Environmental Appeal Board

APPEAL NO. 94/08 WASTE MANAGEMENT

In the matter of appeal under Section 28 of the Waste Management Act, S.B.C. 1982, c.41

BETWEEN	District of Sparwood	**APPELLANT**
AND	Deputy Director of Waste Management	**RESPONDENT**

BEFORE A PANEL OF THE ENVIRONMENTAL APPEAL BOARD
Ms. J. Lee, Chair
Mr. H. Higgins, Member
Ms. C. Mayall, Member

DATE September 16, 1994

PLACE Sparwood, B.C

APPEARING

For Appellant	
Spokesperson:	Mr. G. Purdy, Counsel
Witnesses:	Ms. L. Montemurro
	Mr. D. Dwyer
For Respondent	
Spokesperson:	Mr. D. Brown
Witnesses:	Mr. B. Wood
	Dr. B. Hyslop
	Mr. D. Wetter

This is an appeal from the District of Sparwood against amendments to Waste Permit PE-00253 requiring the classification and certification of Sparwood's wastewater treatment plant facility operators with the British Columbia Wastewater Operators Certification Program Society.

EXHIBITS

1-7. Appellant's Book of Documents

8. May 17, 1989 letter from J. Wilford

9. March 16, 1993, letter from R.J. Driedger, Director, Municipal Waste Reduction Branch to R. Crozier.

10. April 12, 1994, Permit No. PE-00253

11. B.C.W.W.A. Introduction to Wastewater Treatment Programs

APPEAL

The authority for the Panel of the Environmental Appeal Board to hear this appeal is found in the *Environment Management Act*, and in Section 28 of the *Waste Management Act*.

BACKGROUND

On April 20, 1993, the District of Sparwood received a Notice of Amendment to their Permit PE-00253 issued under the provisions of the *Waste Management Act*. This permit authorizes operation of the Sparwood wastewater treatment facility. The Amendment, sent to all municipalities in British Columbia, required that the wastewater treatment facility be classified, and the classification maintained, with the British Columbia Wastewater Operators Certification Program Society (BCWWOCPS).

The Appellant opposed the requirements in the Amendment for:

1] Operator certification;

2] Operators in Training Requirements [OIT]; and

3] Introducing and requiring there be a "Chief Operator" with Direct Responsible Charge [DRC]

On April 21, 1993, Toto Miller, Mayor of Sparwood, wrote to Dr. J. O'Riordan, Assistant Deputy Minister of Environmental Management, stating that compliance with the Amendment would be an excessive financial burden to their community. Dr. O'Riordan replied on May 20, 1993, with a letter explaining the development of the Amendment. He also said that because only facilities classified at Level II or higher required certified operators, the District of Sparwood should have their facility classified before they concluded that the Amendment would place too great an onus on their community.

On January 24, 1994, the wastewater treatment facility of the District of Sparwood was classified at Level II. Under the Amendment this meant that by December 1, 1994, all operators of the District of Sparwood wastewater treatment facility would have to be certified under the B.C. Operators Certification Program to a Class I level and that by December 1, 1996, the District of Sparwood would designate at least one operator to be the Chief Operator of the facility with "Direct Responsible Charge" [DRC]. The Chief Operator would have to be certified to a Class II level. New employees would be subject to Operator-In-Training requirements.

On February 25, 1994, the District of Sparwood appealed to the Deputy Director of Waste Management, Mr. R.J. Driedger, to delete the Amendment from Permit PE-00253. On March 10, 1994, Mr. Driedger recommended that, because the requirements of the Amendment were provincial policy developed within his Branch,

the appeal should be heard by the Environmental Appeal Board to prevent a conflict of interest.

In his March 18, 1994, letter to the Environmental Appeal Board Mr. Driedger stated that he had made a "pro forma" decision to support the Regional Waste Manager (RWM) in his decision.

The appeal to Mr. Driedger was accepted by the Environmental Appeal Board (EAB) as notice of appeal. The appeal was heard in Sparwood on September 16, 1994.

ISSUES AND EVIDENCE

During the presentation of evidence the Appellant raised 2 preliminary legal issues which it argued rendered the permit Amendment illegal.

ISSUE 1. Whether or not the Amendment was beyond the authority given to the Regional Waste Manager under section 11 of the *Waste Management Act* because it was not made "on his own initiative" "for the protection of the environment"; and because the law cannot specify who deals with waste.

The essence of the Appellant's argument was that the Amendment was not authorized by Sections 11(1)(a) and 11(2)(1) of the *Waste Management Act*.

