

DECISION NOS. 2007-EMA-008(b); 2008-EMA-004(b)

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

BETWEEN: Don Dickson, Brenda Belak, Sheila Craigie and Blair Redlin **APPELLANT**

AND: District Director of the Greater Vancouver Regional District **RESPONDENT**

AND: West Coast Reduction Ltd. **THIRD PARTY**

BEFORE: A Panel of the Environmental Appeal Board
Alan Andison, Chair
Monica Danon-Schaffer, Member
Robert Wickett, Member

DATES: May 5-9, July 7, 10, 21-22, and
September 3-5, 2008

PLACE: Vancouver, BC

APPEARING: For the Appellant: Mark Haddock, Counsel
Rachel Forbes, Articled Student
For the Respondent: R.H. Robb, Counsel
For the Third Party: Gary Letcher, Counsel
Andrea Akelaitis, Counsel
Daniela Fisher, Counsel

APPEALS

[1] Don Dickson, Brenda Belak, Sheila Craigie and Blair Redlin appeal two decisions of R.H. (Ray) Robb, Air Quality District Director (the "District Director") with the Greater Vancouver Regional District (the "GVRD")¹: the first decision is dated June 18, 2007 (Appeal No. 2007-EMA-008); the second decision is dated March 14, 2008 (Appeal No. 2008-EMA-004).

[2] Both decisions were to amend air permit no. GVA 0141, held by West Coast Reduction Ltd. ("West Coast"). The permit authorizes the release of air contaminants

¹ The GVRD is now referred to as Metro Vancouver but its legal name remains the GVRD. For the purposes of this decision, its legal name will be used.

from West Coast's rendering plant located at 105 North Commercial Drive, in Vancouver, British Columbia.

[3] The amendments add various requirements, conditions, criteria, standards, guidelines and objectives to West Coast's permit, with the ultimate objective of reducing the amount of rendering plant odour experienced in the local community. Of particular relevance to these appeals, the District Director placed limits on the concentration of odour that can be discharged from the plant as measured in "odour units", and requires monthly odour testing and reporting to determine whether those concentration limits are being met.

[4] The Appellants are residents of Vancouver living in neighbourhoods to the south and southeast of the facility. This area is known as the Grandview-Woodland area. They appeal the amendments on the basis that they do not go far enough to reduce the odour emissions from West Coast's facility. They submit that the District Director incorrectly based the odour emission limits on what West Coast *could* achieve, and has, in fact, achieved, rather than what will address the impacts to the community.

[5] The Board's decision-making authority on an appeal is found in section 103 of the *Environmental Management Act*. Section 103 of the *Act* gives the Board the power to confirm, reverse or vary the decision being appealed, send the matter back to the person who made the decision, or make any decision the person whose decision is appealed could have made and that the Board considers appropriate in the circumstances.

[6] The Appellants ask the Board to allow their appeals and send the decisions back to the District Director to further amend the permit by restricting the emission of odorous air contaminants from West Coast's facility to ensure that the amendments result "in acceptable levels of odour in the neighbourhood affected".

[7] The Appellants also ask the Board to award them a portion of their costs in relation to the appeals. This application was withdrawn at the conclusion of the proceedings.

[8] In addition to the appeals by these Appellants, the Board also received appeals against both amendments by the Permit Holder, West Coast. It appeals the District Director's decisions to amend the permit for different reasons. It maintains that the amendments were made without legal authority and the terms, particularly the imposition of odour units as a compliance measure, are arbitrary and unreasonable. West Coast has been added as a Third Party in these appeals and these Appellants have been added as a Third Party in West Coast's appeals.

[9] Given the overlapping nature of the appeals by West Coast and the resident appellants, the Board heard the appeals together. However, the Board has decided the merits of their respective appeals in separate, but companion, decisions. The Board's decision on West Coast's appeals has been released concurrently with this decision (see *West Coast Reduction v. District Director*, Decision Nos. 2007-EMA-007(a); 2008-EMA-005(a)).

BACKGROUND

[10] A comprehensive background to the permit amendments is set out in the Board's decision on West Coast's appeals, and will not be repeated herein.

