

ALBERTA ENVIRONMENTAL APPEALS BOARD

Report and Recommendations

Date of Hearing – December 17 and 18, 2008

Date of Report and Recommendations – January 19, 2009

IN THE MATTER OF sections 91, 92, 94 and 95 of the
Environmental Protection and Enhancement Act, R.S.A. 2000, c.
E-12;

-and-

IN THE MATTER OF an appeal filed by Lee and Marilyn
Fenske with respect to *Environmental Protection and
Enhancement Act* Approval No. 20754-01-00 issued to Beaver
Regional Waste Management Services Commission by the
Director, Central Region, Environmental Management, Alberta
Environment.

Cite as: *Fenske v. Director, Central Region, Environmental Management, Alberta
Environment re: Beaver Regional Waste Management Services Commission* (19
January 2009), Appeal No. 07-128-R (A.E.A.B.).

BEFORE:

Dr. Alan J. Kennedy, Panel Chair,
Dr. Steve E. Hrudey, Board Chair, and
Dr. M. Anne Naeth, Board Member.

BOARD STAFF:

Mr. Gilbert Van Nes, General Counsel and
Settlement Officer; Ms. Denise Black, Board
Secretary; and Ms. Marian Fluker, Associate
Counsel.

APPEARANCES:

Appellants: Mr. Lee and Ms. Marilynn Fenske, represented
by Ms. Karin Buss and Ms. Eva Chipiuk,
Ackroyd LLP.

Director: Mr. Neil Hollands, Director, Central Region,
Environmental Management, Alberta
Environment, represented by Ms. Alison Peel,
Alberta Justice.

Approval Holder: Beaver Regional Waste Management Services
Commission, represented by Ms. Cherisse
Killick-Dzenick, Reynolds Mirth Richards &
Farmer LLP.

WITNESSES:

Appellants: Mr. Lee and Ms. Marilynn Fenske; and Dr.
John H. Dennis.

Director: Mr. Neil Hollands, Director, Central Region,
Environmental Management, Alberta
Environment, and Mr. Gene Leskiw,
Contaminant Hydrogeologist, Central Region,
Alberta Environment.

Approval Holder: Mr. Francis Hugo, Entara Consulting Services
Ltd.; Mr. Charles Moell, C.E. Moell &
Associates Ltd.; and Mr. J. Paul Ruffell, EBA
Engineering Consultants Ltd.

EXECUTIVE SUMMARY

Alberta Environment issued an Approval to the Beaver Regional Waste Management Services Commission (BRWMSC) authorizing the construction, operation, and reclamation of the Beaver Regional Class II landfill near Ryley, Alberta, where more than 10,000 tonnes per year of waste is disposed. The Approval is a renewal of an approval issued in 1998.

The Environmental Appeals Board (Board) received a Notice of Appeal from Mr. Lee and Ms. Marilynn Fenske, adjacent landowners to the landfill. The Board determined the issues to be heard for this appeal were:

1. the appropriateness and adequacy of the conditions in the Approval with respect to the abandoned wells
 - a. that have been identified, and
 - b. that have not been identified, which may yet be encountered during constructionin the area where the expansion of the landfill is approved;
2. the effects of the expansion of the landfill on the surface water regime in the area, including but not limited to Bible Creek;
3. the appropriateness and adequacy of the conditions of the Approval with respect to the development and operation of special cells; and
4. the operation of the landfill as it relates to litter, odour, noise, operating hours, and aesthetics.

The hearing was held on December 17 and 18, 2008.

The Board recommends that the Approval be confirmed with the following amendments:

1. The BRWMSC is required to develop a written protocol, to be reviewed and approved by Alberta Environment, as to how it will identify and properly reclaim any wells, piezometers, or bore holes that it encounters during construction of cells at the landfill.
2. The BRWMSC is required to develop additional information, to be available to the public, which clearly explains the water management system at the landfill and assists in clearly identifying what features are part of the off-site water diversion, the run-on water system, and the on-site run-off water system.
3. The BRWMSC is required to notify Alberta Environment and the Fenskes when discharging water from its water storage ponds in the event that there could be a negative impact on the Fenskes.

4. The BRWMSC will be required to notify Alberta Environment any time it makes an application for an authorization required by another piece of legislation (provincial, federal or municipal) to receive wastes that will require construction of a special waste cell and Alberta Environment will be authorized to extend the 14-day notice requirement for construction of a new waste cell, as appropriate.

The Board determined that it had no basis from the evidence provided to make any recommendations regarding litter, odour, noise, operating hours, or aesthetics. The Board noted that the Fenskes had chosen not to file complaints with the BRWMSC or Alberta Environment about their concerns over litter, odour, or noise.

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I. INTRODUCTION

[1] This is the Environmental Appeals Board's (the "Board") Report and Recommendations to the Minister of Environment (the "Minister") about an appeal filed by Mr. Lee and Ms. Marilyn Fenske (the "Appellants") regarding the Beaver Regional Class II landfill (the "Landfill") located near Ryley, Alberta.¹ Mr. and Ms. Fenske own property adjacent to the Landfill where they live and run a farming operation.

[2] The appeal is of an approval (the "Approval") issued to the Beaver Regional Waste Management Services Commission (the "Approval Holder" or the "BRWMSC") by Alberta Environment (the "Director").² This Report and Recommendations is being presented for the Minister's consideration following a hearing of the appeal held on December 17 and 18, 2008 (the "Hearing"). At the core of this appeal is the difficult issue of balancing the needs of society with the impacts on individual citizens; society needs landfills to deal with its waste, but no one wants to live beside a landfill. In balancing these needs it is a regrettable fact that it is not possible to completely mitigate all of the impacts from any development, including a landfill, and therefore it is inevitable that in cases such as this there will be some impacts on the individuals.

[3] The Fenskens have lived on and farmed their land since before the Landfill was established in 1989. The Landfill was originally identified as a municipal landfill serving the Town of Ryley's population of approximately 500 people. The Fenskens indicated that, at the time, they accepted the need for the municipal landfill and were prepared to accept living beside it. However in 1992, the BRWMSC, comprised of Beaver County, the Town of Tofield, the Village of Ryley, the Village of Holden, and the Town of Viking, was established and took over the Landfill to serve a large regional area. Since that time, the Landfill has continued to expand in size, and it has also expanded in the number of customers that it serves and in the type of waste that it accepts. It is the expansion in size and scope – going from a local municipal landfill to a regional landfill - that began to raise concerns with the Fenskens.

[4] In 1998, the regulation of landfills was transferred to Alberta Environment under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 ("EPEA"). Shortly after this, an EPEA approval (the "1998 Approval") was issued to replace the *Public Health Act*,

R.S.A. 2000, c. P-37 authorization and further expanding the size of the Landfill. By this time, the Landfill had clearly become a large regional landfill.

[5] The Fenskes exercised their rights as directly affected citizens under EPEA and appealed the 1998 Approval.³ The issues raised by the Fenskes in the appeal of the 1998 Approval included: litter and waste spillage, noise, odour, surface water and groundwater quality, health and quality of life, and a buffer zone. While this appeal resulted in a number of changes to the 1998 Approval, the operation and development of the Landfill, along with the expansion, was allowed to proceed.

[6] The Approval under appeal here is the first renewal of the 1998 Approval. While the fundamental operations of the Landfill are relatively unchanged, as noted in the renewal application filed by the BRWMSC, a number of “significant changes and/or enhancements” were included in the renewal.⁴ The changes or enhancements include: an expanded footprint; elimination of certain restrictions regarding the acceptance of soil containing hydrocarbons; changes to the requirements and frequency for the placement of cover; changes to certain surface water discharge requirements; changes to the capping and reclamation requirement; changes to the prescribed maximum depth of landfill cells; removal of the prescribed maximum height of the Landfill; and provisions for the development of special cells. Most significantly, from the perspective of the Fenskes, these changes allow the Landfill to move from being a large regional landfill to being one of the largest landfills in North America, accepting wastes from beyond the boundaries of Beaver County.

[7] Following a review of the renewal application filed by the BRWMSC, the Director issued the renewal Approval on September 1, 2007, and on October 4, 2007, the Fenskes again exercised their rights under EPEA, filing an appeal of the Director’s decision to issue the Approval. In that this was a renewal Approval, a preliminary question arose as to what issues the Appellants would be allowed to appeal. The basis of this question was that the Appellants had previously filed an appeal relating to the Landfill and the Board had previously reviewed and made a Report and Recommendations regarding the Landfill. The legal principle of “issue estoppel” suggests that it is not appropriate for the Board to rehear the same issues, from the same parties, on the same subject matter, and therefore the only issues that the Appellants

should be allowed to appeal are things that have changed. The Approval Holder also raised a concern that a number of issues raised in the Appellants' appeal were land use planning issues and outside the Board's jurisdiction.

[8] The Board, therefore, established a submission process to determine if the Board had the jurisdiction to hear the appeal and, if so, what issues would be heard at the hearing. Specifically, the Board asked the Director, the Fenskes, and BRWMS (the "Parties") to provide written submissions on the following matters:

1. Issue Estoppel: Whether the issues contained in the Notice of Appeal have been adequately dealt with in the Board's previous decisions?
2. Jurisdiction: Whether there are grounds for appeal that are not within the Director's or the Board's jurisdiction, and therefore, should not be part of the appeal?
3. Whether there are land use issues that are within the jurisdiction of the County, and not within the jurisdiction of the Board?
4. What are the issues to be dealt with at a hearing, should one be held?

[9] The Board received and reviewed the written submissions of the Parties, and then notified the Parties that it required additional information regarding the issues to be heard at the hearing, should one be held, and therefore would convene an oral preliminary motions hearing. The Board explained it understood the arguments with respect to issue estoppel and jurisdiction, and it only wanted additional submissions on what issues should be heard if the appeal proceeded to a hearing.

[10] Following the preliminary motions hearing, the Board notified the Parties that the issues to be heard at the hearing were:

1. the appropriateness and adequacy of the conditions in the Approval with respect to the abandoned wells
 - a. that have been identified, and
 - b. that have not been identified, which may yet be encountered during constructionin the area where the expansion of the Landfill is approved;
2. the effects of the expansion of the Landfill on the surface water regime in the area, including but not limited to Bible Creek;

3. the appropriateness and adequacy of the conditions of the Approval with respect to the development and operation of special cells; and
4. the operation of the Landfill as it relates to litter, odour, noise, operating hours, and aesthetics.

In consultation with the Parties, the Board set the date for the Hearing as December 17 and 18, 2008.

[11] In preparation for the Hearing, the Board received written submissions from the Approval Holder and the Director on November 7, 2008. However, the Appellants notified the Board on that date that they were unable to provide their submission because of an error in diarizing the submission due date and because their expert would be unable to provide his report until November 20, 2008. In response, the Director suggested the Hearing be postponed and the Approval Holder argued the appeal should be dismissed. The Appellants responded to the Director's and Approval Holder's comments and the Board also received additional comments from the Director and the Approval Holder.

[12] On November 12, 2008, the Board notified the Parties that the Hearing would proceed as scheduled on December 17 and 18, 2008, and the submission deadlines would be modified to give the Appellants until November 19, 2008, to provide their submissions and response submissions from all of the Parties were due on December 10, 2008.

[13] The Board subsequently received the Appellants' submission on November 19, 2008, and the response submissions from all of the Parties in accordance with the schedule. The Hearing proceeded as scheduled on December 17 and 18, 2008.

II. Submissions

A. Appellants' Submission

[14] The Appellants explained the original Permit to Operate (W1075) was issued by the Vegreville Health Unit under the *Public Health Act* in 1989, and the Landfill was characterized as the village landfill for Ryley, with a population of approximately 500 people. The Appellants stated the BRWMSC was incorporated in 1992, and its membership included Beaver County, the Town of Tofield, the Village of Ryley, the Village of Holden, and the Town of Viking. The Appellants explained the operating permit was amended in 1994 to increase the

capacity of the Landfill, but the development and operation was restricted to only one stage. The Appellants explained Alberta Environment issued an approval in 1998, extending the provisions of the operating permit to include land filling the remainder of NE 10-50-17-W4M and authorized the NW and SE 10-50-17 W4M for ancillary purposes. The Appellants stated the Approval Holder applied for a renewal of its approval in 2005, and the Approval Holder requested numerous changes, including: that the Approval be uniformly consistent with the provisions of the Draft Standards for Landfills in Alberta, without disparity with approvals for other landfills; that an expanded footprint be approved for land filling to include all of NE 10-50-17 W4M and SE 10-50-17 W4M, with ancillary purposes in the NW 10-50-17 W4M; the requirements and frequency for placement of cover be sufficient to control nuisances, provided the waste is covered within 24 hours; the maximum cell depth be based on underlying geological formations and soil requirements for operations and closure rather than a fixed maximum depth; the maximum height of the Landfill be referenced to side slopes and geometry rather than to a fixed height, to accommodate the larger footprint and final landform; and that there be provisions for the development of dedicated landfill cells for special wastes or to accommodate special needs such as the bulk disposal of animal carcasses or animal parts. The Appellants stated the height of the Landfill is equivalent to a ten-story building and presently takes in about 200,000 tonnes of garbage per year.