Section 11(1)(a) states:

> "A manager may, subject to this section and the regulations, and for the protection of the environment
>
> (a) on his own initiative where he considers it necessary, … amend the requirements of the permit".

Section 11(2)(i) and (j) state:

> "A manager's power to amend a permit or approval includes
>
> (i) authorizing or requiring a change in the method of discharging, storing, treating, handling or transporting the waste, and
>
> (j) changing or imposing any procedure or requirement that was imposed or could have been imposed under section 8 or 9."

The Appellant contends that the method implies authority over how rather than who, and also, that if a process is producing satisfactory results and regular checks indicate satisfactory performance, then why should the Province have the authority to dictate who is qualified? The Appellant contends that Section 11(2)(1), and 8 (1)(e) of the *Act* did not intend to cover the qualifications of who was hired but was designed to ensure the plant was operated according to the terms of the permit.

The Appellant also contends that BCWWOCPS was a non-government body, and therefore should have no authority over qualifications.

The Appellant contended Section 11 of the *Act* stated that amendments must be made on the regional manager's own initiative. In this case the Amendment had not been made on the initiative of the Regional Waste Manager but at the direction of the Deputy Director of Waste Management under a policy decision. Thus he did not exercise his power in accordance with the statute.

In other words, were these Amendments within the powers given to the Deputy Director by the *Act* – either directly or by necessary implication?

In support, the Appellant cited a March 16, 1993, Memorandum [Exhibit 9] from Mr. R. J. Driedger, Director, Municipal Waste Reduction Branch to Mr. R. Crozier, Regional Environmental Protection Manager, Nelson, and a letter dated March 18, 1994, from Mr. Driedger to the then chair of the EAB.

The Memorandum [Exhibit 9] states in part:

> "**Mandatory Waste treatment Operator Certification**
>
> It has been decided to proceed with mandatory certification of operators at municipal sewage treatment facilities…
>
> These amendments will apply only to municipalities at this time. They can be issued from Victoria provided you supply the appropriate Permit numbers, *alternatively, they can be issued from your offices. Please advise which method you would prefer by April 30, 1993.*
>
> Enforcement of these amendments is not anticipated. We believe those municipalities which choose not to abide by these clauses will forfeit an argument for due diligence in operating their treatment facilities." [emphasis added]

The EAB notes that the disputed Amendment was signed by R. Crozier.

The March 18, 1994, letter to the Chair of the EAB was written by Deputy Director Driedger after the permit had been amended and gone through a first level "pro forma" appeal which supported the Regional Manager's decision to make the Amendment for as

Mr. Driedger noted:

> "it was my branch, with the concurrence of the ministry Executive … that made the policy decision … and the potential conflict of interest for me to hear the appeal."

The Respondent Ministry's position was that:

–the policy and appealed changes resulted from a process of consultation. A draft policy regarding mandatory certification had been circulated before approximately 25 permits had been amended in the Kootenay region;

–the authority for this Amendment resides in Section 11(2)(J) read with Section 8(1)(e) of the *Waste Management Act*;

–specifically the Respondent could authorize operator certification in a permit as one of the "requirements for the protection of the environment that he considers advisable" and was included in his power under Section 8 (1)(e) to:

> "specify procedures or requirements respecting the handling, treatment, transportation, discharge or storage of waste that the holder of the permit must fulfil".

–that certification of operators promoted the Ministry of Environment, Lands and Parks' (MoELP) goal that sewage plants should operate so the effluent quality met current standards and operator standards were related;

–cited page 3 of Exhibit 9, as evidence that a direction from the Deputy Director to the RWM in this case, gave the RWM an option to amend.

–studies have revealed that generally certified operators perform more effectively.

The Panel notes that:

* At Section 8, the *Waste Management Act* gave the RWM very broad powers to issue permits to deposit waste.

* Under the legislative scheme, waste permits authorize exceptions to the basic scheme of the *Act* that no person shall "introduce or cause or allow waste to be introduced into the environment".

> * The RWM's power to amend under the *Act* includes:
>
> "(j) changing or imposing any procedure or requirement that was imposed or could have been imposed under Section 8 or 9."
>
> * Section 27(2) of the *Interpretation Act* is entitled "Ancillary Powers" and states:
>
> "Where in an enactment power is given to a person to do or enforce the doing of an act or thing, **all the powers shall be deemed to be also given that are necessary to enable the person to do or enforce** the doing of the act or thing." [emphasis added]

The basic rule as to jurisdiction is that the RWM has only those powers given to him by the *Act*, regulations or by necessary implication.

