ALBERTA
ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – January 6, 2011

IN THE MATTER OF sections 91, 92, 95, and 97 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12;

-and-

IN THE MATTER OF appeals filed by Kent and Ingrid Vipond, Bernie and Margie Brown, Robert and Lisa Cowling, Bruce and Marcia Jeffers, Ian and Corrinne Zeer, Wendel and Christy Wickenheiser, and Jesse, Sarah, and Harji Hari and Haralta Ranches with respect to *Environmental Protection and Enhancement Act* Approval No. 241939-00-00 issued to EcoAg Initiatives Inc. by the Director, Southern Region, Environmental Management, Alberta Environment.

Cite as: *Vipond et al.* v. *Director, Southern Region, Environmental Management, Alberta Environment*, re: *EcoAg Initiatives Inc.* (06 January 2011), Appeal Nos. 09-006-009, 016, 017, & 019-ID1 (A.E.A.B.).

BEFORE:	Mr. Alex G. MacWilliam, Panel Chair; Mr. Jim Barlishen, Board Member; and Ms. A.J. Fox, Board Member.
SUBMISSIONS BY:	
Appellants:	Mr. Kent and Ms. Ingrid Vipond; Mr. Bernie and Ms. Margie Brown; Mr. Robert and Ms. Lisa Cowling and Mr. Bruce and Ms. Marcia Jeffers, represented by Ms. Teresa Meadows, Miller Thomson LLP; Mr. Ian and Ms. Corrinne Zeer; Mr. Wendel and Ms. Christy Wickenheiser; and Mr. Jesse, Ms. Sarah, and Mr. Harji Hari and Haralta Ranches.
Director:	Mr. Brock Rush, Director, Southern Region, Environmental Management, Alberta Environment, represented by Ms. Charlene Graham and Mr. Andrew Bachelder, Alberta Justice.
Approval Holder:	EcoAg Initiatives Inc., represented by Mr. Kelly Nicholson, Field LLP.

EXECUTIVE SUMMARY

Alberta Environment issued an approval under the *Environmental Protection and Enhancement Act* to EcoAg Initiatives Inc., authorizing the construction, operation, and reclamation of the High River Waste Management Facility, located near High River, Alberta, for the collection and processing of waste to produce fuel (commonly referred to as biogas).

The Board received Notices of Appeal from Mr. Kent and Ms. Ingrid Vipond, Mr. Bernie and Ms. Margie Brown, Mr. Robert and Ms. Lisa Cowling, Mr. Bruce and Ms. Marcia Jeffers, Mr. Ian and Ms. Corrinne Zeer, Mr. Wendel and Ms. Christy Wickenheiser, and Mr. Jesse, Ms. Sarah, and Mr. Harji Hari and Haralta Ranches (collectively, the Appellants).*

The Board determined the following preliminary matters:

1. Did the Appellants file statements of concern with Alberta Environment?
2. Was adequate notice of the application given?
3. What documents should be disclosed and provided to the Appellants?
4. What issues are within the Board's jurisdiction and should be considered at the hearing of the appeals?

The Board determined the Cowlings and Jeffers each filed a Statement of Concern and Notice of Appeal and, therefore, their appeals are valid. The remaining Appellants did not file Statements of Concern, a legislated prerequisite to filing a valid Notice of Appeal. However, the Board determined the Notice of Application did not properly describe the land location for the proposed facility. Therefore, the Board accepted the Notices of Appeal of the Viponds, Browns, Cowlings, Jeffers, Zeers, and Haris and Haralta Ranches.

The issue that will be heard at the hearing is: Do the terms and conditions of the Approval adequately address the impacts of the facility on the environment?

The Appellants requested additional documents be produced. The Board asked the Appellants to review their document requests to ensure the requests are necessary, and if EcoAg or Alberta Environment do not provide the documents, the Appellants can submit a formal request to the Board to order the production of these documents.

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* The appeal of Mr. Wendel and Ms. Christy Wickenheiser was dismissed for failing to comply with the Board's request to submit a written submission in respect of the preliminary motions.

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I. BACKGROUND

[1] On June 23, 2009, the Director, Southern Region, Environmental Management, Alberta Environment (the "Director"), issued Approval No. 241939-00-00 (the "Approval") under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 ("EPEA"), to EcoAg Initiatives Inc. ("EcoAg" or the "Approval Holder") authorizing the construction, operation, and reclamation of the High River Waste Management Facility (the "Facility") located near High River, Alberta, for the collection and processing of waste to produce fuel. Such fuel is commonly referred to as biogas.