[15] The Appellants noted that there has never been an environmental impact assessment of the Landfill.

[16] The Appellants explained their home is one of the closest residences to the Landfill and is directly “kitty-corner” to the active Landfill. The Appellants stated their residence is located within half a kilometer of the active Landfill. They stated the water sources on their property include two water wells that are approximately 200 feet deep, two main dugouts (one is for domestic water uses), and four other dugouts.

[17] The Appellants stated they are concerned that not all the abandoned wells on E 10-50-17 W4M and NW 10-50-17 W4M have been identified and properly reclaimed, and the proposed operations will leak into and affect the Appellants’ water sources, particularly the water wells and the deep dugouts.

[18] The Appellants expressed concern that the watershed downstream of the Landfill will be affected as a result of the run-off from the Landfill. The Appellants explained that in spring 1995, water was diverted off the Landfill from a dugout located in the area now occupied by the northeast detention pond into a roadside ditch that carried the water to the Appellants' domestic dugout.

[19] The Appellants stated they are concerned with the infestation of sea gulls at the domestic dugout. The Appellants explained the sea gulls are attracted to their dugout because it is aerated.

[20] The Appellants explained they are concerned with the Approval Holder's practice of clearing snow so that melt water drains into the ditch and ultimately into the Appellants' dugout. The Appellants expressed concerns with the Approval Holder's practice of watering trees on the Landfill and the consequences of the surface run-off from the Landfill. They are concerned with the Approval Holder using water trucks and sprinklers to move water on the Landfill.

[21] The Appellants noted that between the border of NE and NW 10-50-17 W4M, the Approval Holder used an interceptor trench, and the Appellants are concerned about where the water from this trench is flowing.

[22] The Appellants explained that, as a result of the Landfill, they no longer drink water from the water sources on their property and are required to purchase bottled water for personal consumption. The Appellants stated they have never been compensated for the purchase of bottled water.

[23] The Appellants explained they are concerned the conditions in the Approval fail to consider and prevent the environmental outcomes on the water shed downstream of the Landfill, particularly the Appellants' water sources, as a result of the water run-off from the Landfill. The Appellants argued the conditions in the 1998 Approval were inadequate to prevent surface water run-off and the requirements for surface water management have not been improved in the Approval.

[24] The Appellants are concerned about the lack of information regarding the development of special waste cells, including the entombment of BSE carcasses and the potential impact of these cells on the Appellants' cattle operations and water sources. The Appellants stated they are concerned about the lack of conditions, lack of an assessment of the potential impacts of these cells, and the lack of a public consultation process for the development of special waste cells. They also questioned the need for the special waste cells.

[25] The Appellants submitted that the impacts created by the project as they relate to noise, litter, odour, dust, operating hours, and aesthetics were not properly identified and controlled by the conditions in the Approval. The Appellants stated that mitigation measures used to date have been inadequate.

[26] The Appellants explained they have found litter on their property, and they are concerned their cattle will eat the litter, which could ultimately be fatal if ingested. The Appellants stated the litter has frequently interrupted their farming activities because they have had to stop their farming equipment to pick up litter on their property.

[27] The Appellants stated they have been awakened in the middle of the night to the noxious smell of the Landfill. Ms. Fenske noted that her breathing has changed in response to the odour. The Appellants questioned what chemical substances they are inhaling considering the odour of hydrocarbons and other foul smelling substances which they breathe.

[28] The Appellants stated they no longer open their living room blinds because the view looks directly at the Landfill. The Appellants are concerned the Landfill operations will surround them and block the view of more of the surrounding landscape.

[29] The Appellants explained that they used to enjoy quiet rural living, but the enjoyment of their farm life has been eroded by the noises emitted from the Landfill, such as the noise of back-up beepers and heavy equipment, and semi-trucks unloading and travelling in and out of the Landfill. The Appellants expressed concern that the increased size of the Landfill and the importation of waste on a 24-hour basis will increase the activity at the Landfill and will correspondingly increase the noise level.

[30] The Appellants argued the relationship between human health and the environment is confirmed in section 11 of EPEA.⁵ The Appellants' expert, Dr. John Dennis, prepared a report on the potential and actual health effects on the Appellants caused by the Landfill. Dr. Dennis stated that it "...would be prudent to assume there is a health impact until exposure information integrated within a competent risk assessment demonstrates otherwise."⁶

[31] Dr. Dennis reached this conclusion based on a telephone interview with Ms. Fenske, a visit to the Fenske residence and an on-site interview with Ms. Fenske, a drive on the public roads around the Landfill, and a brief review of the scientific literature concerning health impacts from landfills. Dr. Dennis noted that the scientific literature was inconclusive about health effects on residents neighbouring landfills, in large part because of the absence in the studies done of any assessment of actual exposure to contaminants from landfill operations. He noted that no contaminant exposure assessment has been done in this case concerning the Fenskes.

[32] Dr. Dennis found that living next to the Landfill has resulted in increased stress to the Appellants, which would be expected to impact the Appellants' health. Dr. Dennis stated the stress is compounded by the "...unconstructive attitude of landfill management which is reportedly characterized as dismissive, aggressive and confrontational."⁷

[33] The Appellants stated the Approval Holder's behaviour has been particularly harsh and punitive which has caused increased stress to the Appellants. The Appellants explained the Approval Holder has not been forthcoming with information and charged large fees for requests for additional information.

[34] The Appellants argued the failure of the Director to effectively impose conditions in the Approval to mitigate litter, odour, noise, dust, operating hours, and visual pollution was unreasonable and violates EPEA and the common law. The Appellants stated the common law protects the use and enjoyment of property through the tort of nuisance. The Appellants stated it is unlawful for anyone to unreasonably or substantially interfere with a person's use of their property, and anything which causes substantial discomfort to the occupier of lands is an unlawful nuisance.

[35] The Appellants argued their human rights may be violated, because the constant, increasing threats to their well-being and health as a result of the Landfill violates section 7 of the Charter of Rights. The Appellants argued their security of the person is eroded by the fear of pollution they are exposed to in the water and air, and this uncertainty and fear of the unknown is a constant threat to their health and security of the person. The Appellants argued the Director's failure to properly regulate the Landfill violates the Appellants' constitutional right to enjoy their property.

[36] The Appellants submitted their common law right to use and enjoy their property without interference has been contravened by the Director not properly regulating the Landfill, including failing to ensure off-site nuisances are mitigated and the health effects on nearby residents are assessed and mitigated.

[37] The Appellants argued the Approval Holder receives the benefits of the Landfill, but the Appellants receive no benefits and all of the burdens.

[38] The Appellants submitted that comprehensive mitigative measures should be imposed in the Approval. The Appellants stated this should include an assessment of the noise, odours, litter, sea gull infestation, surface water, air, and health effects of the Landfill and an assessment of the best available technology and practices to avoid or minimize effects. The Appellants recommended the Approval Holder conduct noise, air, and water quality monitoring on the Appellants' property and a holistic health assessment.

[39] The Appellants stated the Board can reverse the Director's decision until there are no outstanding technical, environmental, or health concerns. In the alternative, the Appellants requested the Board vary the Approval and attach the following conditions:

- “(a) A Human Health Risk Assessment is undertaken to obtain information on landfill emissions to air and water and to measure the acute and chronic exposure of chemicals of concern which could impact human health. This will include measuring and modelling off site emissions including noise and odour...;
- (b) The wider impacts of health to the Fenske's (such as stress) be mitigated through an effective consultation and communication program with landfill management (potentially involving facilitated meetings)...;

- (c) All abandoned [w]ells be identified and reclaimed on SE 10, NE 10, and NW 10 prior to any further construction;
- (d) All water sources on the Fenske property be tested annually;
- (e) A new surface water containment regime is designed and implemented to ensure that there is no surface water run-off of SE 10, NE 10, and NW 10;
- (f) That special cells be explicitly removed from the scope of the Approval until the Commission completes an assessment of the special cells and provides detailed information including, but not limited to, the design of the special cells and the contents of the special cells, and until a public consultation process is completed;
- (g) Air quality on the Fenske property be monitored to assess what emissions (such as [particulate] matter and VOC's) are being received on the Fenske property;
- (h) A day-time and night-time noise assessment be completed on the SW corner of the Fenske property;
- (i) The operator be required to follow the noise restrictions as described in Section 2.1 of the ERCB Directive 038 in order to mitigate the noise pollution experienced by the Fenske's...;
- (j) A term be imposed limiting the operating hours of the landfill from 7:00 am to 6:00 pm;
- (k) The construction of a significant berm with trees planted on the berm (designed such that it does not obstruct road safety) on the NE corner of the landfill to mitigate the release of litter off of SE 10, NE 10, and NW 10 and to mitigate the visual, olfactory and noise pollution experienced by the Fenske's. A berm on the corner of NE 10 will also mitigate the release of run-off surface water from the active portion of the landfill;
- (l) A chain link fence constructed on top of a berm on the corner [of] NE 10 to ensure that the litter remains on SE 10, NE 10, and NW 10; and
- (m) Extend the CU waterline (less than [2] miles south of the Fenske's) to the Fenske's property. This will supply the Fenske's with a clean source of domestic water. (*Sic.*)”⁸

B. Approval Holder

[40] The Approval Holder stated that the Approval should be consistent with the provisions of the new draft Standards for Landfills in Alberta.

[41] The Approval Holder stated the only area of the Landfill to which the issue of abandoned wells relates is the expansion area, including the entire SE 10-50-17-W4M and the north end of NE 10-50-17-W4M.

[42] The Approval Holder explained a report was prepared by C.E. Moell (the “Moell Report”) in response to the August 26, 2006 Ministerial Order 13/2006, and the Director accepted the report.

[43] The Approval Holder stated that prior to the construction of the stage 4 cell in 2007, all identified monitoring wells within the excavation were properly abandoned or completely excavated to a depth below the bottom of the well. The Approval Holder stated a special certificate was prepared and signed to confirm the procedure that was followed and identify the wells that were removed.

[44] The Approval Holder explained that during construction, the ground surface was inspected as the scrapers removed the soil looking for any indication of the remains of former monitoring wells. The Approval Holder stated this process was followed as a matter of due diligence. The Approval Holder stated no unidentified wells that extended below the base of the cell were found in either the Stage 1 cell extension in 2004 or the Stage 4 cell construction in 2007. The Approval Holder explained this same process will be followed in excavation and development of the remaining portion of the Stage 4 cell.

[45] The Approval Holder stated that no known wells were drilled on the SE-10-50-17-W4M other than those drilled and referenced by C.E. Moell in the August 2004 report that was submitted as part of the application. The Approval Holder explained all wells found will be properly abandoned in advance of cell development. The Approval Holder indicated the statement on abandonment was made in C.E. Moell’s February 28, 2005 report, and the Approval Holder treats this as a condition of the Approval because the report formed part of the application. The Approval Holder confirmed “This abandonment procedure has been followed on previous cell development and will continue to be followed on future cell development and reported to the Director.”⁹

[46] The Approval Holder stated the issue of the abandoned wells, including the background and well inventory, was addressed in the Moell Report in response to the Ministerial Order. The Approval Holder argued the information in the Moell Report coupled with the procedure for abandoning wells satisfies any concerns about any unidentified well that may be identified during expansion. The Approval Holder stated the application and the conditions in the Approval adequately and appropriately address the identification of abandoned wells.

[47] The Approval Holder stated it is difficult to address the effects on the relocation of the seasonal tributary to Bible Creek because, at this time, it is premature.

[48] The Approval Holder explained the application provides the details of the stormwater detention and controlled release process that will be followed to ensure there is no increase in the rate of flow in the tributary or in Bible Creek resulting from the Landfill development. The Approval Holder stated there will likely be a reduction in the rate of flow because a controlled discharge is only done on an occasional basis compared to regular surface run-off from the site prior to development. The Approval Holder stated the 2007 controlled release was the first discharge from any on-site detention ponds since the west pond was constructed in 1998. The Approval Holder explained that approximately eight million gallons of water were released, and there was no evidence of any flow in the tributary to Bible Creek beyond approximately one and a half miles east from the point of release. The Approval Holder stated the water from the controlled release remained on its property.

[49] The Approval Holder stated the application provides details of the stormwater volume analysis that was undertaken, and it describes the controlled release process that will be followed. The Approval Holder stated the receiving water course, including Bible Creek, was considered when the stormwater plan was established. The Approval Holder stated various sections of the application deal with quantity and quality surface water issues and were before the Director when he issued the Approval.

[50] The Approval Holder noted that licencing of any water diversion is regulated under the *Water Act*, R.S.A. 2000, c. W-3, and does not form part of the Approval, and a new application will be required when the Landfill expansion requires additional detention pond capacity. The Approval Holder explained the application will be done when construction can be

completed within 12 months, as required in the *Water Act*. Therefore, according to the Approval Holder this issue is premature at this time.