On a careful reading, the Panel of the EAB finds that the Memorandum [Exhibit 9] sets out a policy directive and it also discusses how it could be implemented. The memorandum states to the RWM that he could consider implementing the policy directive by making the Amendment himself, and if he did not wish to, he was to advise the Deputy Director by April 30, 1993. Since the evidence before the Panel was that the RWM made the Amendment himself, it was presumably on the basis that he felt it was advisable for the protection of the environment. The Panel heard no evidence to the contrary.

The Panel finds that no matter how automated or well run a sewage treatment plant is, the evidence from the Appellant clearly established that its own well-run plant required daily monitoring by human personnel and it did have occasional problems requiring human attention. The Panel of the EAB cannot conceive how waste can be handled, treated, transported, etc. without human action or, at least supervision of the machinery.

In this case the Panel finds that the power to impose operator standards is a power ancillary and necessary to enable a Waste Manager under Section 8(1)(e) powers "to specify procedures or requirements respecting the handling, treatment … of waste that the holder of the permit must fulfil".

The Panel finds the power to impose operator standards also arises by necessary implication in the powers given to a Regional Manager under this section.

ISSUE 2. Unlawful Sub-delegation of the RWM's authority to the British Columbia Wastewater Operators Certification Program Society (BCWWOCPS).

The issue raised by the Appellant was whether or not, the Amendment requiring that all "operators at municipal wastewater treatment facilities … be certified by the [B. C. Operator Certification] Program to a class I level at a minimum", constitutes an unlawful sub-delegation of the RWM's authority to an outside non-governmental authority, the BCWWOCPS.

The training brochures for the 1994 Operators' Training Workshop not only covered basics such as hydraulics for waterworks and sewers but also water and sewer emergencies, and earthquake preparedness.

The Appellant's legal argument is based upon a decision where an unlawful delegation of authority was found in a case involving a Director of a Human Rights Commission where the regulations appointed him as the agent empowered to attempt to settle complaints for the Commission. It was not permissible to further delegate that responsibility specified in the regulations to the Commission's staff lawyer. See Ernest Reimer v. Saskatchewan Human Rights Commission [1991] 2 Admin. L.R. (2d) 275, Saskatchewan Court of Queen's bench.

The Panel does not find the case helpful nor applicable to this case where the Amendment decision was signed by the appropriate manager referred to in section 11(1) of the *Waste Management Act*.

The Appellant also relied upon a decision of the B.C. Supreme Court affirming the basic principle that "the sub-delegation of a discretionary power has been held generally to be unlawful". See page 3 of **WCWC v. B.C. (Ministry of the Environment and Parks)** [1988] 2 CELR(NS) 245 BCSC.

The Panel finds that this decision is not applicable to the Appellant's case. In that case the Wildlife Act stated that Cabinet was to enact regulations which set out the circumstances under which the officer may issue permits; that is, the regulations were to contain a complete scheme of standards and criteria. The unlawful delegation occurred because the court found that regulations only made a bare transfer of this power to the regional manger to do so at his own unfettered discretion.

Here, with respect to the issuing and amending of waste permits, Section 11 of the *Waste Management Act* itself outlines how a regional manger is to exercise his discretion or authority and the circumstances, criteria and broad areas of concern. Once the regional manager has properly made a decision to amend under Section 11(1), Section 11(2) lists the areas of permissible amendments.

The Board is guided by Principles of Administrative Law at page 73:

> The characterization of the function is important for determining the ambit of power granted to the delegate ... Thus, the general rule is that both delegated legislative and judicial powers must be exercised by the very person to whom they have been granted, **whereas merely administrative powers can be sub-delegated quite freely to others.**" [emphasis added]

Thus, if the amendments themselves are made within the Manager's Section 11(2) powers, the actual carrying out of any amendments themselves, can be sub-delegated being, mere administrative matters.

Rather than impermissible, the Panel finds the Amendment for basic training by BCWWOCPS using standards outside the MoELP which are geared to provincial and national standards, was reasonable in that it promotes the ultimate legislative goal, protection of the environment from treated sewage discharge.

The Panel concluded that the Amendment contains no unlawful sub-delegation of the RWM's authority.