[2] Between July 22 and September 29, 2009, the Environmental Appeals Board (the "Board") received Notices of Appeal from Mr. Kent and Ms. Ingrid Vipond (the "Viponds") (09-006), Mr. Bernie and Ms. Margie Brown (the "Browns") (09-007), Mr. Robert and Ms. Lisa Cowling (the "Cowlings") (09-008), Mr. Bruce and Ms. Marcia Jeffers (the "Jeffers") (09-009), Mr. Ian and Ms. Corrinne Zeer (the "Zeers") (09-016), Mr. Wendel and Ms. Christy Wickenheiser (the "Wickenheisers") (09-017), and Mr. Jesse, Ms. Sarah, and Mr. Harji Hari and Haralta Ranches (the "Haris") (09-019) (collectively, the "Appellants"). The Board notified the Approval Holder and the Director of the Notices of Appeal, and requested the Director provide the Board with a copy of all documents in his possession relating to the application and the issuance of the Approval (the "Record").

[3] The Record was received on August 21, 2009, updates were provided on March 31, 2010, October 8, 2010, and October 29, 2010, and the Director also provided a number of policy documents on December 17, 2010. Copies of all of these documents were provided to the Appellants, the Approval Holder, and the Director (collectively, the "Participants").

[4] A mediation meeting was held on October 30, 2009, in High River, Alberta. An additional mediation meeting was held on March 9, 2010, in Calgary. No resolution was reached, and the Board proceeded with the hearing process.

[5] On September 21, 2010, the Board asked the Participants to provide submissions on the following preliminary motions raised by the Participants:

1. Did the Appellants file statements of concern with Alberta Environment?
2. Was adequate notice of the application given?

3. What documents should be disclosed and provided to the Appellants?
4. What issues are within the Board's jurisdiction and should be considered at the hearing, if one is held?

Submissions were received from the Participants between October 12, 2010, and November 15, 2010.

II. PRELIMINARY MATTER

[6] The Wickenheisers did not comply with the Board's request to provide an initial submission for the preliminary motions by October 15, 2010. The Board attempted to contact them by telephone to request a response. The Board then e-mailed the Wickenheisers inquiring if they intended to file a submission and cautioned them that the Board could dismiss their appeal if they did not respond. The Board also sent a letter to the Wickenheisers requesting their submission by October 20, 2010, and the cautionary notice was included in the letter.[1] The Wickenheisers did not respond to the Board.

[7] Pursuant to section 95(5)(a)(iv) of EPEA,[2] the Board dismissed the Wickenheisers' appeal on November 10, 2010, for failing to provide an initial written submission.

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[1] The Board's October 18, 2010 letter stated:

> "…The Board has extended the deadline to **noon on Wednesday, October 20, 2010** to receive their initial submission. Please be advised that the Environmental Appeals Board has strict timelines. Failure to respond to the Board in a timely manner may result in the dismissal of the appeal pursuant to section 95(5)(a)(iv) of the Environmental Protection and Enhancement Act." (Emphasis in original.)

[2] Section 95(5)(a)(iv) of EPEA provides:

> "The Board may dismiss a notice of appeal if the person who submitted the notice of appeal fails to comply with a written notice under section 92."

Section 92 of EPEA states:

> "Where the Board receives a notice of appeal, it may by written notice given to the person who submitted the notice of appeal require the submission of additional information specified in the written notice by the time specified in the written notice."

III. STATEMENTS OF CONCERN

A. Submissions

1. Jeffers and Cowlings

[8] The Jeffers and Cowlings said the Facility is located within one mile of their properties. They stated the Facility is part of a larger waste management enterprise that includes existing waste management sites that hold Registrations issued by the Director that authorize these sites to accept up to 20,000 tonnes of waste annually in accordance with a Code of Practice.[3] They noted the Approval application contained an error in the site's legal land description, and instead of SE 16-19-1-W5M, the application listed the location as NE 19-16-1-W5M. The Jeffers and Cowlings noted this error was carried throughout the Approval process and was included in the initial Approval. It was finally corrected in August 2009 by way of an amendment to the Approval.