[51] The Approval Holder stated the stormwater detention pond in the NW-10-50-17-W4M, referred to as the kidney shaped pond, is licenced under the *Water Act* to divert off-site stormwater from north and west of the Landfill.

[52] The Approval Holder explained that from the designated discharge point from the Landfill at the south end of SE-10-50-17-W4M, there is approximately three miles of seasonal tributary and the Bible Creek channel before it reaches the Appellants' property. The Approval Holder explained the diversion cuts through the northeast corner of the Appellants' property. The Approval Holder stated most of the water flows through a poorly defined channel, consisting of a number of interconnected sloughs and broad flat land before reaching the channel of Bible Creek, and before it reaches the Appellants' property. The Approval Holder explained the water is dispersed throughout these areas rather than immediately running off. The Approval Holder stated the maximum rate of discharge is 1.4 cubic feet per second or approximately 525 imperial gallons per minute. The Approval Holder explained the water is essentially stored in the sloughs and dissipates through evaporation and infiltration into the ground with only a small portion, if any, getting into Bible Creek.

[53] The Approval Holder stated the water quality parameters in the application are more stringent than those set out in the legislation. The Approval Holder stated the parameters were based on the principle of approximating pre-development run-off quality. The Approval Holder stated the parameters are within surface water guidelines, and the parameters and allowable concentrations are based on indicator levels to determine any evidence of contamination.

[54] The Approval Holder stated that when the realignment of Bible Creek occurs, it will occur entirely on and within the Approval Holder's lands. The Approval Holder explained the diversion is required to accommodate the expanded cell construction so the expansion is not over any water channel. The Approval Holder stated the water flow will be redirected, but the flow will not be disrupted beyond the discharge point from the Approval Holder's lands. The

Approval Holder stressed that no discharge from the detention ponds will occur until the stormwater meets the required standards.

[55] The Approval Holder noted that the Approval requires the Approval Holder to operate and maintain certain infrastructure at the Landfill, including run-on and run-off control systems.

[56] The Approval Holder stated the effects of the expansion of the Landfill on surface water regimes in the area were fully addressed in the application, to the extent of the configuration of the Landfill at the time of the application.

[57] The Approval Holder explained the material that will be accepted in a special cell would be approved for a Class II landfill. The Approval Holder stated that any material placed in a special cell would be materials the Approval Holder would be authorized to accept, whether or not a special cell was created.

[58] The Approval Holder explained the purpose of the special cells is to exercise better control of the disposal of specific waste. The Approval Holder stated that prior to construction, details would be made available to the Director for review. The Approval Holder argued it is premature to discuss the details of the construction of the special cells because it will be done if and when any special cell construction proceeds.

[59] The Approval Holder argued the issues of aesthetics, noise, litter, and operating hours are primarily a land use and development issue within the jurisdiction of the municipal authority and are typically dealt with as part of the land use bylaw and development process.

[60] The Approval Holder stated the Board dealt with the issues of litter, noise, odour, berms and trees, and health issues in its 1998 decision, but the Minister did not accept the Board's recommendations around these issues.

[61] The Approval Holder argued these issues and the considerations relative to the operation of the expansion do not vary from the matters discussed and decided in 1998 and 2006. The Approval Holder stated that the Beaver County Development Authority considered noise, odour, litter, seagulls, decreased enjoyment of quality of life and health, screening berms, and

hours of operation. The Approval Holder stated the Beaver County Development Authority exercised its jurisdiction by choosing not to impose hours of operation.

[62] The Approval Holder Beaver County advised the Approval Holder that it would not enforce compliance regarding berms and trees due to issues with sight lines affecting safety on adjacent roads. The Approval Holder explained the height of cell 4 provides a screen as landfilling proceeds west and south of the cell, and the height of cell 4 also provides noise and visual relief. The Approval Holder explained there is no room to construct a berm between the east boundary of the NE-10-50-17-W4M and the water detention pond. The Approval Holder indicated a berm could not form an effective screen due to the height of the Landfill. The Approval Holder believed the issue of the berm to be a land use issue.

[63] The Approval Holder explained the application contains the Operations Plan that covers such issues as nuisance management, operating procedures, and surface water management. The Approval Holder stated that any changes that may be necessary to correct any operational problems will be reported to the Director. The Approval Holder stated the Operations Plan addresses access and hours of operation, nuisance avoidance, litter control, noise, on-site dust, trees for buffering, pest control, mosquito control, odour control, and bird control. Therefore, according to the Approval Holder, these issues are clearly addressed in the Operating Plan and have been previously raised by the Appellants and considered by the Board.

[64] The Approval Holder requested the Board dismiss the appeal and confirm the Approval.

C. Director

[65] The Director submitted the concern regarding the unknown status of a number of water wells is related solely to a concern for the protection of groundwater. The Director stated that he is satisfied the requirements in the Approval for cell design and construction, the groundwater monitoring program, and the legislated requirements for water well reclamation will provide more than ample protection for the groundwater underlying the Landfill.

[66] The Director was aware that approximately 132 water wells existed on the Landfill site, and according to the Moell Report, the status of 53 of these wells remains unknown.

[67] The Director submitted that if an abandoned well was not discovered during construction of the cell at the Landfill, there would be negligible risk to the groundwater because the liners constructed under and around the cells would provide the necessary barrier to prevent contact between the cell's contents and the groundwater. The Director stated the groundwater monitoring required under the Approval will detect any contact between the cells and the groundwater and will enable mitigation before migration off site. The Director explained the Approval Holder is required to implement a groundwater monitoring program as described in the application. The Director noted the contingency plan comprises three levels of action. The Director stated that the first level requires reconfirmation of the data from the existing monitoring well network, and should the impact be confirmed, the second level of action would involve palliative management of groundwater contamination. The Director stated that if the issue cannot be dealt with in the long term using the previously described steps, then further action would be taken, which could include a combination of compacted soil trenches, cut-off drains, grouting, permanent leachate or groundwater extraction wells, and soil/bentonite cut-off walls.

[68] The Director stated that, based on the Annual Groundwater Monitoring Program Summary Reports submitted under the Approval and previous approvals, there is no indication of any groundwater impacts, and the latest report concluded that the "...Landfill has imposed no measurable or discernible impact on groundwater quality within the underlying hydrostratigraphic intervals in which the monitoring system is completed."¹⁰

[69] The Director explained that under section 110 of EPEA, the Approval Holder is required to report the release of a substance into the groundwater, following which Alberta Environment would carry out an investigation.

[70] The Director stated that neither the application nor the Approval indicate how abandoned wells are to be properly reclaimed, but the requirements for proper reclamation of water wells are contained in the *Water (Ministerial) Regulation*, Alta. Reg. 205/1998. The

Director explained the regulation applies in all circumstances in which abandoned wells are discovered and, therefore, apply to the Approval Holder and any wells it may discover.

[71] The Director submitted that it would be redundant for the Approval to reiterate the statutory obligations, because the legislative requirements are expected to be followed whether or not an approval is issued.

[72] The Director stated that he is satisfied the requirements in the Approval for cell design and construction, the groundwater monitoring program, and the legislated requirements for water well reclamation taken together provide more than ample protection for the groundwater.

[73] The Director stated he was satisfied that any impact on the area's surface water that may occur from the Landfill expansion will be negligible and appropriately mitigated by the Approval Holder in accordance with the Approval and other applicable legislation.

[74] The Director explained that on-site surface water management is largely achieved through three ponds licenced under the *Water Act*. The Director submitted that none of the licences can be reviewed by the Board at the Hearing because they are authorized separate from the Approval under appeal. The Director noted these licences form part of the regulatory regime governing the Landfill.

[75] The Director submitted that the continuing development of the Landfill will require changes to the on-site surface water management systems, but the expansion of the Landfill will have a negligible effect on the surface watershed surrounding and downstream of the Landfill because potential effects will be mitigated.

[76] The Director stated the Approval requires the Approval Holder to manage run-on as described in the application. The Director explained this requires the Approval Holder to continue to use the existing kidney shaped pond and overflow ditch to the county road to prevent off-site flows from entering the Landfill site. The Director did not expect any changes to manage the off-site run-on with the expansion of the Landfill.

[77] The Director stated the Approval Holder is required to manage run-off as described in the application. The Director explained the application proposes a number of

changes to accommodate horizontal and vertical expansion of the Landfill. The Director noted the measures proposed included the continued utilization of the northeast and west detention ponds and the construction of a new detention pond, which will require a licence under the *Water Act*. The Director referred to the Approval Holder's application and noted the network of stormwater run-off control facilities will accommodate surface water run-off flows from all of the northeast quarter and the northern portion of the southeast quarter until it is no longer feasible to direct surface water to the south pond. The Director stated the Approval Holder will construct surface water drainage ditches to capture and direct water into one of the surface water detention ponds, and if necessary, diversion berms will be constructed to prevent off-site flows from draining onto the site. The Director explained he does not have jurisdiction to make a decision on these plans to construct new ponds, ditches, or berms until an application is submitted by the Approval Holder, and the Director will make his decision under the *Water Act*, not EPEA. The Director submitted it is premature to determine what the application would include.

[78] The Director stated it is not within his jurisdiction to make a determination about the Approval Holder's plans to redirect the seasonal tributary of Bible Creek at this time, because no application has been made and the decision would be made under the *Water Act*.

[79] The Director stated the Approval Holder recognized the expansion of the Landfill will have an effect on the discharge of run-off water from the site, and the Approval Holder took into account that the largest surface run-off volume for the site will occur when an area of the Landfill is no longer operational and has been capped but has not been fully reclaimed. The Director explained the Approval Holder used those circumstances as the design criteria for the sizing of the stormwater ponds and surface water ditches.

[80] The Director acknowledged that the Approval Holder was aware that the northeast pond will have to be increased with the expansion of the Landfill, but the west pond had adequate capacity to accommodate expected flows. The Director explained that the Approval Holder would have to make an application to expand the northeast pond, but no application has been made and is not before the Director or the Board at this time.

[81] The Director stated the Approval requires the Approval Holder to conduct monitoring prior to each planned release and during each unanticipated release from the run-off control system.

[82] The Director was satisfied that there would be a negligible effect on the surface water regime surrounding the Landfill as a result of the expansion.

[83] The Director submitted that the conditions in the Approval for development and operation of any cells, including special waste cells, are appropriate and adequate. The Director stated the Approval, and past approvals, do not have conditions related to special waste cells. The Director submitted that the facility is a Class II landfill and is permitted to accept any wastes other than hazardous wastes.

[84] The Director explained the Approval sets out the requirements for constructing any cell, whether special or not. The Director stated that it is only in the application that the Approval Holder indicated that, should conditions or economics require, it would consider constructing one or more cells dedicated to special wastes. According to the Director, the application states the special wastes may include animal carcasses or packing plant wastes, waste sulphur, asbestos, food processing wastes, and unspecified industrial wastes. The Director submitted that any special wastes accepted may only be Class II wastes.

[85] The Director stated the Approval requires that the design plan and specifications for any Class II cell at the Landfill shall include: a clay liner or composite liner for containment of the waste constituents; a leachate collection system capable of maintaining the maximum acceptable leachate head; a groundwater monitoring system; and run-on and run-off control systems for the active landfill area.

[86] The Director stated the design plans and specifications must be stamped and signed by a professional with the Association of Professional Engineers, Geologists and Geophysicists of Alberta. The Director explained the Landfill must be operated in accordance with the Operations Plan.

[87] The Director was satisfied the special waste cells will be designed so that any waste, whether special or not, will be wholly contained. The Director stated he is satisfied the

special wastes will be handled appropriately by the Approval Holder because of the conditions in the Approval and handling specifications set out in the Operations Plan. The Director explained that waste generators must obtain approval by the Approval Holder prior to disposal of special waste.

[88] The Director stated he was satisfied with the Approval Holder's commitment to appropriately line all cells constructed.

[89] The Director explained the Canadian Food Inspection Agency ("CFIA") requires all landfill operations that intend to receive specified risk material or carcasses from which the specified risk material has not been removed, to apply to the CFIA for a permit to receive and dispose of the specified risk material. The Director was of the opinion that the CFIA and the *Health of Animals Act*, S.C. 1990, c. 21, regulates landfills and their acceptance of specified risk material in a manner acceptable to the Director.

[90] The Director was satisfied the Approval Holder handles and reports on its special waste in accordance with the Approval and the Operations Plan. The Director referred to the Approval Holder's 2007 Annual Landfill Operation Report in which the Approval Holder stated it accepted waste requiring special handling (such as contaminated soil, abattoir wastes, asbestos, and other restricted nonhazardous wastes), the waste was handled and disposed of in accordance with the Operations Plan, and the Approval Holder was not currently accepting specified risk material.

[91] The Director noted the Approval Holder is required to provide 14 days notice to Alberta Environment prior to the construction of any waste cells. The Director explained that, should he find any part of the design plan or specifications to be deficient, he can issue an environmental protection order to potentially halt the construction of the waste cell or require changes be made to the design plan or specifications.