ISSUE 3. Difficulties with Operator certification and OIT Requirements

The Appellant testified that the District of Sparwood has 13 public works employees of whom 11 are "actual workers" and 2 are management. Because of the small size of the municipality all workers are versatile and are involved in a variety of tasks. Scheduling of workers and tasks changes daily to permit coverage seven days per week. The wastewater treatment plant is checked daily by two people, but at least five different people may take on this responsibility on separate days. The Appellant stated it was their understanding that each of these five people would have to be

classified as a Level 1 Operator by December 1, 1994, in order to comply with the permit Amendment. If the current staff were unable to attain Class 1 certification, the District of Sparwood understands from the permit Amendment that they would be required to hire employees with that certification and they would then be overstaffed, and overbudget.

Dr. Hyslop, witness for the Respondent and member of the BCWWOCPS, stated that everyone who works in the wastewater treatment plan must be certified.

Exhibit 11 shows that Class 1 Operator certification courses were given four times in 1994 in a variety of communities around British Columbia. Prerequisites for the course are "at least 1 year experience in the operation of a wastewater treatment plant, … a good understanding of algebra, … and preferably the student will have completed the equivalent of Grade 12."

Class 2 Operator certification courses were held once in 1994 in the Lower Mainland. Prerequisites for the Class 2 course are "a minimum of three (3) years experience in the operation of a wastewater treatment plant and … a valid Class 1 Certificate."

The Appellant stated that fewer than half of Sparwood's public works employees have completed Grade 12. They stated further that, because employees work in the wastewater treatment plant for only 1-1.5 hours per day and each employee is assigned to the plant only several days per week, it would take 8 to 10 years for an individual employee to accumulate the required experience to take a Class 1 certificate.

Dr. Hyslop stated that the requirement for high school completion could be replaced by work experience for Class 1 and 2 Operator's certificates. He agreed that, at the rate of work in the treatment plant for each employee, it would take longer than one year to accumulate the experience required to take the Class 1 Operator's course. He did not state the length of time that would be acceptable to the BCWWOCPS.

The Appellant stated that the people in charge of the Sparwood wastewater treatment plant and responsible for making decisions regarding operations are the Public Works Superintendent and the Technical Planning Co-ordinator. However, according to the terms of the employees' collective agreement these two people are not allowed to do the daily work. Therefore, they do not gain hands-on experience and would be precluded from gaining certification.

Dr. Hyslop stated that the Superintendent would probably be allowed to take the Class 1 and 2 courses, without explaining why.

The Appellant also stated that some of the terms of the Collective Agreement between CUPE and the District of Sparwood are in conflict with the permit Amendment. The Collective Agreement gives employees a 45-day probationary period while the permit Amendment requires that Operators In Training (OIT) be required to successfully pass an OIT examination within three months of

commencement of employment and that within 15 months of passing the OIT examination, the operator must successfully complete a Class 1 certification examination in order to remain in the wastewater treatment field. The Appellant is concerned again about the pre-requisite for 1 year's experience and also, that they would have to renegotiate the Collective Agreement in order to comply with the new requirements.

The Appellant testified that the person currently in charge of the wastewater treatment plant is the non-union Public Works Superintendent, Bert Eckel. They were concerned that, should he not complete Class 1 and 2 operator certification, he would lose control of the plant to a union employee and that during strikes, he would be unable to operate the plant.

The Respondent stated that during an emergency such as a strike the MoELP would discuss options with the District.

ISSUE 4. Problems with a Chief Operator with Direct Responsible Charge

The Appellant also argued that the concept of "Direct Responsible Charge" [DRC] was a fundamental term of the Amendment and was so vague as to be capable of interpretation and void for vagueness; or alternatively a violation of Section 7 of the Charter of Rights.

In raising this issue the Appellant's underlying concerns related to lines of authority at the plant and also of responsibility; that is, could only certified personnel operate the plant? How did this impact on the authority and responsibility of non-certified supervisors? Is this phrase so vague as to be incapable of enforcement or leading to, inadvertently, possible permit violation and liability? How could the current Public Works Superintendent qualify to be a Chief Operator Class Level II when the collective agreement forbade management to participate in the daily testing, etc.

How could the current Public Works Superintendent be certified as a Chief Operator, Class Level II? As a manager, the collective agreement forbade him to participate in the daily testing and work experience that were pre-requisites to certification.

The Respondent could not specify how these problems could be overcome.

The Appellant advanced several arguments against the permit Amendment on a factual basis.

The first was that it was impractical and far too costly to implement for this small municipality.