RESIDENT APPELLANTS' APPEAL

[11] Although the Resident Appellants appealed both permit amendments, in their view, the 2008 decision fully replaces the 2007 permit amendment making their appeal of the 2007 decision essentially moot. Thus, they focused their evidence and arguments on the 2008 permit amendment.

[12] Despite the fact that the amendment imposes more stringent odour control standards on West Coast, as well as additional monitoring and planning requirements, the Resident Appellants maintain that the amendment does not go far enough.

[13] The Resident Appellants maintain that the odour concentration and loading limits in Schedule F of the 2008 amendment allows West Coast to emit odours that exceed levels that are acceptable to the Appellants and the affected community. They submit that the odour concentrations and loading limits, as measured in odour units:

- 1) exceed levels that have caused and will continue to cause material physical discomfort to the Appellants and area residents;
- 2) were proposed by West Coast and adopted by the District Director without adequate assessment of the impacts on the Appellants and area residents;
- 3) to the extent that community impacts were assessed, that assessment is based on inadequate air dispersion modeling submitted by West Coast to the District Director, which nevertheless predicted that the affected neighbourhoods will continue to experience unduly high odour levels; and
- 4) even if the dispersion modeling was adequate, it nevertheless predicted that the affected neighbourhoods will continue to experience unduly high odour levels.

[14] The Resident Appellants submit that the District Director knew, or ought to have known that the levels permitted by Schedule F of the 2008 Permit would likely perpetuate the physical discomfort of the residents. This is because the levels exceed those measured in the air samples taken during the months of July through December 2007, during which period the Resident Appellants, and others in the community, suffered high levels of discomfort which were reported to the GVRD, and discussed with the District Director.

[15] They submit that the odour concentration and loading limits in the 2008 amendment were adopted by the District Director without adequate assessment of the impacts on these Appellants and area residents. They submit that the permit should be based upon a reasonable ambient odour objective being achieved for the neighbourhoods impacted by the rendering plant emissions. They submit that the air dispersion modeling carried out by Envirochem Services Inc. ("Envirochem") for West Coast was inadequate, and not a reliable predictor of ambient odours likely to be experienced in the affected neighbourhoods for the permitted levels.

[16] The Appellants point out that the GVRD advised that it would establish an ambient odour objective or criterion, but has not done so. They submit that there is no valid reason for additional delay in determining this odour objective or criterion: it is a necessary input to sound dispersion modeling and the operational planning necessary to improve air quality for the residents.

[17] In addition, the Appellants maintain that the amendment fails to adequately curtail odours from fugitive emission sources at the facility. In fact, it is almost silent concerning the identification, monitoring and/or regulation of fugitive emissions. They note that the permit only regulates odour emissions from 5 stack emission sources, and fails to take account of odours emitted during the reception and storage of materials at the facility, or from other fugitive sources.

[18] The Appellants argue that controlling fugitive emissions is both reasonable and crucial to the regulation of odours emanating from the facility. Such regulation is also standard in the permits of rendering facilities in other jurisdictions, such as Ontario.

[19] The Appellants ask the Board to order as follows:

1. Reduce the odour concentration and loading limits in Schedule F either permanently or pending completion of 2 and 3 below.
2. Determine an ambient odour criterion for the facility that is appropriate to both the urban Vancouver environment in which the permit holder operates and the nature of the odours from its animal rendering operations.
3. Send the matter back to the District Director with directions that in a timely manner he carry out, or cause to be carried out, air dispersion modeling that:
 - a) is consistent with the ambient odour criterion determined by the Board;
 - b) addresses the deficiencies in previous dispersion modeling identified by the Appellants; and
 - c) determines new odour concentration and loading limits to replace those in Schedule F of the permit.
4. Amend the permit to include provisions that will effectively curtail odours emanating from fugitive emission sources at the facility.

[20] In addition to these remedies, the Appellant Dickson asked for additional orders from the Board. During his testimony, Mr. Dickson asked the Board to order the permit to be further amended by adding the clause contained on page 1, Schedule E, of the draft 2007 permit. This clause allows the District Director to curtail West Coast's operation if satisfactory level of odour control is not achieved on certain stacks. The clause states, in part: "The District Director may require curtailment of this source from 4:00 PM Friday to 10:00 PM Sunday (10:00 PM Monday when Monday is a statutory holiday) from May 1st to September 30, if a satisfactory level of odour control has not been achieved."