[92] The Director was satisfied the Operations Plan is appropriate and reasonable and mitigates environmental and other concerns related to litter, noise, and odour. The Director stated the Approval requires the Approval Holder to implement nuisance control procedures as set out

in the Operations Plan. The Director argued that aesthetics is not an issue for the Director to consider.

[93] The Director explained the Operations Plan requires windblown litter be picked up manually on and adjacent to the site within seven days. The Director noted the Operations Plan states that waste compaction on the tipping face will be done on an ongoing basis to reduce the potential for windblown litter. The Director noted the Approval Holder covers all waste with soil, an approved alternate cover material, or additional waste within 24 hours of placement of the waste, and an unattended waste surface will be considered adequately secured when it does not cause odour or litter nuisance.

[94] The Director was satisfied with the regulatory system for the operation of the Landfill for minimization of the impact of litter on the Appellants.

[95] The Director was satisfied the Operations Plan minimizes the impact of noise on the Appellants. The Director noted the Operations Plan requires that noise levels be kept to acceptable levels consistent with Occupational Health and Hygiene Standards for the workplace, but safety warning devices, such as back-up alarms, must not be compromised. The Operations Plan also requires mufflers be installed equivalent to those originally installed by the manufacturer and in accordance with Alberta Occupational Health and Safety Regulations. The Director stated the Operations Plan requires land filling to be done in a manner that works away from the residences, wherever practical, to allow the completed areas to act as a noise buffer.

[96] The Director noted the Operations Plan sets out ways in which odours will be minimized, including: immediate deposition of waste into the Landfill; immediate compaction of deposited waste on the working face; immediate covering of any unusually odoriferous wastes with soil or additional waste material; covering waste on the active working face with soil, an approved alternate covering, or additional waste to ensure no waste is exposed for more than 24 hours; and emptying convenience bins as soon as they are filled or at least weekly.

[97] The Director was satisfied that odours that may be produced are being minimized and controlled appropriately.

[98] The Director noted that, if the issue of litter, noise, or odour becomes a problem that cannot be resolved through voluntary means, the Director can issue an environmental protection order to require the necessary remedies.

[99] The Director argued that aesthetics as they relate to the operation of the Landfill are outside of the Director's jurisdiction and, therefore, are not within the jurisdiction of the Board. The Director stated he is not required to consider aesthetics when issuing operating approvals. The Director submitted that aesthetics are subjective and therefore are difficult to regulate consistently.

[100] The Director noted the parts of the Operations Plan that indicate the Approval Holder is aware of and considered the aesthetics, including: cells are filled from the outside, working inwards to provide visual screening of the operations from surrounding areas; a litter control strategy; dust suppression measures; and the establishment of a tree farm in NW 10-17-W4M.

[101] The Director noted that, as the development of cell 4 continues, the cell will provide some screening of the Landfill from the Appellants' property and sightline, reducing any perceived aesthetic impact.

[102] The Director stated he is satisfied the conditions in the Approval regarding monitoring of groundwater and the statutory requirements for reclamation of the abandoned wells adequately mitigate any concerns for groundwater protection. The Director was satisfied the conditions for construction and operation of special waste cells are appropriate to mitigate any environmental concerns such waste may raise. The Director stated the surface water program currently operated by the Approval Holder brings the impact of the expansion of the Landfill on the surface water regime surrounding the Landfill to a negligible level. The Director explained that as the expansion of the Landfill progresses, separate Water Act authorizations will be applied for and considered by the Director as they are received. The Director argued that attempting to predetermine content, completeness, and acceptability of these applications is speculative and outside the Director's jurisdiction.

[103] The Director stated he is satisfied with the Operations Plan regarding managing operating hours, litter control, noise minimization, and odour control.

D. Appellants' Rebuttal Submission

[104] In their rebuttal submission, the Appellants stated they are concerned that the Director and the Approval Holder are describing two different processes, abandoned and reclaimed, that are meant to be attached as conditions in the Approval for abandoned wells. The Appellants questioned whether the Director had a complete application before him when he issued the Approval given the inconsistency in the Approval Holder's and Director's descriptions of the conditions regarding the abandoned wells.

[105] The Appellants argued the reclamation of the test holes was a condition in the decision of the Vegreville Health Unit and the Approval Holder did not comply with that condition.

[106] The Appellants reiterated that they are concerned that all abandoned wells have not been identified or properly reclaimed and the Appellants' wells and dugouts will be affected. The Appellants requested the Board order as a condition to the Approval that:

- “(a) All abandoned wells on SE 10, NE 10, and NW 10 be identified and properly reclaimed (as described in the Water (Ministerial) Regulation) prior to any further construction; and
- (b) All water sources on the Fenske property are tested in the spring and the fall of each year.”¹¹

[107] The Appellants questioned the Approval Holder's assumption that the re-alignment of Bible Creek will occur entirely on the Approval Holder's lands. The Appellants referred to the statement made by the Approval Holder that the effects of the relocation of the tributary to Bible Creek were premature at this time.

[108] The Appellants questioned the Director's conclusion that any impact on the area's surface water resulting from the expansion of the Landfill would be negligible and appropriately mitigated by the Approval Holder when the Approval Holder stated it was premature to address the effects of the relocation of the seasonal tributary to Bible Creek and that this would be done strictly through the *Water Act*.

[109] The Appellants submitted that the surface water regime already impacts them and their water sources because of the diversion of the intermittent creek and surface water that would normally remain on the Landfill site now flows onto the Appellants' land.

[110] The Appellants stated they are concerned the conditions in the Approval fail to consider and prevent the environmental outcomes to the water shed downstream of the Landfill and to the Appellants' water sources as a result of surface run-off from the Landfill. The Appellants requested the Board attach the following conditions to the Approval:

- “(a) A new surface water containment regime is designed and implemented to ensure that there is no surface water run-off of SE 10, NE 10, and NW 10; and
- (b) Extension [of] the CU waterline (less than ... 2 miles south of the Fenske's) to the Fenske's property. This will supply the Fenske's with a clean source of domestic water.”¹²

[111] The Appellants questioned whether the Director's assessment that the requirements under the Approval for the construction of special cells had been met when the Approval Holder stated it is premature to discuss the details of the construction of the special cells.

[112] The Appellants requested the Board remove the development and operation of special cells from the scope of the Approval until the Approval Holder:

- “(a) Completes an assessment of the special cells and provides detailed information including, but not limited to, the design, construction and contents of the special cells; and
- (b) Completes a public consultation process.”¹³

[113] The Appellants noted the Beaver County Development Authority exercised its jurisdiction to impose operating hours, but the land use bylaw exempted a change in hours of operation.

[114] The Appellants submitted that under sections 2 and 68(2) of EPEA, the Director has the discretion to approve terms and conditions deemed appropriate in discharge of his mandate under EPEA. The Appellants stated they are negatively impacted by litter, noise, odour, dust, operating hours, and aesthetics and that current mitigation measures have been inadequate and improvements have not been made to control the effects. The Appellants stated the Approval

Holder has not voluntarily assessed or resolved the adverse effects in the application or the Approval, and the Director has the authority to attach appropriate mitigative measures to ameliorate the adverse effects.

[115] The Appellants questioned whether the Director discharged his mandate to promote the protection and wise use of the environment while recognizing the protection of the environment is essential to the integrity of human health, the need to integrate environmental protection in the earliest stages of development, the importance of preventing and mitigating the environmental impacts of development, listening to the advice of citizens with respect to decisions affecting the environment, and the importance of a comprehensive and responsive action when administering EPEA.

[116] The Appellants argued the Approval should include mitigative conditions that are consistent with section 2 of EPEA. The Appellants requested the following conditions should be attached to the Approval:

- “(a) A Human Health Risk Assessment is undertaken to obtain information on landfill emissions to air and water and to measure the acute and chronic exposure of chemicals of concern which could impact human health. This will include measuring and modelling off site emissions including noise and odour;
- (b) The wider impacts of health to the Fenske’s (such as stress) be mitigated through an effective consultation and communication program with landfill management (potentially involving facilitated meetings);
- (c) Air quality on the Fenske property be monitored to assess what emissions (such as [particulate] matter and VOC’s) are being received on the Fenske property;
- (d) A day-time and night-time noise assessment be completed on the SW corner of the Fenske property;
- (e) The operator be required to follow the noise restrictions as described in Section 2.1 of the [Energy Resources Conservation Board (“ERCB”)] Directive 038 in order to mitigate the noise pollution experienced by the Fenske’s;
- (f) A term be imposed limiting the operating hours of the landfill from 7:00 am to 6:00 pm;
- (g) The construction of a significant berm with trees planted on the berm (designed such that it does not obstruct road safety) on the NE corner of

the landfill to mitigate the release of litter off of SE 10, NE 10, and NW 10 and to mitigate the visual, olfactory and noise pollution experienced by the Fenske's. A berm on the corner of NE 10 will also mitigate the release of run-off surface water from the active portion of the landfill; and

- (h) A chain link fence constructed on top of a berm on the corner [of] NE 10 to ensure that the litter remains on SE 10, NE 10, and NW 10. (*Sic.*)”¹⁴

[117] The Appellants requested the Board reverse the Director's decision to renew the Approval until there are no outstanding technical, environmental, or health concerns. Alternatively, the Appellants requested the Board vary the Approval as suggested.

E. Approval Holder's Response Submission

[118] The Approval Holder argued the Appellants raised issues outside the scope of the four issues to be heard at the Hearing, including: business decisions, including finding customers of the Approval Holder that are made within the scope of the Approval; issues of third party business activities; environmental impact assessment; health issues and a human health risk assessment; and economic and social issues.

[119] The Approval Holder did not provide any additional comments regarding the abandoned wells.

[120] The Approval Holder referred to the photographs provided by the Appellants in their submission to discuss the surface water regime. The Approval Holder explained the kidney shaped pond serves as a buffer for the detention of off-site run-off water from the area to the northwest of the Landfill. The Approval Holder stated this is not run-off from the active part of the Landfill, and it is water approved for overflow into the road ditch along the north side of the Landfill.

[121] In reference to another photograph, the Approval Holder explained there is a setback strip that is an inactive area, and run-off is permitted to discharge naturally in the area.

[122] The Approval Holder explained there is a swale at the toe of the Landfill slope that intercepts run-off from the active Landfill slope and diverts it to the northeast detention pond. The Approval Holder stated the setback area is considered to be non-contact run-off, because it comes from an inactive area of the site and is permitted to run naturally to the surrounding area.

[123] The Approval Holder explained it is normal practice to clear the snow immediately prior to the spring snow melt to ensure the ditch will function correctly and to ensure the kidney shaped pond's water level will not exceed its limit and cause flooding to other neighbouring properties.

[124] The Approval Holder explained that it also normally cleans snow from a ditch which flows from the northeast corner of the Stage 1 cell to the south and then east to discharge into the northeast pond. The Approval Holder stated this ditch does not discharge into the county ditch along the north side of the Landfill.

[125] The Approval Holder explained it uses a water truck to haul leachate from the Stage 4 cell for re-circulation and for using water from the detention ponds to water haul roads for dust control purposes. The Approval Holder stated these are approved activities and identified in the Operations Plan in the application. The Approval Holder explained that irrigation is an acceptable use of stormwater and sprinklers are used for that purpose if required.

[126] The Approval Holder stated the Appellants seemed to raise an issue of a damage claim for the cost of bottled water. The Approval Holder argued decisions on the tort of nuisance and damage claims are outside the scope of the Hearing and the Board's jurisdiction.

[127] The Approval Holder did not provide any additional comments regarding the special cells.

[128] The Approval Holder argued that matters of a planning nature dealt with by a municipal authority are outside the Board's jurisdiction. The Approval Holder explained that in the current Beaver County Land Use Bylaw, a development permit is not required to change hours of operation of any permitted use development in the landfill and composting district for which a development permit has been issued. The Approval Holder stated the municipality exercised its discretion and removed any restrictions on operating hours. The Approval Holder stated the Beaver County passed a bylaw for controlling nuisance, so the municipality has the ability to monitor for nuisance.

[129] The Approval Holder noted the Appellants criticized the manner in which the Approval Holder has treated the Appellants. The Approval Holder argued this is outside the scope of the issues defined by the Board.

[130] The Approval Holder argued the Board does not have jurisdiction to make decisions on constitutional issues.

[131] The Approval Holder explained testing is carried out on water in the Appellants' southwest dugout and from the Appellants' sink. The Approval Holder argued that by the Appellants requesting the CU waterline be extended to the Appellants' property, the Appellants were essentially making a damage claim, which the Board has no jurisdiction to order. The Approval Holder stated the wells on the Appellants' property are not potable. The Approval Holder stated the groundwater monitoring around the Landfill has been deemed sufficient to provide early warning of groundwater contamination should it occur.