[9] The Cowlings and Jeffers stated the Approval Holder is a corporate entity that was unknown to them, and the public notice did not refer to the known entities at the existing waste management sites (referred to in the legislation as composting facilities), specifically Tongue Creek Feeders or Roseburn Ranches. They said they noticed the contact person shown in the public notice was the principal in Tongue Creek Feeders and Roseburn Ranches and that was what led them to file Statements of Concern.

[10] The Cowlings and Jeffers said they filed Statements of Concern within the prescribed time period even though the party named as the applicant was unknown to them, the site description was vague, the notice was provided on the Friday of a long weekend, and the application incorrectly described the Facility as being located in a different township. The Cowlings and Jeffers submitted that they met all the requirements of section 91 of EPEA, because they filed Statements of Concern, are directly affected, and filed Notices of Appeal within the time period.

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[3] The Activities Designation Regulation, Alta. Reg. 276/2003, requires waste management sites to obtain an approval or registration depending on their size. Where a registration is required, the operator is required to comply with a Code of Practice, in this case the Code of Practice for Composting Facilities. When the Director issues a registration, it is not appealable.

2. Zeers

[11] The Zeers said they did not file a Statement of Concern, because they did not see the public notice in time and if they had seen it, they would not have recognized the name "EcoAg" and, additionally, the land location was not correct.

3. Browns

[12] The Browns stated they did not file a Statement of Concern, because they did not recognize the name "EcoAg" and the operation they are familiar with had always been referred to as Tongue Creek Feeders or Roseburn Ranches. The Browns explained they own the half section immediately adjacent to the Facility, and had they been aware of the materials being allowed on the site and the ensuing problems, they would have filed a Statement of Concern.

4. Haris

[13] The Haris acknowledged they did not file a Statement of Concern.

5. Viponds

[14] The Viponds stated they did not file a Statement of Concern.

6. Approval Holder

[15] The Approval Holder conceded that the Cowlings and the Jeffers filed Statements of Concern within the legislated timeframe. However, the Approval Holder noted that the remaining Appellants did not file Statements of Concern. The Approval Holder submitted the remaining Appellants have no standing and their appeals are not properly before the Board. The Approval Holder argued that the Appellants who did not file a Statement of Concern had not submitted any evidence or argument to show this was an exceptionally rare or extremely unusual case such that their appeals should be allowed. It stated the Haris and Viponds provided no valid reason for failing to file a Statement of Concern, and the Browns and Zeers blamed the Notice of Application. The Approval Holder argued the Notice of Application was sufficient and cannot be blamed for the failure of the Appellants to file Statements of Concern.

7. Director

[16] The Director confirmed the Cowlings and Jeffers sent letters to Alberta Environment that were accepted as Statements of Concern, and the concerns the Cowlings and

Jeffers expressed were considered in the review of the application. The Director stated the Cowlings and Jeffers were notified of the issuance of the Approval.

[17] The Director stated the Viponds and Zeers sent letters to the Board expressing their concerns, and the Browns and Haris filed Notices of Appeal with the Board.

8. Rebuttal Submissions

[18] The Zeers said the Facility has become a dump site for sewer waste, pigs being shot and rotting in compost piles, drywall, and waste from slaughter facilities. The Zeers added that, had they been aware of the operations at the Facility, they would have filed a Statement of Concern.

[19] The Haris and Viponds submitted the Statements of Concern that were filed on time were not addressed by the Approval Holder until after the Approval was issued. They argued that those who filed Notices of Appeal should be granted standing because of the poor communication and their concerns being ignored by the Approval Holder and the Director.

B. Analysis

[20] The issue of whether someone filed a Statement of Concern can determine whether that person is entitled to proceed with an appeal. Under section 91(1)(a)(i) of EPEA,[4] an appellant must file a Statement of Concern with the Director in response to the Notice of Application before a valid Notice of Appeal can be filed. Filing a Statement of Concern reserves the filer's right to appeal, but it also provides the filer with the opportunity to bring concerns forward early in the application process. The Director takes these valid concerns into consideration and can incorporate terms and conditions in the approval to address the concerns. Statements of Concern also notify the proponent of the project of these concerns, allowing the proponent the opportunity to mitigate the concerns. Filing a Statement of Concern also balances

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[4] Section 91(1)(a)(i) of EPEA states:

"A notice of appeal may be submitted to the Board by the following persons in the following circumstances:

(a) where the Director issues an approval, makes an amendment, addition or deletion pursuant to an application under section 70(1)(a) or makes an amendment, addition or deletion pursuant to section 70(3)(a), a notice of appeal may be submitted

(i) by the approval holder or by any person who previously submitted a statement of concern in accordance with section 73 and is directly affected by the Director's decision, in a case where notice of the application or proposed changes was provided under section 72(1) or (2)…."

the interests of those involved, because it provides notice to the Director and project proponent of the concerns early in the process, rather than waiting until the approval is issued and bringing the concerns forward for the first time in an appeal.