[21] Mr. Dickson also asked the Board to make the discharge levels considerably lower as set out in the draft permit. For example, an odour level of 1.0 or 2.0 for a

duration of 10 minutes would be acceptable, and he believes is achievable because other permits have imposed that limit. Mr. Dickson acknowledges that identifying an acceptable level of odour is a very difficult thing to do and acknowledges that there are many other factors to consider.

THE DISTRICT DIRECTOR'S POSITION ON THE APPEALS

[22] The District Director acknowledges the Appellants' concerns. He accepts that the 2007 and 2008 permit amendments have not imposed requirements that, on their own, will achieve the objective of "acceptable air quality" in the community. However, he believes that these amendments move towards the objective in a manner that fairly balances the needs of the community and West Coast. He believes that the delay in reaching satisfactory permit requirements is justified as it will take some time to establish the level of air quality that is necessary for the community. He maintains that, given the key role of West Coast in the management of animal wastes in British Columbia, the delay in the process to achieve acceptable air quality in the community is also necessary to allow West Coast time to consider options and implement the necessary changes. He asks that the Board uphold the amendments.

[23] In response to the specific issues raised by the Appellants, the District Director points out that the 2008 limits are lower than in previous permits. He also notes that "it is important to ensure that appropriate targets for the company are set and that the company is given a reasonable time to comply with those targets."

[24] He also notes that, although the odorous air emission limits in the 2007 and 2008 amendments were not based on dispersion modelling, it is anticipated that future amendments will restrict the emission of odorous air contaminants based upon appropriate dispersion modeling.

[25] The District Director submits that he has embarked upon a process to establish an ambient objective for West Coast in the community, but that it is a more complicated and lengthy process than originally anticipated.

[26] Regarding fugitive emissions, the District Director submits that the highest odour concentrations appear to be found further away from the site, which is indicative of stack emissions, rather than ground level fugitive emissions. Although the District Director is not satisfied that amendments are required to specifically address fugitive emissions, he intends to consider this for future amendments.

THE THIRD PARTY'S POSITION ON THE APPEALS

[27] The Permit Holder, West Coast, opposes the appeals. First, it challenges the Board's jurisdiction over the issues raised by the Resident Appellants in relation to the District Director's failure to impose an "ambient odour objective" and the District Director's failure to address fugitive emission sources. It submits that the District Director's failure to include ambient odour objectives, or to address fugitive emissions, does not constitute an "appealable decision" as defined in section 99 of the *Act*; therefore, the Board has no jurisdiction to grant the remedies sought in relation to them.

[28] Alternatively, West Coast submits that the Board should not grant the requested relief in relation to ambient odour objectives and fugitive emissions on the grounds that it will increase uncertainty and confusion, and that they are unreasonable and unnecessary for the protection of the environment.

[29] With respect to dispersion modeling, West Coast submits that its modeling was reasonable and appropriate in the circumstances.

[30] West Coast asks the Board to dismiss these appeals.

RELEVANCE OF PANEL'S FINDINGS ON WEST COAST'S APPEALS TO THE RESIDENT APPELLANTS' APPEALS

[31] In its decisions on West Coast's appeals, the Board found that the District Director exceeded his jurisdiction when he issued the amendments.

[32] The Board also found that the District Director's imposition of odour units in the permits, which have significant sanctions for non-compliance, was an unreasonable exercise of discretion and that the terms were unenforceable as a result.

[33] Accordingly, the Board rescinded the 2007 and 2008 amendments and the decision by the District Director to impose the amendments was reversed.

[34] Given that the Board has rescinded both the 2007 and 2008 amendments, the amendments and remedies sought by the Resident Appellants cannot be granted.

DECISIONS

[35] The Panel has considered all the submissions and arguments made whether or not they have been specifically referenced herein.

[36] For the reasons provided above, the Panel finds that the Resident Appellant's appeals of the 2007 and 2008 permit amendments are dismissed.

"Alan Andison"

Alan Andison, Chair
Environmental Appeal Board

"Monica Danon-Schaffer"

Monica Danon-Schaffer, Member
Environmental Appeal Board

"Robert Wickett"

Robert Wickett, Member
Environmental Appeal Board

March 8, 2010