The second was that the Appellant felt its employees could not meet the pre-requisites for training certification and it was unfair because they were doing a good job. The main problems were the requirements for Grade 12 education and 1-3 years experience which could not be met by its employees especially when you considered the working schedule required for 7-day-per-week coverage year round and the make-up of its work force.

The current Amendment had no grandfathering clause.

The District of Sparwood and CUPS have a collective labour agreement. As a sub-issue, the Appellant argues that the Amendment conflicted with the collective agreement between Sparwood and its employees. Further, in times of labour relations strife it could be necessary for uncertified management to operate the treatment plant.

At Section 1.06, the agreement provides for the respective responsibilities of the parties; that is, that it is mutually understood that "the District has the right to manage its affairs and operations, and the Union has the right to do the work of the bargaining unit."

The language of this section also provides that employees who are not members of the union can perform work of the bargaining unit "in case of emergency" and several other situations. This language seems broad enough that the District of Sparwood should be able to work out with its union, a protocol and procedures to maintain essential and emergency services during periods of labour relations strife.

There seemed to be agreement that the Sparwood sewage treatment plant was well run with few, if any, excess discharges of chlorine. Sparwood was on the verge of constructing an ultraviolet disinfection system despite its larger capital cost than a rival dechlorination plant. However then no chlorination would be required and the resulting sewage discharge after treatment, would be less toxic. The plant itself, would have minimal operating costs.

For practical purposes the Appellant Sparwood felt the requirement for operator certification would be irrelevant because currently, the British Columbia Wastewater Association had no courses regarding the operation of ultraviolet disinfection plants.

Further it was undisputed evidence that the MoELP currently has no criteria regarding ultraviolet plants but would continue to expect that discharge effluent should reach the standard of recreational quality for the river.

It seems reasonable to the Panel to recognize the practical problems in qualifying for Operator Certification in this well-run plant in a very small municipality by way of a grandfather clause. Further, the OIT pre-requisites do seem to raise a catch-22 situation in this case; that is, one must pass Class I certification between 12 and 15 months of being hired – but unfortunately there is no way of obtaining the pre-requisite one year's experience to take the Class I course in this small work force. Thus one can not take the course and test which ensures continued employment.

ISSUE 5. Further is the term Direct Responsible Charge [DRC] void for vagueness?

The Appellant's evidence to this point was that there was some confusion regarding the terms "Direct Responsible Charge", "Chief Operator" and "Operator".

For the Respondent, Mr. Wetter, Special Technical Advisor to the MoELP, stated that in Sparwood an operator would have Direct Responsible Charge [DRC]. He then stated that an individual designated DRC would be empowered to make process changes to the plant such as changing pump settings. Mr. Wetter stated further that, if there were a difference between his interpretation of these terms and the interpretation of Dr. Hyslop that he would defer to Dr. Hyslop's interpretation.

Dr. Hyslop, for the Respondent, stated that the person with Direct Responsible Charge was the Chief Operator, the identifiable senior person who was in charge of the plant. The Chief Operator would examine daily test results and make operational decisions based on those tests, but would not necessarily do the testing.

The Panel notes that none of the witnesses for the Respondent had the same understanding for this new permit term, DRC.

The Panel finds that these terms are not sufficiently well-defined for those who are to implement the permit. Moreover, it is not a term found in the legislation or the regulation or policy.

DECISION

With respect to the paragraphs containing the terms Chief Operator and DRC, and the Appellant's legal arguments that they are void for vagueness, the Panel has been guided by these general principles

> "Of, course, mere ambiguity is not sufficient to constitute uncertainty. On the contrary the court is to resolve ambiguity, to choose one correct meaning - which in most cases would itself be uncertain. Accordingly, the ambit with which uncertainty will be a useful ground for reviewing delegated legislation is likely to be narrow. In principle, uncertainty should also be a ground for attacking the exercise of other discretionary administrative powers which are not legislative in nature; however it is difficult to find a good example of this."

See Principles of Administrative Law, pages 166-167.

Further, as stated in the law cited by the Appellant:

> "... the threshold for finding a law vague is relatively high. So far discussion of the content of the notion has evolved around intelligibility."

The case law put forward by the Appellant all deals with uncertainty in legislation or regulations; and being constitutionally vague in a Charter sense. DRC is a term used in the permit. Thus this is an exercise of a discretionary administrative power, which **is not legislative** in nature. For that reason, the case law cited by the Appellant is not directly applicable.

The Panel finds that the term DRC is not void for vagueness, and finds that in any event, the term DRC does not fall into that narrow ground that "it so lacks precision as not to give sufficient guidance for legal debate ".