[21] The Director and Approval Holder agree that the Cowlings and the Jeffers filed Statements of Concern within the legislated time frame. They also filed Notices of Appeal in time.

[22] The Viponds, Browns, Zeers, and Haris admitted they did not file a Statement of Concern because they either did not see the notice in the newspaper or did not recognize the location of the project.

[23] Based on the submissions and the Record, the Board finds the Cowlings and Jeffers filed valid Statements of Concern and their appeals are properly before the Board. It is clear that the remaining Appellants did not file Statements of Concern as required under section 91(1)(a)(i) of EPEA. What is at issue is what affect not filing a Statement of Concern should have on their appeals. To answer this question, the Board will consider the adequacy of the notice that was provided.

IV. ADEQUACY OF NOTICE

A. Submissions

1. Jeffers and Cowlings

[24] The Cowlings and Jeffers noted section 72 of EPEA requires the Director to give notice or direct the applicant to give notice of an approval application thereby fulfilling one of the fundamental purposes of EPEA, specifically section 2(g).[5] They submitted that, although Section 2 of the *Environmental Protection and Enhancement (Miscellaneous) Regulation*, Alta. Reg. 118/93 (the "Regulation")[6] sets out the specific content for the public notice that must be

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[5] Section 2(g) of EPEA provides:

"The purpose of this Act is to support and promote the protection, enhancement and wise use of the environment while recognizing the following…

(g) the opportunities made available through this Act for citizens to provide advice on decisions affecting the environment…."

[6] Section 2 of the Regulation states:

provided, what constitutes adequate public notice is not determined solely by reference to the enumerated requirements of the Regulation. The Cowlings and Jeffers argued the requirements of the Regulation were not met for the following reasons:

1. it did not accurately identify the party who was behind the application;
2. it did not properly identify the proposed land location with sufficient clarity to alert adjacent landowners; and
3. the application contained a significant error in land description, such that if an adjacent landowner obtained a copy of the application, it would have appeared that the application related to lands located in another municipality.

[25] The Cowlings and Jeffers argued the Notice of Application was deficient in that it did not convey the true intention of the applicant, and it was not sufficiently clear to enable persons who may be directly affected by the application to understand their right to voice their opposition. They submitted the test is an objective one, essentially "…'would a reasonable person have understood it [the notice] in all the circumstances, notwithstanding its inadequacy'."[7] The Cowlings and Jeffers stated that, even though they managed to connect the dots when the public notice was posted, it should not be taken as evidence the public notice was reasonable given the circumstances. They explained they had to do considerable work to find the link between the Notice of Application and the actual Facility, and this does not mean that a reasonable landowner in the same area would or could have managed to reach the same

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"2(1) Where, in the Director's opinion, an application under the *Approvals Procedure Regulation* is complete and the Director does not waive the notice requirement under section 72(3) of the Act, the Director shall, or shall require the applicant to, do one or both of the following:

(a) publish notice of the application in one or more issues of a newspaper that has daily or weekly circulation in the area in which the activity that is the subject of the application is or will be carried on;

(b) provide notice of the application to the persons and in the manner determined by the Director….

(3) A notice under subsection (1) or (2) shall contain the following:

(a) the name of the applicant;

(b) a description of the nature of the activity, the change to the activity or the amendment, addition or deletion, as the case may be;

(c) the location, capacity and size of the activity to which the notice relates;

(d) a statement that a person who is directly affected by the application may submit a statement of concern to the Director within 30 days of the last notice, or within any longer period specified by the Director in the notice;

(e) the locations where information about the activity, the change in the activity or the amendment, addition or deletion, as the case may be, may be obtained or is available for public disclosure;

(f) any other information required by the Director."

[7] Jeffers' and Cowlings' submission, dated October 15, 2010, at paragraph 7.

conclusion. The Cowlings and Jeffers argued that, even though the other Appellants indicated they were misled by the defective public notice, when applying the reasonable person test, subjective evidence from the neighbours as to whether they were misled, although instructive, is unnecessary.