[132] The Approval Holder stated the ERCB Directive 038 is not applicable to the Landfill operations, and noise is properly addressed in the application.

[133] The Approval Holder argued the operating hours are addressed in the application.

[134] The Approval Holder stated the issues of the berm and fence are land use issues, and the issue of the berm has been dealt with previously by the Board.

[135] According to the Approval Holder, the other conditions requested by the Appellants were either outside the scope of the four issues or the Board's jurisdiction or they have been properly dealt with in the Operations Plan and the Approval.

[136] The Approval Holder requested the appeal be dismissed.

F. Director's Response Submission

[137] The Director noted the Appellants raised constitutional law arguments, but they failed to provide proper notice of their intent to do so. The Director stated the Board is not one of the tribunals with the jurisdiction to hear and decide on constitutional issues, so the Board should dismiss the portions of the Appellants' submission related to constitutional issues and arguments.

[138] The Director stated the Appellants repeatedly raised the issue of a human health impact assessment. The Director explained the identification of issues related to human health is one of the required elements of an environmental impact assessment. The Director argued the reframing of the Appellants' interest as a human health impact assessment instead of an environmental impact assessment is an attempt to put evidence before the Board of an issue that was determined not to be part of the Hearing. The Director argued the Appellants' attempt to raise the health impact assessment as separate and distinct from the environmental impact assessment issue is an attempt to circumvent the process and undermine the authority of the Board to set the issues to be heard.

[139] The Director explained the surface water event that occurred in 1995 predates the prior approvals related to the Landfill and was raised in previous proceedings.

[140] The Director argued the surface water issue should not be distorted into a rehearing of matters raised in previous proceedings or be an attempt to challenge existing authorizations issued under the *Water Act* that are not currently before the Board.

[141] The Director argued the issues raised by the Appellants concerning litter, noise, odour, dust, operating hours, and visual pollution can be characterized as local land use planning considerations and can be addressed through local municipal land use planning documents, development permitting processes, and local bylaws.

[142] The Director explained the Draft Landfill Standards for Landfills in Alberta sets out the expectations of landfill operations, including developing, maintaining, and implementing an operations plan that addresses operating procedures for nuisance management. The Director stated the Operations Plan addresses nuisance management, including litter, noise, dust, visual buffering, and odour, and therefore, the Appellants' view that he did not consider these issues in his review and decision making process was incorrect.

[143] The Director stated he is satisfied with the Operations Plan with respect to managing operating hours, litter control, noise minimization, and odour control. The Director added that the municipality has taken jurisdiction over matters such as operating hours through its land use bylaw and development permitting process.

[144] The Director stated the Operations Plan and the application addressed nuisance matters adequately and additional Approval conditions were not necessary to address the issues further. The Director explained that approvals for other Class II landfills in Alberta do not include conditions with respect to local land use planning matters, including operating hours and aesthetics.

[145] The Director submitted that the Board should not hear evidence outside the scope of the issues set by the Board or beyond the jurisdiction of the Board.

III. ANALYSIS

[146] The Board set four issues that it would consider. The issues were:

1. the appropriateness and adequacy of the conditions in the Approval with respect to the abandoned wells
 - a. that have been identified, and
 - b. that have not been identified, which may yet be encountered during constructionin the area where the expansion of the Landfill is approved;
2. the effects of the expansion of the Landfill on the surface water regime in the area, including but not limited to Bible Creek;
3. the appropriateness and adequacy of the conditions of the Approval with respect to the development and operation of special cells; and
4. the operation of the Landfill as it relates to litter, odour, noise, operating hours, and aesthetics.

The Board will consider each of these issues in turn.

A. Abandoned Wells

[147] The issue set by the Board in relation to abandoned wells was: “the appropriateness and adequacy of the conditions in the Approval with respect to the abandoned wells: (a) that have been identified, and (b) that have not been identified, which may yet be encountered during construction, in the area where the expansion of the Landfill is approved.”

[148] The issue of abandoned wells relates directly to the protection of groundwater. The concern is that abandoned wells, that have not been properly reclaimed, could act as a conduit for contaminants that could be released from the Landfill to enter groundwater sources.

The evidence before the Board is that at least 53 wells used for site investigation and groundwater monitoring on the Landfill site have not been accounted for.¹⁵ There was inconclusive evidence presented to the Board regarding the types of “wells” that may be on the Landfill site, but it appears to include monitoring wells, piezometers, and bore holes used for sampling the composition of materials on the site.

[149] The Director and the Approval Holder argued that any danger posed by these various types of wells is minimal, because there are liners constructed under and around the Landfill cells to provide the necessary barrier to prevent any contact between the waste contained within a cell and the groundwater. Part of the reason for locating the Landfill in this area was the significant clay deposits that provide a substantial natural barrier to water flow in addition to the constructed liners. The Director noted that the monitoring information collected to date does not identify any contaminants leaving the cells. The Approval Holder argued that it has construction practices in place to address any such wells that are discovered during construction.

[150] The Board accepts the evidence of the Director and the Approval Holder that the risk of possible contamination of groundwater is low; however, should such contamination occur, the consequences could be significant. All reasonable steps should be taken to protect Alberta’s groundwater resources. The Board’s concern with the approach taken is that the operational practices described by the Approval Holder at the Hearing to identify and reclaim any abandoned wells encountered during construction have been developed as a voluntary initiative by the Approval Holder, but these practices are not formalized in the Approval in any way.

[151] The Board will recommend to the Minister that the Approval be amended to require the Approval Holder to develop a written protocol, to be reviewed and approved by the Director, as to how it will identify and properly reclaim any wells that are encountered during construction of cells at the Landfill. The written protocol should address any type of well that could be encountered, including but not limited to monitoring wells, piezometers, and bore holes.

B. Surface Water Regime

[152] The issue set by the Board in relation to surface water was: “the effects of the expansion of the Landfill on the surface water regime in the area, including but not limited to Bible Creek.” There are two possible impacts on the Appellants underlying this issue: the possibility of contaminated water leaving the Landfill site (quality), and increases in the amount water leaving the Landfill site, potentially causing flooding on the Appellant’s land (quantity).

Water Management System

[153] The Approval Holder provided the Board with an overview of the water management system at the Landfill. The Approval Holder described how it manages water at the Landfill in four different ways.

1. Contact Water

[154] First, any water that comes in contact with waste in a landfill cell (“Contact Water”) is treated and managed as if it were leachate. Contact Water should not pose a quality or quantity concern for the Appellants because it is not released into the environment.

2. Run-Off

[155] Second, run-off water (“Run-off”) that reaches any portion of the active landfill, other than that which comes in direct contact with wastes being landfilled, is collected in an on-site drainage system and is currently directed to the northeast or the west detention ponds where it is retained. (This type of water could also be referred to as “non-contact” water.) There can be no releases of this water from these ponds unless the water is tested and satisfies the quality criteria listed in Table 4.5-A of the Approval. Water released from this system is directed southwards towards the Bible Creek drainage system, initially away from the Appellants’ land and then eventually to Bible Creek. Bible Creek crosses the eastern portion of the Appellants’ land, but this does not impact the surface water dugout that the Appellants use as their domestic water supply. As such, these discharges should not normally pose a quality or quantity problem for the Appellants.

3. Run-On

[156] Third, any water that reaches the Landfill site but which has not come into contact with waste, referred to as run-on water (“Run-on”), is collected in the kidney shaped pond from which the discharge rate can be controlled. (No quality testing on this water is required before it is released.) Run-on water raises possible concerns for the Appellants primarily in quantity. Run-on water has the potential to be contaminated only to the extent that it may encounter litter on the undeveloped portion of the property of the Approval Holder, but Run-on water, by definition, does not contact the active portion of the Landfill and certainly not the waste being deposited in the active waste cells. Run-on water has the potential to cause the Appellants’ quantity problems if it is not released in a controlled manner.

4. Off-site

[157] Fourth, water that comes from outside the Landfill site is managed so that it flows “around” the Landfill site (“Off-site Water”). For example, any water that reaches the setback strip, like the inactive area outside the fence on the northern boundary of the Landfill, is allowed to follow the natural drainage around the site because it has not come into contact with any waste at the Landfill. The intent in managing Off-site Water is to maintain as natural a flow as possible in the area, as if the Landfill was not there. The Off-site Water that is diverted around the Landfill should only raise the concern of an increased quantity depending on the timing and rate of natural flows in the area. It should not pose a quality issue for the Appellants.

Lack of Clear Information

[158] Based on this explanation, three main concerns emerged at the Hearing related to the surface water regime in the area. The first concern is a lack of clear information – this concern goes to potential quality and quantity impacts on the Appellants. The Appellants expressed concern that Run-on water is being contaminated and released from the site without going to the detention ponds and being tested. The Board is satisfied with the explanation provided by the Approval Holder that this is not occurring; however, the Board also understands the concern of the Appellants.

[159] In fact, the Board found it challenging to sort through all of the information before it to prepare the summary of the water management system provided. The terms used to

describe the different types of water are unclear and often misused. It was also difficult to determine which “ditches” were part of the Run-on water system and which “ditches” were part of the Run-off water system based on the maps provided. The photographs that were introduced at the Hearing did not provide an improved understanding of the water flow in the area. More should be done to assist the Appellants, and other members of the public, to clearly identify the various components of the Landfill’s water management system on maps and on the ground at the site (i.e. with signage).¹⁶ A clear area map of the Landfill that shows the various types of surface water and how these various types of water are managed (periodically updated to show any changes) would provide a reasonable and rational basis for all Parties to understand the water management practices of the Approval Holder.

[160] The Board will recommend to the Minister that the Approval be amended to require the Approval Holder to develop additional information, to be available to the public, that clearly explains the water management system at the Landfill and assists in clearly identifying what features are part of the Off-site Water diversion, the Run-on water system, and the on-site Run-off (non-contact) water system on a map and on the ground at the site.

Notice to the Appellants

[161] The second concern identified at the Hearing was an uncontrolled release of Run-on or Run-off water from a detention pond into the environment that occurred following a major storm event. This represents both quality and quantity concerns for the Appellants. The Board accepts the evidence of the Approval Holder and the Director that water management systems are designed meet a standard that deals with all reasonably foreseeable risks, but there will inevitably be situations where the standards are exceeded. In this case, the standard for detention ponds containing the Run-off water is that the ponds must be able to contain a 1 in 25 years, 24 hour duration storm event, and in fact evidence was provided that the ponds were actually designed to exceed this standard. Notwithstanding this, the Approval Holder presented evidence that a storm event occurred that exceeded the capacity of the Run-off detention ponds, and an uncontrolled release occurred. Fortunately, when the uncontrolled release occurred, the Run-off water being stored in the detention pond met the standards for release. If the stored Run-off

water had not met the standards for release, the Board expects the Approval Holder would have had to take steps to mitigate any quality impacts on the Appellants.

[162] The uncontrolled release apparently did pose a quantity concern for the Appellants as it may have made the flooding that occurred on their land worse. The Approval Holder stated that it did not contact the Appellants to notify them of the uncontrolled release. In circumstances such as this, regardless of whether the Run-off water that is released meets the standards for release or Run-on water is being released because of high water conditions, the Approval Holder should have notified the Appellants. Notifying the Appellants would have possibly allowed them to take additional steps to protect their land.

[163] To address this concern, the Board will recommend to the Minister that the Approval be amended to require the Approval Holder to notify the Director and the Appellants of all stored water releases (both Run-on water and Run-off water) from the Approval Holder's property, in the event that there could be a negative impact on the Appellants.

Quantity of Water

[164] The final issue identified at the Hearing as it relates to the surface water regime in the area, was the possibility that the Appellants are receiving more water than they would have received naturally if the Landfill was not there. There appears to be two likely sources of water that may impact the Appellants in relation to the quantity of water that they receive: the Off-site Water that is being diverted around the Landfill and the Run-on water that is being released periodically from the kidney shaped pond.

[165] At the Hearing, the Approval Holder explained it tries to manage the Off-site Water coming to the Landfill site to maintain the natural flow of water in the area. The evidence presented at the Hearing is that the Approval Holder has taken all reasonable steps to accomplish this, including preparing water flow balances for the current situation and the proposed expansion. Further, the Approval Holder explained that it tries to release water from its ponds at a time and at a rate so that it does not have an impact on the amount of water the Appellants receive from the site. The Board accepts this evidence.

[166] The Board will not be making any recommendations to the Minister regarding the quantity of water being released from the Landfill site. However, the Board sees value in the Approval Holder and the Appellants working together to obtain a better understanding about how these releases impact the Appellants and trying to minimize these impacts.

C. Special Cells

[167] There was a great deal of discussion at the Hearing about whether the Approval addressed “special cells”. Both the Director and the Approval Holder argued, correctly, that the Approval does not mention special cells. The Director was clear that any cell that is constructed at the Landfill is capable of properly containing any type of waste that the Landfill is allowed to accept. The Approval Holder indicated that the concept of “special cells” is merely a “management tool” to more effectively manage the waste being received by the Landfill. The Approval Holder discussed an example of receiving a type of waste that would be more effectively managed if it was all placed in one location and, for example, be subject to more frequent cover requirements to control potential odour concerns.

