number of reasons why he disagrees with the decision to issue the Permit in its current form and thereby feels he is a person “aggrieved”, his concerns do not meet the tests and principles for standing that have been articulated by the Board. Canfor cites a number of previous Board cases in support of its argument.²

Canfor submits that Mr. Thompson’s stated interests do not establish any right or interest over and above the general public’s or a general concern for aviation interests. Further, Canfor argues that:

- Mr. Thompson is alleging he will be affected by a hypothetically linked chain of future events that may result in increased costs which will then cause reduced revenue at the airport that may cause him reduced opportunities for contract work, but he provides no evidence to substantiate these concerns;
- Mr. Thompson provides no evidence that the Permit will cause risks of a fatal aircraft incident; and
- While residency and proximity to a discharge source are relevant to the reasonableness of asserting that air emissions will affect an appellant’s or his family’s health, Mr. Thompson has not adduced any evidence as to why the proximate location of his residence may be prejudicial to his interests.

The Panel notes that previous air emissions decisions from the Board have established that residency and proximity to a discharge site are relevant to an assessment of whether a person is “aggrieved”.³ Accordingly, standing has been granted to appeal where personal health issues are concerned and the applicant lives or works in close proximity to the site of the emissions by virtue of the fact that such close proximity necessarily subjects the person to any potential effects of the discharge.⁴ Standing has been refused where sufficient proximity and potential prejudice have not been established.⁵

In this case, while Mr. Thompson has established evidence of a close proximity to the site and emissions, he is not alleging any potential adverse health impacts on himself or his family from exposure to those emissions. He has stated that he is aware of another appeal of the Permit brought by a different appellant that is addressing such health issues. Mr. Thompson’s appeal is solely concerned with the potential for water vapour emissions to affect weather within the air traffic control

² *Azreal, Brar, Keays and Goggins, Stevens, Fleisher, Houston, supra* note 1; *Squamish Terminals Ltd. v. Director Waste Management and District of Squamish* (Appeal No. 2004-EMA-002(a) March 22, 2005)

³ *Azreal, Brar, Keays and Goggins, Stevens, Fleisher and Houston, supra* note 1

⁴ *Keays and Goggins, Fleisher, supra* note 1

⁵ *Azreal, Brar, Stevens, supra* note 1

zone, and any resulting impacts on the aviation industry as a result of increased fogging or aircraft icing conditions at the airport. Therefore, Mr. Thompson's proximity to the site is not determinative of the issue of standing and the Panel must consider other factors in order to find the requisite prejudice to his interests.

Mr. Thompson's submissions establish that he is or has been an electrician, weatherman, pilot, and search and rescue firefighter. Although retired, he continues to be interested in the general aviation industry and has expressed concerns for public safety and operations at his local airport. He believes that he has information and expertise as a result of his experiences to cause him concern about the potential weather impacts of water vapour emissions.

The Director has recognized the potential for impacts to the local aviation industry. The Permit contains conditions requiring Canfor to continue discussions with the airport owners and management to evaluate any impacts on airport operations and to record any concerns expressed by the owners or management due to water vapour from the OSB facility. In addition, section 16 of the *Act* provides authority for the Director to amend the requirements of the permit at some later date, on the director's own initiative, if he considers it necessary for the protection of the environment. Section 16 of the *Act* provides as follows:

- 16** (1) A director may, subject to section 14(3) [permits], this section and the regulations, for the protection of the environment,
- (a) on the director's own initiative if he or she considers it necessary, or
 - (b) on application by a holder of a permit or an approval,
- amend the requirements of the permit or approval.

Mr. Thompson does not believe that the agencies responsible have sufficient expertise to make those determinations or that these measures are sufficient. He further alleges that the airport's owners and the Director, through inexperience, have been misled and have been inadequately advised by their own consultants.

It is clear that Mr. Thompson has a sincere interest in these issues and has taken an active role to communicate his concerns about the safety and efficiency of the airport operations arising out of the water vapor emissions from the OSB facility. However, the Panel finds that this interest is not sufficient to make him a "person aggrieved" under the *Act*.

The Panel finds that no evidence has been adduced to show that Mr. Thompson reasonably has sufficient interest in the issues he has raised. The Panel accepts Canfor's submissions that Mr. Thompson's interests are too speculative. For example, the Panel agrees with Canfor that the prejudice alleged with respect to his job, relies upon "a hypothetical linked chain of future events" and that "even if those events were to happen, [there is no evidence] that they would lead to a decreased opportunity for Mr. Thompson to participate in contract work." The Panel finds that Mr. Thompson's concern that increased adverse weather conditions may increase costs or reduce revenue at the airport and thereby reduce available funds for contract work is too remote. He is not an owner or manager of the Fort St. John Airport, nor is he accountable for airport operations or directly responsible for airport safety. There is no evidence that he is a pilot, owner or manager for one

of the airline tenants or that he is responsible for airline safety. Further, Mr. Thompson is not representing a federal or other agency responsible for the environment, safety or transportation issues.

Even as an electrical contractor, retired pilot, former weatherman and retired search and rescue volunteer, the Panel finds that Mr. Thompson does not have any more of a personal interest in the issues he raises than any other member of the general public who may have occasion to fly into or out of the Fort St. John airport. The Panel further notes that Mr. Thompson has provided no compelling evidence that he uses the airport on a daily or even frequent basis over and above the general public's usage. Mr. Thompson has not adduced any evidence that the Permit will directly affect his income or livelihood, that his personal health or welfare may be compromised by exposure to the emissions, or that he will suffer some other prejudice. The issues and concerns Mr. Thompson raises are, by his own submission, "aviation interests" and "concerns for those providing services at the Ft. St. John airport and their customers." Accordingly the Panel finds that he cannot be said to have the kind of interest required to have standing to bring an appeal to the Board.

While Mr. Thompson is not required to provide definitive proof that he will be harmed by the granting of the Permit, he must disclose enough evidence to allow the Panel to find that his interests are being prejudicially affected.⁶ The Panel finds that while Mr. Thompson's concern for other's safety regarding aircraft accidents and his general concerns about potential costs and inefficiency to the aviation industry is admirable, he has not provided sufficient evidence for the Panel to find that the potential harm identified is prejudicial to his own interests. The Board, as a statutory body, is bound by its enabling legislation in regard to substantive rights to appeal, and in determining who has such a substantive right to bring an appeal under the terms of the *Act*. In this case, the Panel finds that Mr. Thompson's stated interests are too remote and/or indirect to support standing for him to bring an appeal in his own right under section 100 of the *Act*.

Although Mr. Thompson does not have a right to appeal the Permit, this may not preclude his participation as a witness on behalf of an appellant who does have standing. Accordingly, Mr. Thompson may wish to voice his concerns and provide the benefit of his information and expertise to others with an interest before the Board who may be more closely affected by the Permit under appeal.

Finally, as the Panel has found that Mr. Thompson does not have standing to appeal, it is not necessary to rule on his submission that the OSB facility water vapour is a "pollutant" which should be regulated under the *Act*.

DECISION

In making this decision, the Panel has considered all of the evidence and submissions before it, whether or not specifically reiterated herein. For all of the reasons set out above, the Panel finds that Mr. Thompson cannot properly be

⁶ See *Azreal, Houston, Fleisher and Goggins supra* note 1

considered a "person aggrieved" by the decision to issue the Permit. Therefore, Mr. Thompson has no standing to bring the appeal, and the Board has no jurisdiction over the appeal.

Accordingly, the appeal is dismissed for lack of jurisdiction.

"Alan Andison"

Alan Andison, Chair
Environmental Appeal Board

November 25, 2005