[26] The Cowlings and Jeffers submitted that, by applying the reasonable landowner test to the public Notice of Application, a reasonable landowner would not have found the connection between the application and the Facility for the following reasons:

1. the applicant was a new and previously unknown corporate entity;
2. the vague land description of the location ("about 7 miles west of High River") did not contain a legal land description and provided only approximate distance and direction from High River; and
3. the incorrect legal land description in the application.

[27] The Cowlings and Jeffers argued the provision of public notice is fundamental to the engagement of directly affected persons in the process, and failure to give adequate notice is a fundamental flaw in the approval process that cannot be subsequently cured.

[28] The Cowlings and Jeffers recognized the Approval has been issued on the basis of a seriously flawed process due to the inadequacy of the public notice, and they asked the Board to relieve those Appellants who did not have the opportunity to file a Statement of Concern from strict compliance with the timelines and requirement of filing a Statement of Concern. They added there may be additional adjacent landowners who are directly affected that could not identify their interest in the matter due to the deficient public notice. The Cowlings and Jeffers asked the Board to publish details of the appeals in the appropriate newspaper with an invitation to participate as intervenors. They submitted this is an exceptional case where such an approach is warranted, and it is necessary to ensure the most relevant information from adjacent landowners is available to the Board.

2. Zeers

[29] The Zeers argued the Notice of Application was not adequate because it only ran in the newspaper once and the name and location were unfamiliar to anyone in the area.

3. Browns

[30] The Browns argued the Notice of Application was inadequate and misleading because it used a name that was unfamiliar to the neighbours and the legal land description was incorrect.

4. Haris

[31] The Haris stated no adequate notice was provided.

5. Viponds

[32] The Viponds argued the Notice of Application was not adequate for the following reasons:

1. The Municipal District of Foothills 31 L.L.D. map of 2007 did not list EcoAg Initiatives Inc. as the landowner, so anyone who looked at this map would not have found the site.
2. The actual description was vague, stating it was "about 7 miles west of High River," even though the site is more than 8 miles west, and there are many locations considered to be west of High River.
3. The location of the facility was recorded as NE 19-16-1 W5M, which is in the Municipal District of Willow Creek, not the Municipal District of Foothills.
4. The actual location was known to residents of the area as Tongue Creek Feeders or Roseburn Ranches.
5. The correct legal land description is SE 16-19-1 W5M, and the error was not corrected until later.

[33] The Viponds added they have a petition with 96 names of concerned residents in the area who want their concerns heard.

6. Approval Holder

[34] The Approval Holder stated the Notice of Application was in the form provided by Alberta Environment, was published in accordance with section 2(1)(a) of the Regulation, and contained all the requirements set out in section 2(3) of the Regulation.

[35] The Approval Holder argued the Cowlings' and Jeffers' proposition that sufficient notice depends on the circumstances of the case was taken from a discussion in Macaulay and Sprague[8] of the common law of notice requirements. The Approval Holder stated that in this

[8] R.W. Macaulay and J.L.H. Sprague, *Hearings Before Administrative Tribunals*, 3d ed. (Toronto: Thomson Carswell, 2007).

case, the legislation is not silent with respect to procedural matters including notice and, therefore, there is no need to consider the common law. The Approval Holder noted section 72 of EPEA[9] sets out the notice requirement and the content of the notice is described in the Regulation.

[36] In response to the Cowlings' and Jeffers' submission regarding the "reasonable landowner test," the Approval Holder stated the quotation used by these Appellants was actually a question posed by counsel in the Ontario Hydro case,[10] not the basis of the decision by the court and no way was it meant to be a basis for some sort of "reasonable landowner test" to be applied in other cases. The Approval Holder argued there is no "reasonable landowner test" and the common law notice requirements raised by the Cowlings and Jeffers have no application in determining whether sufficient notice was achieved under the terms of the legislation.

[37] The Approval Holder stated there is no requirement that an applicant's name be familiar to affected parties. It explained EcoAg was incorporated pursuant to the laws of Alberta on March 20, 1998, and the name EcoAg was painted on the sides of trucks used in the area. The Approval Holder stated the Notice of Application named the applicant as EcoAg Initiatives Inc. and listed Mr. Peter Morrison as the contact person for further information. The Approval Holder stated that the Morrison family has lived and worked in the Tongue Creek area for over 100 years and most, if not all, of the Appellants know Mr. Morrison.