[168] The Board does not accept the view that the Approval does not address special cells. While it is true that the Approval itself does not refer specifically to special cells, the application that was filled by the Approval Holder clearly refers to special cells and the application is incorporated by reference into the Approval. However, the Board does accept that all cells constructed at the Landfill site will meet the minimum requirements so that any cell can properly contain any waste that the Landfill is allowed to receive. In this regard, the Board views the possibility of developing “special cells” that exceed the standards for regular Class II Landfill cells as positive.

[169] The Board notes that some wastes may be subject to additional regulatory requirements; for example, some wastes were identified as being subject to federal approval. In such cases, it may be that additional requirements will be placed on the construction of cells to meet the other regulatory scheme. Therefore, the Board accepts the view that special cells can be used to more effectively manage the waste being received by the Landfill.

[170] The question of what type of wastes are allowed into a Class II landfill raised a concern for the Board. Currently, the Board understands that a Class II landfill can accept any waste that is not specified as “hazardous” under the *Waste Control Regulation*, A.R. 192/1996. The concern is that some wastes, such as specified risk material from BSE carcasses, which are not listed as a hazardous waste but which likely warrants special attention, are not addressed by the Approval.

[171] The Board notes that the Approval requires that the Approval Holder provide the Director with 14 days notice prior to constructing any cells at the Landfill. (See: Condition 3.1.2 of the Approval.) This mechanism could be used by the Director to address any concerns that he has with waste that is going to special cells. However, the Board is concerned with the amount of notice that the Approval Holder has to provide the Director before commencing construction of such Landfill cells. Fourteen days may not be sufficient time for the Director to properly review the plans of the Approval Holder if additional requirements may be needed for a special cell. As a result, the Board will be recommending to the Minister that the Approval be amended to: (1) require the Approval Holder to notify the Director any time it makes an application for an authorization required by another piece of legislation (provincial, federal, or municipal); and (2) allow the Director to extend the 14 day notice to complete his review where appropriate.

D. Nuisance Issues

[172] The final issue identified by the Board was the operation of the Landfill as it related to litter, odour, noise, operating hours, and aesthetics.

Litter and Odours

[173] The evidence of the Appellants is that, along with noise, the most significant day-to-day impacts that the Landfill has on them is litter and odours. The Appellants described that when they come across litter on their property, which they do frequently, they pick it up and dispose of it because that is the easiest and quickest thing to do. The Appellants described situations where the odours they are experiencing are unbearable and that, on a regular basis, they cannot open the windows of their home because of the odours.

[174] The Approval Holder described the measures it included in its Operations Plan to attempt to control litter and odours. The Approval Holder indicated that it has a litter picking program, but the Appellants have not granted access to their land. The Approval Holder indicated that it responds to complaints about litter and odour received from neighbours in the area and works to address these problems. The Approval Holder and the Director advised that there is no history of regulatory complaints from the Appellants.

[175] The Appellants responded to this, stating that they do not want to spend all of their time complaining, potentially reaching a point where they are simply ignored as just being “chronic complainers.” They indicated it is simply much easier to pick up the litter and be done with it.

[176] The Board understands that the Appellants do not wish to be perceived as “chronic complainers”. Respectfully, however, the Approval Holder and Director cannot be expected to respond to concerns unless they are advised of the concerns. In saying this, the Board does not want to leave the impression that the Approval Holder is not responsible for these impacts even if there are no complaints. To be clear, the Approval Holder is responsible to manage its litter and odour regardless of whether there are complaints. However, the Board accepts that without a formal record of complaints, it is more difficult for both the Approval Holder and the Director to address the Appellants’ concerns.

[177] If the Appellants advised the Approval Holder about when and where they find litter on their property, it may be possible for the Approval Holder to modify the measures it has in place to further limit litter from leaving the Landfill site. If the Appellants were to allow the Approval Holder to have access to their land for its litter picking program, it is likely that the number of times the Appellants encounter litter themselves will decrease. Similarly, if the Appellants advise the Approval Holder about the odours they experience, it may be possible for the Approval Holder to determine the source of the odours and take steps to further mitigate the cause.

[178] Without information about the effectiveness of the litter and odour control measures used by the Approval Holder, it is difficult for the Director to justify including

additional requirements in the Approval. Without this information, it is also not possible for the Director to take enforcement action.

[179] As stated, the Board understands the Appellants not wanting to be constantly complaining. However, without more detailed information about their concerns, there is little that the Approval Holder, the Director, or the Board can do to assist the Appellants.

[180] The Board suggests that the Appellants consider making a chronological list of all of the litter, odour, and other concerns they have and providing it regularly (i.e. monthly, as necessary) to the Approval Holder and the Director. This will form a basis for the Approval Holder and Director to try to address the concerns. In this regard, the Board notes the offer that the Approval Holder made to undertake the litter picking program on the Appellants' land. The Board encourages the Appellants to consider this offer.

[181] Based on the circumstances of this case, the Board will not be making any recommendations to the Minister on the issues of litter and odours.

Noise

[182] The Appellants identified noise as a day-to-day concern. The Appellants explained that the noise prevents them from having the windows of their home open during the summer and that it limits the use of their yard. They also expressed concern about the noise resulting from the "around the clock" construction work when the latest cell was developed.

[183] The Appellants point to ERCB Directive No. 038 as a policy that should be applied in this case. (This directive addresses the regulation of noise at facilities regulated by the ERCB.) The Appellants also presented Dr. John H. Dennis as a witness to discuss, among other things, the impacts of noise. Neither the Appellants nor Dr. Dennis presented any quantitative evidence regarding the noise levels at this Landfill or at landfills in general.

[184] The Approval Holder and the Director argued that the Director, and by extension the Board, cannot or does not regulate noise at landfills such as this, leaving the regulation of noise levels to the local municipality. They argued that ERCB Directive No. 038 is not applicable in these circumstances and that to apply it in relation to a landfill would be "artificial".

[185] The Board does not accept the argument that noise cannot be regulated by the Director. Noise is expressly included as a “substance” under EPEA, and therefore the Director has the ability to regulate it if he chooses.¹⁷ While the Director was unable to point to a written policy, the Board accepts the evidence that Alberta Environment does not regulate noise at any Class II landfills in Alberta, and that the regulation of noise has been left to the local municipalities. However, in accepting the Director’s evidence, the Board is unclear if this decision is based on any qualitative evidence. None of the Parties, nor Dr. Dennis, was able to point the Board to any information on the level of noise that a landfill produces, although the Board expects that such information could be obtained. While the Board acknowledges that ERCB Directive No. 038 was developed for ERCB facilities, the Board believes the directive could be of some assistance to the Parties. In the absence of any other relevant information, ERCB Directive No. 038 is a relevant technical document as it presents useful information on noise impact assessment methodology that would be a useful starting point for a municipality, or any other agency, in addressing the regulation of noise.

[186] As the Board accepts that a *de facto* policy decision has been made that the Director leaves the regulation of noise at Class II landfills to the local municipality, the Board will not be making a recommendation to the Minister on this issue.

Operating Hours and Aesthetics

[187] The Director and the Approval Holder argued that the Director, and again by extension the Board, does not have the jurisdiction to consider operating hours or aesthetics. The Board does not share this view. First, EPEA is clear that the Director has the ability to issue an approval subject to any terms and conditions he considers appropriate.¹⁸ The Board certainly accepts that these terms and conditions must relate to environmental issues. For example, regulating operating hours can be used to control noise, and aesthetic elements such as berms, buffer zones, and the placement of trees and shelter belts, can be used to mitigate noise, dust, and litter. These are clearly environmental issues that are within the scope of the Director’s authority to regulate. Second, while a municipality can also regulate operating hours and aesthetics as they relate to municipal purposes, this does not mean the jurisdiction under EPEA has been ousted.

“...[T]he *Municipal Government Act*, like its preceding legislation, does not purport to oust the jurisdiction of provincial government agencies that operate under their own enabling legislation which requires the issuance of permits or other forms of approval. Indeed, ss. 619 and 620 explicitly contemplate that projects requiring approvals under [the *Municipal Government Act*] will also be subject to the permit requirements of other legislation.”¹⁹

As long as the regulation under EPEA and the regulation under the municipal legislation do not result in an operational conflict, where one requires an approval holder to do something and the other prohibits the approval holder from doing something, both are valid. For example, where two regulators, properly within their own jurisdiction and for their own purposes, prescribe a maximum emissions limit, the approval holder has to comply with the more restrictive limit to meet the purpose of both regulators. Third, as the Appellants have pointed out, EPEA expressly provided for the regulation of unsightly property, which relates directly to aesthetics.²⁰

[188] That being said, no evidence has been provided upon which the Board can base a recommendation regarding the issue of operating hours or aesthetics.

[189] The Board is left in the position that it can only strongly encourage the Appellants and the Approval Holder to work together to try to resolve these concerns. The Board notes particularly the offer by the Approval Holder at the Hearing to try to develop a berm or buffer on the Appellants' land to provide a visual barrier. The Board encourages the Appellants to discuss this with the Approval Holder.

[190] Given the circumstances of this case, the Board will not be making any recommendation to the Minister about operating hours or aesthetics.

Operations Plan

[191] Regarding the nuisance issues raised by the Appellants, the main response from the Approval Holder was that these issues are addressed in the “Operations Plan.” Based on the evidence presented at the Hearing, it is unclear to the Board whether the “Operations Plan” is one specific document or a set of documents collected in one place. During the Hearing, reference was made to numerous documents located throughout the Director's Record, with some documents being part of the Operations Plan and other documents being part of the application. For the benefit of all Parties, the Board strongly encourages the Approval Holder to

develop a specific, clearly defined copy of the Operations Plan. A complete copy of the Operations Plan should be provided to the Director and another complete copy should be kept onsite by the Approval Holder. Both copies of the Operations Plan should be formally updated when any changes are made.

E. Health Impacts – Dr. John A. Dennis

[192] The Appellants presented Dr. John A. Dennis as a witness to address the health impacts associated with landfills. The Board notes the objections of the Approval Holder and the Director that health impacts were not included as an issue to be considered at the Hearing. However, the Board was prepared to consider the evidence provided by Dr. Dennis as it related to issues that were set for the Hearing. The evidence of Dr. Dennis did not provide any insights for the Board to consider bearing on the issues at the Hearing, and none of the information provided by Dr. Dennis forms the foundation for the Board's recommendations to the Minister.

[193] The Board accepts that Dr. Dennis has the appropriate technical background as an occupational hygienist to review exposure assessments and discuss health risk assessments. However, it was noted that he has no direct experience with landfills and he is not qualified to practice medicine by diagnosing health outcomes in individuals such as the Appellants. Further, it is clear that Dr. Dennis limited his preparation for the Hearing to: a telephone and on-site interview with Ms. Fenske; driving on public roads around the Landfill; a literature review where he located only two articles that he thought were relevant; and a limited review of some additional documents. Specifically, Dr. Dennis indicated he reviewed some of the reports included in the Director's Record, but only to assist him in identifying health risks. He did not review the application filed by the Approval Holder, and he did not do any analysis of the data included in any of the reports.

[194] Dr. Dennis' evidence at the Hearing was useful to the extent that he elaborated on his finding that the scientific literature was inconclusive about demonstrating any causal association between emissions from a landfill and health effects in nearby residents. Specifically, he acknowledged that the literature provided insufficient evidence of any human health effects caused by landfills in neighbouring residents so that no examples from the literature could be adapted to the circumstances of this case.

[195] Dr. Dennis provided his observations and opinion that Ms. Fenske is experiencing stress from some of the nuisance impacts of living adjacent to the Landfill. These nuisance impacts include noise and odours. He also indicated that Ms. Fenske is experiencing stress because of an unconstructive relationship with the Approval Holder. Dr. Dennis draws the reasonable inference that stress, itself, is a source of health effects. Although no evidence was presented to support the claims of negative treatment of the Appellants by the Approval Holder, the Board accepts that the relationship is strained and the overall circumstances of residing next to the Landfill is a source of stress to the Appellants.

[196] As noted, one of the challenges facing the Board is balancing the interests between society's need for landfills with the impact on individuals. This by definition is conflict and conflict inherently creates stress. Regrettably, as discussed earlier in this Report and Recommendations, without assistance from the Appellants in reporting their specific concerns in a more timely fashion, little can be done to address these concerns.

[197] Dr. Dennis recommended that one of the ways to address these concerns was to do a health risk assessment. However, as discussed above, based on the literature review, published studies respecting human health impacts from landfills have been unable to demonstrate causal linkages. Dr. Dennis provided no basis to conclude that any health-related studies that might be done at this location could be more successful than the inconclusive studies that have been published. Based on this testimony, the Board would not consider recommending to the Minister that a health risk assessment be done in this case.