However, the Panel shares the practical concern of the Appellant that there be in the plant clear lines of authority and responsibility. The Panel is particularly concerned about this in times of emergency when potential risk to the environment increases, and the Respondent's lack of precision regarding the term Direct Responsible Charge.

The Panel is particularly concerned about possible confusion or malfunctions leading to excess chlorination spills, etc. At those times, it may be critical to have quick action and to know who is in charge and whose decision to follow. For these reasons the Panel feels the permit terms 'Chief Operator' and DRC, as written, and the confusion surrounding them, do not promote the protection of the environment.

The Panel accordingly orders that paragraph holding the term "Direct Responsible Charge" be deleted from the permit Amendment.

By deleting the paragraph using the term 'Direct Responsible Charge' there is no need to consider the Appellant's legal argument regarding conflict with Section 611(2) of the *Municipal Act*.

DECISION

Having regard for the evidence, the Panel's decision regarding the Amendment to Waste Permit PE-00253 is that:

- **confirm the other paragraphs of the amendments as written to permit PE-00253 regarding Operator Certification with a direction that the Deputy Director make an additional amendment to this permit to add a "grandfathering" clause which would list and deem any 10 year employee of Sparwood who has safely and effectively performed his/her duties, as exempt from the Operator Certification requirements. The list of employees shall be determined in consultation with the Superintendent of Public Works for Sparwood;**

- **delete the paragraphs relating to Operators in Training because of the practical difficulties noted above of getting sufficient experience to qualify for, and take, the course within 12-15 months commencement of employment;**

- **delete the paragraphs of the amendments referring to "Chief Operator" and "Direct Responsible Charge".**

COMMENTS

1. When Sparwood's ultraviolet disinfection plant is constructed, the Panel expects that this waste permit will be again amended. The Panel heard evidence that BCWWOCPS basic courses do cover basic aspects about sewage transport and

treatment systems relevant to all treatment plants but it does not have any courses regarding operating ultraviolet treatments of wastewater. Sparwood's ultraviolet waste treatment will involve no chlorination.

Meaningless legal requirements tend to bring the administration of justice into disrepute, and that should be avoided. Thus the Panel would recommend that when these future amendments occur, the Regional Waste Manager review the Operator Certification requirements to determine which are still meaningful for an ultraviolet disinfection system.

2. The Panel did not find the terms Direct Responsible Charge and Chief Operator to be void for vagueness but shared the concerns of the Appellant that it did not give any indication as to how decisions were to be reached in situations of emergency and labour relations, strife, etc. The Evidence established that the Respondent amended about 24 other waste permits using similar terms and wording as was contested in this case. Although these were not appealed, the Panel has concerns about the need to use wording which sets clear boundaries and indicators for decisions in future amendments.

In this case, neither witnesses for the Appellant nor for the Respondent could give a clear indication of either DRC or how a decision was to be reached in situations of emergency or labour relations strife. It also seemed that neither party had communicated its specific concerns to the other.

For these reasons, the Panel suggests it may be sensible for them to meet and map-out a contingency plan of action.

In drafting future permit wording and amendments, the Board would like to see a better balance between precision and flexibility and notes the guidelines and general concepts cited by the Supreme Court of Canada in the Appellant's case Regina v. Nova Scotia Pharmacy [1992] 2 S.C.R. 606 and S.C. J. No. 67.

> "Legal provisions by stating certain propositions outline permissible and impermissible areas … By setting out the boundaries of permissible and non-permissible conduct, these norm give rise to legal debate."

And at page 37, the court notes how to balance between precision and flexibility:

> "The modern state intervenes today in fields where some generality in the *enactments* is inevitable. The substance of these enactments remain nonetheless intelligible. What becomes more problematic is not so much general terms conferring broad discretion, *but terms failing to give direction as to how to exercise this discretion … an impermissible vague law will not provide sufficient basis for legal debate; it will not give a sufficient indication as to how decisions must be reached, such as factors to be considered or determinative elements.*

> Finally I also wish to point the standard I have outlined applies to all enactments, irrespective on whether they are civil, criminal, administrative or other." [emphasis added]

3. The Panel applauds the Respondent for sending draft amendments to Sparwood before they were made. However, again, the Panel notes that this hearing seemed to be the first exchange of the practical and decision-making concerns raised by the amendments.

Judith C. Lee, Chair Environmental Appeal Board

March 15, 1995