



---

## APPEAL NO. 98 WAS-22(b)

IN THE MATTER OF AN APPEAL UNDER SECTION 44  
OF THE WASTE MANAGEMENT ACT, R.S.B.C. 1996, c.482

<b>BETWEEN:</b>	DELBERT SECORD	<b>APPELLANT</b>
<b>AND:</b>	DEPUTY DIRECTOR OF WASTE MANAGEMENT	<b>RESPONDENT</b>
<b>AND:</b>	NORANDA MINING & EXPLORATION INC.	<b>THIRD PARTY</b>

### CONSENT ORDER

#### WHEREAS:

- A. On July 15, 1997, the Assistant Regional Waste Manager, Peter Jarman, of the British Columbia Ministry of Environment, issued an amendment to Waste Permit PE-00263 to authorize the discharge of effluent to MacDonald Creek, a tributary to Trepanier Creek, from a former minesite located near Peachland, British Columbia.
- B. On July 28, 1998, the Deputy Director of Waste Management, H.J. Vogt, (the "Respondent") confirmed the decision of the Assistant Regional Waste Manager, subject to certain changes. (The amendment to Waste Permit PE-00263, as worded following the decision of the Respondent, is referred to herein as the "Permit").
- C. On August 28, 1998, various individuals, who are represented by the Sierra Legal Defence Fund, and whose activities are co-ordinating through the Appellant Delbert Secord, (the "Appellant") appealed the Respondent's decision to the Environmental Appeal Board (the "Appeal"). The position taken by the Appellant in the Appeal was that the Permit required amendment, as it did not adequately protect human health and the environment. The Appellant also applied for a stay of the Respondent's decision pending a decision by the Environmental Appeal Board on the merits of the appeal.
- D. On November 19, 1998, the Environmental Appeal Board denied the application for the stay, subject to a specified condition, following which the parties commenced discussions relating to the hearing, and the possible settlement of, the Appeal.
- E. During the course of those discussions, the Appellant proposed amendments to the Permit to the Respondent and to the Third Party, and advised that the Appellant would be prepared to conclude this matter by way of a written Consent Order if those amendments were made to the Permit.

F. The Third Party responded that it agreed with the decision of the Respondent to the effect that the Permit was fully protective of human health and of the environment, but that in the interests of enhancing an atmosphere of co-operation and trust, as evidenced by the ending of the Appeal, it would agree to the proposed amendments.

G. The Respondent has further advised that if the amendments proposed by the Appellant were acceptable to the Third Party, the Respondent would be prepared to agree to the amendment of the Permit accordingly, notwithstanding that it does not consider the amendments to be necessary for the protection of human health and the protection of the environment.

H. The Third Party has agreed with the Appellant that the Third Party will conduct a wild ruminant study further to the following terms of reference:

- a wildlife biologist, with appropriate assistance, will undertake direct observations of mule deer on the mine site and within 2 kilometres of it. In addition, "trailmaster" units will be set up to monitor the number of movements and to capture photographs of animals;
- the direct observations of mule deer will include frequency and period of attendance, size, form, mobility, species, sex and age;
- in addition, observations will be made of browsed vegetation (to provide indicators of diet intake), and the nature and number of pellets;
- the observations will continue from June 14, 1999 through to snow cover; and
- at the end of the observation period, a study report will be written. The report will be copied to the Ministry of Energy and Mines and to the Ministry of Environment for their joint review, in consultation with the Third Party.

The purpose of the study is to provide further information relevant to wild ruminant use at the site. It is understood that the question of whether further information and analysis is required beyond the study, and, if so, what that further information and analysis would be, will be determined by the Third Party, or by those Ministries within the context of their statutory jurisdiction.

I. The Third Party has also confirmed to the Appellant that it presently intends to construct a spillway on the tailings dam at the mine site, and that the projected completion date for that spillway is October 1999.

J. The Appellant, the Respondent, and the Third Party propose and agree to conclude this Appeal by way of a written Consent Order of the Environmental Appeal Board, on the terms set out herein.

Further to the request of the Appellant, the Respondent and the Third Party, the Environmental Appeal Board has agreed to conclude the Appeal by making the following Orders, by consent of the parties:

1. Section 2.1 of the Permit is amended as follows:

(a) by deleting the text under the heading "**Molybdenum**", and by replacing it with the following:

"Maximum Monthly Concentration: less than or equal to 0.03 mg/L

In any single sample,

from June 1 to September 30: less than or equal to 0.03 mg/L

from October 1 to May 31: less than or equal to 0.06 mg/L"

(b) by deleting the text under the heading "**Definition of Terms Used Within Section 2.1**" except for the following:

"Monthly Concentration" means the arithmetic mean of concentration values within a calendar month, including background levels."

2. Section 1.1.1 of the Permit is amended as follows:

(a) by increasing the maximum authorized rate of discharge to 6,000,000 cubic meters per year; and

(b) by deleting the words, "average rate of discharge is", and by replacing them with the words "anticipated average rate of discharge is approximately".

3. The decision of the Respondent in respect of the Permit is otherwise upheld.

Dated at Victoria, British Columbia this 1st day September, 1999.

Toby Vigod, Chair  
Environmental Appeal Board

**APPROVED AND CONSENTED TO:**

Tim Howard, Counsel for the Appellant

Dennis Doyle, Counsel for the Respondent

Peter Kenward, Counsel for the Third Party