IV. Conclusions

[198] The Board set four issues that it would consider. The issues were:

1. the appropriateness and adequacy of the conditions in the Approval with respect to the abandoned wells
 - a. that have been identified, and
 - b. that have not been identified, which may yet be encountered during constructionin the area where the expansion of the Landfill is approved;
2. the effects of the expansion of the Landfill on the surface water regime in the area, including but not limited to Bible Creek;

3. the appropriateness and adequacy of the conditions of the Approval with respect to the development and operation of special cells; and
4. the operation of the Landfill as it relates to litter, odour, noise, operating hours, and aesthetics.

A. Abandoned Wells

[199] The Appellants are concerned about the potential for wells that are not properly reclaimed to act as a conduit for possible contamination from the Landfill to enter groundwater sources. While the risk of this happening is low, all reasonable steps should be taken to protect Alberta's groundwater resources. The Approval Holder uses operational practices to deal with wells that it encounters during construction on the Landfill site. However, these operational practices are not formalized. Therefore, the Board will recommend to the Minister that the Approval be amended to require the Approval Holder to develop a written protocol, to be reviewed and approved by the Director, as to how it will identify and properly reclaim any wells that it encounters during construction of cells at the Landfill. The protocol should address any type of well that could be encountered, including but not limited to monitoring wells, piezometers, and bore holes.

B. Surface Water Regime

[200] The Appellants have concerns about the impact that the surface water management system operated by the Approval Holder has on them in terms of both quality and quantity of surface water. The Board identified three issues underlying these concerns.

[201] The first was a lack of clear information. The information before the Board was unclear as to how the Approval Holder's water management system works, creating the potential for miscommunication and misunderstanding. Therefore, the Board will recommend to the Minister that the Approval be amended to require the Approval Holder to develop additional information, to be available to the public, that clearly explains the water management system at the Landfill and assists in clearly identifying what features are part of the Off-site Water diversion, the Run-on water system, and the on-site Run-off water system on a map and on the ground at the Landfill site.

[202] The second issue was a lack of notice to the Appellants when there were potential downstream impacts from water being released from the Approval Holder's property. Therefore, the Board will recommend to the Minister that the Approval be amended to require the Approval Holder to notify the Director and the Appellants of all stored water released from the Approval Holders' property, in the event that there could be a negative impact on the Appellants.

[203] The third issue that the Appellants raised was the quantity of water being released from the Approval Holder's property. The Board will not be making any recommendations to the Minister on this matter. However, the Board sees value in the Approval Holder and the Appellants working together to obtain a better understanding about how these releases impact the Appellants and trying to minimize these impacts as best as possible.

C. Special Cells

[204] The Board views the use of special cells as a management tool to more effectively manage waste at the Landfill as positive. However, the Board is concerned the general 14 day notice prior to commencing construction of cells at the Landfill may not be sufficient time for the Director to properly review the plans of the Approval Holder with respect to special cells. As a result, the Board will be recommending to the Minister that the Approval be amended to: require the Approval Holder to notify the Director any time it makes an application for an authorization required by another piece of legislation (federal, provincial, or municipal) to allow it to accept certain types of wastes; and allow the Director to extend the 14 day notice where appropriate.

D. Nuisance Issues

[205] The Appellants raised concerns about litter, odour, noise, operating hours, and aesthetics. Based on the evidence presented and the circumstances of this case, the Board will not be making any recommendations to the Minister on the issues of litter, odour, noise, operating hours, or aesthetics.

[206] The Appellants also raised a concern about health impacts resulting from these nuisance issues. The Appellants retained an occupational hygienist, Dr. Dennis, to speak to this concern. Dr. Dennis did not provide any evidence as to health impacts occurring at this or any other landfill. He advocated that a health risk assessment be conducted, but provided no basis to

conclude that any health-related studies that might be done at this location would be more successful than the previous inconclusive studies that have been published regarding other landfills. In these circumstances, the Board would not consider recommending to the Minister that a health risk assessment be done in this case.

V. RECOMMENDATIONS

[207] The Board makes the following recommends to the Minister for his consideration:

1. The Board recommends to the Minister that the Approval be amended to require the Approval Holder to develop a written protocol, to be reviewed and approved by the Director, as to how it will identify and properly reclaim any wells it encounters during construction of cells at the Landfill. The written protocol should address any type of well that could be encountered, including but not limited to monitoring wells, piezometers, and bore holes.
2. The Board recommends to the Minister that the Approval be amended to require the Approval Holder to develop additional information, to be available to the public, that clearly explains the water management system at the Landfill and assists in clearly identifying what features are part of the Off-site Water diversion, the Run-on water system, and the on-site Run-off water system on a map and on the ground at the Landfill.
3. The Board recommends to the Minister that the Approval be amended to require the Approval Holder to notify the Director and the Appellants of all stored water released from the Approval Holders' property, in the event that there could be a negative impact on the Appellants.
4. The Board recommends to the Minister that the Approval be amended to: require the Approval Holder to notify the Director any time it makes an application for an authorization required by another piece of legislation (federal, provincial, or municipal) to allow it to accept certain types of wastes; and allow the Director to extend the 14 day notice that needs to be given before the construction of a cell at the Landfill commences, where appropriate.

[208] With respect to sections 100(2) and 103 of EPEA, the Board recommends that copies of this Report and Recommendations, and of any decision by the Minister, be sent to the following:

1. Ms. Karen Buss and Ms. Eva Chipiuk, Ackroyd LLP, on behalf of Mr. Lee and Ms. Marilyn Fenske;
2. Ms. Cherisse Killick-Dzenick, Reynolds, Mirth, Richards & Farmer LLP, on behalf of the Beaver Regional Waste Management Services Commission; and
3. Ms. Alison Peel, Alberta Justice, on behalf of the Director, Central Region, Environmental Management, Alberta Environment.

VI. FINAL COSTS

[209] The Appellant and Approval Holder reserved their right to apply for costs. The Board requests that any applications for costs be provided to the Board within two weeks of the date of the Minister's Order with respect to this Report and Recommendations. The Board will then provide the Parties with an opportunity to respond to any such applications before making its decision.

Dated on January 19, 2009, at Edmonton, Alberta.

“original signed by”

Dr. Alan J. Kennedy
Panel Chair

“original signed by”

Dr. Steve E. Hruddy, FRSC, PEng
Board Chair

“original signed by”

Dr. M. Anne Naeth
Board Member

PROCEDURAL BACKGROUND

[1] On September 1, 2007, the Director, Central Region, Environmental Management, Alberta Environment, issued Approval No. 20754-01-00 under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”) to the Beaver Regional Waste Management Services Commission (“BRWMSC” or “Approval Holder”) authorizing the Beaver Regional Class II landfill near Ryley, Alberta, in Beaver County where more than 10,000 tonnes per year of waste is disposed.²¹

[2] On October 4, 2007, the Board received an appeal from Lee and Marilyn Fenske (“Appellants”). On October 5, 2007, the Board wrote to the Appellants, the Approval Holder, and the Director (“Parties”) acknowledging receipt of the Notice of Appeal and notifying the Approval Holder and the Director of the appeal. The Board also requested the Director provide the Board with a copy of the record relating to this appeal and that the Parties provide available dates for a mediation meeting, preliminary motions hearing, or hearing.

[3] According to standard practice, the Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board asking whether this matter had been the subject of a hearing or review under their respective legislation. Both boards responded in the negative.

[4] On November 1, 2007, the Board received a copy of the Record from the Director and on November 8, 2007, the Board forwarded a copy to the Appellants and Approval Holder. On November 14, 2007, the Board notified the Director that the November 1, 2007 Record did not contain Statements of Concern in relation to the Approval. On November 24, 2007, the Board received an addendum to the November 1, 2007 Record from the Director including the Director’s Record related to the Statements of Concern filed. The addendum was forwarded to the Appellants and Approval Holder on November 28, 2007.

[5] On October 30, 2007, the Board received a letter from the Approval Holder advising that it saw no merit in pursuing mediation and requested that the issues for a hearing be identified and that the matter proceed directly to a Hearing.

[6] In the Board's letter of November 14, 2007, it advised the Parties that, since the Approval Holder saw no merit or benefit in pursuing mediation the Board proceeded to schedule a Hearing and set a written submission process to determine the issues. The Board requested that any further preliminary motions be provided to the Board by November 21, 2007.

[7] On November 19, 2007, the Approval Holder requested the Appellants "...provide, in advance, details of expert evidence upon which they will rely in the appeal, including names of experts and copies of reports, testing and findings. As well, if the Appellants have obtained any previous testing which will be relied upon by the Appellants, we request that that be provided to the [Approval Holder] in advance."

[8] The Approval Holder further requested clarification on what issues in the Notice of Appeal are properly before the Board "...taking into consideration that there has been no change in groundwater, surface water, containment and discharge." In addition, the Approval Holder sought determination of "...which issues are land use issues that are within the jurisdiction of [Beaver] County, and which will not be dealt with by the Board." The Board advised the Parties on November 21, 2007, that the request by the Approval Holder to the Appellants to provide detailed evidence in advance was, in essence, a request for a staggered submission process for the hearing to which the Board agreed.

[9] On November 21, 2007, the Appellants advised they would be submitting an application for advanced interim costs.

[10] The Director, in his letter of November 21, 2007, requested the Board address in the preliminary issues the matters of: issue estoppel because a number of issues had been adequately dealt with in the Board's previous decisions regarding the Landfill; those issues under appeal that are not within the Director's or the Board's jurisdiction; and a request that the Board consider conducting the preliminary motions and Hearing in writing. The Appellants advised the Board on November 27, 2007, they objected to a written hearing, if that was the Director's intent, and advocated for an opportunity to provide *viva voce* evidence.

[11] The Board advised the Parties on November 29, 2007, that it wished to receive written submissions on the following preliminary motions:

1. Issue Estoppel: whether the issues contained in the Notice of Appeal have been adequately dealt with in the Board's previous decisions;
2. Jurisdiction: whether there are grounds for appeal that are not within the Director's or the Board's jurisdiction, and therefore, should not be part of the appeal;
3. whether there are land use issues that are within the jurisdiction of the County, and not within the jurisdiction of the Board; and
4. the issues to be dealt with at a hearing, should one be held.

The Board stated that it would not conduct the hearing of this appeal via written submissions; however, it would request written submissions from the Parties in a staggered manner in preparation for the Hearing, should one be held.²²

[12] The Appellants' initial submission was received on December 21, 2007, response submissions were received on January 14, 2008, from the Approval Holder and the Director, and the rebuttal submission was received from the Appellants on February 7, 2008.

[13] On May 9, 2008, the Board notified the Parties that it required additional information regarding the issues to be heard at the Hearing, should one be held, and it wanted to hear arguments on the issues at an oral preliminary motions hearing. The Board explained it understood the arguments with respect to issue estoppel and jurisdiction and it only wanted additional submissions on what issues should be heard if the appeal proceeds to a hearing.

[14] The preliminary motions hearing was held June 16, 2008.

[15] On July 24, 2008, the Board notified the Parties that the issues that would be heard at the Hearing were:

1. the appropriateness and adequacy of the conditions in the Approval with respect to the abandoned wells
 - a. that have been identified, and
 - b. that have not been identified, which may yet be encountered during constructionin the area where the expansion of the Landfill is approved;
2. the effects of the expansion of the Landfill on the surface water regime in the area, including but not limited to Bible Creek;

3. the appropriateness and adequacy of the conditions of the Approval with respect to the development and operation of special cells; and
4. the operation of the Landfill as it relates to litter, odour, noise, operating hours, and aesthetics.

These are the only issues heard by the Board.

[16] The Board provided its reasons for setting the issues on September 22, 2008.²³

[17] On September 15, 2008, the Appellants submitted a request for interim costs. On September 16, 2008, the Board acknowledged the request and set the submission process. The Board also noted the Appellants requested costs associated with legal fees already incurred. The Board informed the Appellants that it would not consider costs already incurred, because the purpose of interim costs is to cover future costs in preparation for the Hearing. The Board stated it would consider the Hearing preparation costs, additional legal costs, and the anticipated disbursements. The Board received additional arguments from the Appellants on September 18, 2008. The Approval Holder and Director provided their responses on September 26, 2008. The Appellants' rebuttal submission was received on October 2, 2008. On October 30, 2008, the Board notified the Parties that interim costs in the amount of \$1,200.00 payable by the Approval Holder would be provided to the Appellants to offset the costs of retaining an expert.²⁴

[18] The Board received the submissions for the Hearing from the Approval Holder and the Director on November 7, 2008. However, the Appellants notified the Board on that date that they were unable to provide their submission because of an error in diarizing the submission due date and because their expert would be unable to provide his report until November 20, 2008. In response, the Director suggested the Hearing be postponed and the Approval Holder argued the appeal should be dismissed. The Appellants responded to the Director's and Approval Holder's responses on November 10, 2008. The Board received additional comments from the Director and the Approval Holder.

[19] On November 12, 2008, the Board notified the Parties that the Hearing would be held as scheduled on December 17 and 18, 2008, and the submission deadlines would be modified to allow the Appellants until November 19, 2008, to provide their submissions and the

Approval Holder and Director could provide additional arguments on that date if they wanted to. Response submissions from all of the Parties were due December 10, 2008.

[20] The Board received the Appellants' submission on November 19, 2008. The Appellants' response submission was provided on December 10, 2008, and the response submissions from the Approval Holder and the Director were received on December 8 and 10, 2008, respectively.

[21] On December 12, 2008, the Director notified the Board that Mr. David Dowhaniuk would not be able to attend the Hearing. In response, the Approval Holder requested an adjournment until Mr. Dowhaniuk was available. The Approval Holder explained Mr. Dowhaniuk was the person from Alberta Environment who met with the Appellants and obtained information from the Approval Holder. The Approval Holder was concerned questions might arise from the Board or the Appellants which could not be fully responded to. The Appellants took no issue with Mr. Dowhaniuk's absence. The Director responded, explaining he was familiar with the Record, issues, and Approval, and although Mr. Dowhaniuk may have assisted the Director, there was no barrier to proceeding as planned. The Board notified the Parties on December 12, 2008, that the Hearing would proceed as scheduled, and prior to the close of the Hearing, the Approval Holder could consider remaking the application. The Appellants expressed concern with the proposed procedure, because it would prejudice the Appellants if the Hearing evidence was negated or the Hearing continued indeterminately as a result of the Approval Holder's application. The Board assured the Parties that if the application is remade, the other Parties would be given the opportunity to respond and express their concerns. The Board explained it would have more information on which to base its decision on the application, and none of the evidence presented would be negated.

PROCEDURAL MATTERS AT THE HEARING

A. JURISDICTIONAL ISSUE

[22] In the written submissions, the Appellants indicated that the rights they are asserting are protected by the *Canadian Charter of Rights and Freedoms* (the “Charter”) and the *Canadian Bill of Rights*. The Appellants’ written submission was unclear whether they intended to challenge the Approval or the enabling legislation (EPEA) as being in violation of either the Charter or the Bill of Rights.²⁵

[23] At the Hearing, the Appellants confirmed that they were not challenging the validity of the Approval or EPEA under either the Charter or the Bill of Rights. Rather, the intent was to emphasize the significance of the impacts the Appellants are experiencing, and to argue that the Charter and the Bill of Rights incorporate the view that they should be protected from these impacts.

[24] While the Board understands the viewpoint being expressed by the Appellant, neither of the arguments are properly before the Board. Section 11 of the *Administrative Procedures and Jurisdiction Act*, R.S.A. 2000, c. A-3, prohibits this Board from dealing with Charter challenges.²⁶ Further, the Bill of Rights, which requires the “laws of Canada” to be interpreted in accordance with certain rights and freedoms, applies only to federally enacted laws. The Bill of Rights does not apply to provincial legislation (i.e. EPEA) or exercises of provincial jurisdiction (the Approval).²⁷

B. EVIDENCE PROVIDED THROUGH UNDERTAKING

[25] During cross-examination by the Appellants at the Hearing, Mr. Francis Hugo, a witness for the Approval Holder, was reviewing a set of pictures submitted by the Appellants as Exhibit #2. Regarding a particular picture that showed flooding in an area adjacent to the Appellants’ property, Mr. Hugo testified that the water in the ditch was flowing in a particular direction (away from the Appellants’ land). Mr. Hugo was asked how he remembered this. He indicated that he had diary notes to that effect. When asked to produce the diary notes, Mr. Hugo

advised that the diary was at his home in British Columbia. At the request of the Appellants, Mr. Hugo undertook to provide the copy of the page from the diary that referenced this information.

[26] On December 22, 2008, after the Hearing had closed, the Board received a letter from the Approval Holder and attached to the letter were the extracts from Mr. Hugo's diary. The Board has determined that it does not need additional comments from any of the Parties on these diary notes. In reviewing the notes, they appear to confirm Mr. Hugo's testimony, and in any event, nothing in the Board's considerations turns on this evidence. Therefore, the Board did not consider the diary notes for the purposes of the Report and Recommendations.

C, APPROVAL HOLDER'S MOTION REGARDING MR. DOWHANIUK

[27] As discussed above, shortly before the Hearing, the Board was notified that Mr. David Dowhaniuk would not be able to attend the Hearing and the Approval Holder requested an adjournment until Mr. Dowhaniuk was available. After considering comments from all of Parties, the Board decided that the Hearing would proceed as scheduled, but that prior to the close of the Hearing, the Approval Holder would be given the opportunity to remake the application for the adjournment if it so wished. At the end of the evidentiary part of the Hearing, the Approval Holder was asked by the Board if it wished to remake the application for the Hearing to be adjourned pending the return of Mr. Dowhaniuk. The Approval Holder advised the Board that it did not want to remake the application, and that it was prepared to proceed to closing arguments.

END NOTES

- ¹ On October 4, 2007, the Board received a Notice of Appeal from Mr. Lee and Ms. Marilynn Fenske.
- ² On September 1, 2007, the Director, Central Region, Environmental Management, Alberta Environment issued Approval No. 20754-01-00 under the *Environmental Protection and Enhancement Act*. An approval is required because more than 10,000 tonnes of waste is disposed at the Landfill annually.
- ³ See: *Mizera et al. v. Director, Northeast Boreal and Parkland Regions #2, Alberta Environmental Protection*, re: *Beaver Regional Waste Management Services Commission* (July 13, 1999), Appeals No. 98-231 to 98-233-R (A.E.A.B.).
- ⁴ See: Director's Record, Tab 18, EBA Engineering Consultants Ltd., *Beaver Regional Landfill Application Renewal Application* (November 2005) at page 6.
- ⁵ Section 11 of EPEA states:
"The Minister shall, in recognition of the integral relationship between human health and the environment, co-operate with and assist the Minister of Health and Wellness in promoting human health through environmental protection."
- ⁶ Appellants' submission, dated November 19, 2008, at paragraph 49, quoting Dr. Dennis' report at page 2.
- ⁷ Appellants' submission, dated November 19, 2008, at paragraph 50, quoting Dr. Dennis' report at page 4.
- ⁸ Appellants' submission, dated November 19, 2008, at paragraph 62.
- ⁹ Approval Holder's submission, dated November 7, 2008, at paragraph 15.
- ¹⁰ Director's submission, dated November 7, 2008, at paragraph 6. Quotation corrected.
- ¹¹ Appellants' submission, dated December 10, 2008, at paragraph 11.
- ¹² Appellants' submission, dated December 10, 2008, at paragraph 21.
- ¹³ Appellants' submission, dated December 10, 2008, at paragraph 25.
- ¹⁴ Appellants' submission, dated December 10, 2008, at paragraph 39.
- ¹⁵ See: "Response to Conditions of the Ministerial Order", by C.E. Moell (August 29, 2006), Director's Record, tab 17, page 14.
- ¹⁶ A proper map and signage or some other form of markings at the site would assist the Parties in communicating more effectively about any concerns that may develop.
- ¹⁷ Section 1(1)(mmm)(ii) of EPEA defines a substance to include "...any sound, vibration, heat, radiation or other form of energy...."
- ¹⁸ Section 68(2) of EPEA provides that: "The Director may issue an approval subject to any terms and conditions the Director considers appropriate."
- ¹⁹ Planning Law and Practice in Alberta (2d), by Frederick A. Laux (Carswell, 1996), at pages 3-12, section 3.9(1).
- ²⁰ Section 183(1) of EPEA provides that: "If an inspector or investigator considers any property when viewed from a highway to be unsightly property, the inspector or investigator may issue an environmental protection order to clean up the unsightly property."
- ²¹ The Approval replaces a previous approval issued to the Beaver Regional Waste Management Services Commission in 1998 and subsequent amendments. The 1998 Approval had an expiry date of 2008, requiring the Approval Holder to apply for a new approval.
- ²² In the Board's view, the principles of natural justice require that, with respect to a substantive hearing, if one of the parties requests an oral hearing, they are generally entitled to it.
- ²³ See: Preliminary Motions: *Fenske v. Director, Central Region, Environmental Management, Alberta Environment*, re: *Beaver Regional Waste Management Services Commission* (22 September 2008), Appeal No. 07-128-ID1 (A.E.A.B.).

²⁴ See: Interim Costs: *Fenske v. Director, Central Region, Environmental Management, Alberta Environment* re: *Beaver Regional Waste Management Services Commission* (30 October 2008), Appeal No. 07-128-IC (A.E.A.B.).

²⁵ The *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11 (the Canadian Charter of Rights and Freedoms) and the *Canadian Bill of Rights*, S.C. 1960, c. 44.

²⁶ Section 11 of the *Administrative Procedures and Jurisdiction Act*, R.S.A. 2000, c. A-3 provides:
“Notwithstanding any other enactment, a decision maker has no jurisdiction to determine a question of constitutional law unless a regulation made under section 16 has conferred jurisdiction on that decision maker to do so.”

²⁷ Sections 5(2) and (3) of the *Canadian Bill of Rights*, S.C. 1960, c. 44 provides.

“(2) The expression "law of Canada" in Part I means an Act of the Parliament of Canada enacted before or after the coming into force of this Act, any order, rule or regulation thereunder, and any law in force in Canada or in any part of Canada at the commencement of this Act that is subject to be repealed, abolished or altered by the Parliament of Canada.

(3) The provisions of Part I shall be construed as extending only to matters coming within the legislative authority of the Parliament of Canada.”



ALBERTA
ENVIRONMENT

*Office of the Minister
MLA, Medicine Hat*

Ministerial Order
03 /2009

Environmental Protection and Enhancement Act
R.S.A. 2000, c. E-12.

Order Respecting Environmental Appeals Board
Appeal No. 07-128

I, Rob Renner, Minister of Environment, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeals Board Appeal No. 07-128.

Dated at the City of Edmonton, in the Province of Alberta, this 21 day of January, 2009.

Rob Renner
Minister

Appendix

Order Respecting Environmental Appeals Board Appeal No. 07-128

With respect to the decision of the Director, Central Region, Regional Services, Alberta Environment (the "Director"), to issue Approval No. 20754-01-00 (the "Approval"), under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, to the Beaver Regional Waste Management Services Commission (the "approval holder"), I, Rob Renner, Minister of Environment, order that the decision of the Director to issue the Approval is confirmed subject to the following variations:

1. The Approval is amended by adding the following immediately after condition 2.1.7:

"2.1.8 The approval holder shall notify the Director in writing of any applications that it makes for an authorization under any other legislation (federal, provincial, or municipal) to allow it to accept waste at the landfill. The approval holder shall notify the Director on the same day that it makes the application."

2. The Approval is amended by adding the following immediately after condition 3.1.4:

"3.1.5 On or before July 1, 2009, the approval holder shall submit a written Well Identification and Reclamation Protocol (the "Protocol") to the Director for review and approval. The Protocol shall describe how the approval holder will identify and reclaim any wells that it may encounter during the construction of any cells at the landfill, including but not limited to monitoring wells, peizometers, and bore holes. Once the Protocol is approved by the Director, the approval holder shall implement the Protocol during the construction of any cells at the landfill, unless otherwise authorized in writing by the Director.

3.1.6 The Director may by written notice to the approval holder extend the minimum amount of notice that the approval holder is required to provide under condition 3.1.2. The Director may extend the amount of notice that is required regardless of whether notice has already been given under condition 3.1.2."

3. The Approval is amended by adding the following immediately after Table 4.5-A:

"4.5.5 On or before July 1, 2009, the approval holder shall submit a written Surface Water Management Communications Report (the "Report") to the Director for review and approval. The Report shall:

- (a) describe how the approval holder manages surface water at the landfill, including but not limited to:
 - (i) the run-off control system,
 - (ii) the run-on control system, and
 - (iii) the off-site diversion system;
- (b) include a map, or maps, identifying all of the features of the surface water management system at the landfill, including but not limited to:
 - (i) the run-off control system,
 - (ii) the run-on control system, and
 - (iii) the off-site diversion system; and
- (c) include a plan to physically identify the main features of the surface water management system at the landfill, including but not limited to:
 - (i) the run-off control system,
 - (ii) the run-on control system, and
 - (iii) the off-site diversion system.

Once the Report has been approved by the Director, the approval holder shall make it freely available to the public for viewing and implement the plan to physically identify the main features of the surface water management system at the landfill. The approval holder shall update the Report on an annual basis or as otherwise authorized in writing by the Director.

- 4.5.6 On or before July 1, 2009, the approval holder shall submit a written Stored Water Release Notification Plan (the "Plan") to the Director for review and approval. The Plan shall describe how and under what circumstances the approval holder will notify the Director and Mr. Lee and Ms. Marilyn Fenske (the "Fenskes") of the release of any surface water stored at the landfill that could negatively affect the Fenskes. Once the Director has approved the Plan, the approval holder shall implement the Plan. The approval holder shall update the Plan on an annual basis or as otherwise authorized in writing by the Director."