[38] The Approval Holder submitted that, even though the legal land description supplied in the initial application document was incorrect, anyone who read the document would know the lands affected by the proposed Facility were the Tongue Creek lands because:

1. Peter Morrison was named as the contact person.
2. "Roseburn" appeared in the documents' identifying tagline at the bottom of the first 33 pages, and the Appellants all recognized Roseburn Ranches as one of the operations at Tongue Creek.
3. High River is listed as the nearest town, city, or village.

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[9] Section 72(1)(a) of EPEA provides:

"72(1) Where the Director receives

(a) an application for an approval under section 66 …

the Director shall, in accordance with the regulations, provide or require the applicant to provide notice of the application."

[10] *Re: Central Ontario Coalition Concerning Hydro Transmission Systems et al. and Ontario Hydro et al*. (1984) 46 O.R. (2d) 715 (Div. Ct.).

4. A Tongue Creek Feeders site map and water well maps for the site were attached to the application, and the Appellants knew the name and that it was associated with lands affected by the application.

[39] The Approval Holder submitted it is difficult to see how a reasonable landowner in the area who read the application could not have determined the lands in question were the same lands used under the business names of Tongue Creek Feeders and Roseburn Ranches and to be able to connect the Approval Holder, Mr. Morrison, and the Tongue Creek lands.

[40] The Approval Holder argued the description of the Facility being "about 7 miles west of High River" was not vague, and any reasonable landowner in the area would be aware that from the northwest point of High River, the Facility is almost exactly 7 miles away, and the composting facility at Tongue Creek is the only such facility in the area that is west of High River.

[41] The Approval Holder argued that, even if there was such a thing as the reasonable landowner test, the requirements of the test were met and the public Notice of Application was sufficient.

[42] The Approval Holder argued the sufficiency of the notice was demonstrated by the fact that three Statements of Concern were filed.

[43] The Approval Holder noted the Cowlings and Jeffers suggested this is a case in which procedural fairness was abused and the Board should publish an invitation in an appropriate newspaper to those who may want to participate in the process. The Approval Holder referred to section 7(2)(c) of the *Environmental Appeal Board Regulation*, Alta. Reg. 114/93,[11] which requires those wanting to intervene to make a request to do so at the appropriate time. The Approval Holder stated the Board may give intervenor standing to an applicant, but it

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[11] Section 7(2)(c) of the *Environmental Appeal Board Regulation* states:

"A published notice referred to in subsection (1)(a)(ii) or (b)(ii) must contain the following:

(a) the date, time and place of the hearing, in a case where an oral hearing is to be held;

(b) a summary of the subject matter of the notice of appeal;

(c) a statement that any person who is not a party to the appeal and wishes to make representations on the subject matter of the notice of appeal must submit a request in writing to the Board;

(d) the deadline for submitting a request in writing under clause (c);

(e) the mailing address of the Board;

(f) the location and time at which any material filed with the Board will be available for examination by interested persons."

cannot invite people to apply for intervenor status, or grant intervenor status to members of the community at large, in a manner that bypasses the legislation and the Board's established Rules of Practice.

7. Director

[44] The Director stated the Notice of Application was published in the High River Times on November 9, 2007, and in the Okotoks Western Wheel on November 21, 2007. The Director submitted the Notice of Application met the requirements of section 2 of the Regulation. The Director noted the Notice of Application:

1. listed EcoAg Initiatives Inc. as the applicant and Mr. Peter Morrison as the contact person for further information;
2. described the Facility and its use of manure, packing house by-products, meat, bone meal, specified risk material, and drywall;
3. listed the location of the Facility to be about 7 miles west of High River, and as there are no other similar facilities in the area, it is unreasonable to suggest that anyone familiar with the area would not be able to determine where the location is even though the legal land description was not included;
4. contained information on capacity of the Facility; and
5. included information about submitting a Statement of Concern to the Director.

[45] The Director stated it would be a significant burden if he had to personally notify each person who may be affected by the application, so he chose to follow standard departmental practice and notify those who may have an interest in the application by advertising in the local newspapers.

8. Rebuttal Submissions

[46] The Cowlings and Jeffers took issue with the Approval Holder's submission that where a statute prescribes the form of notice, it is inappropriate for the Board to have regard to the common law to determine the substantive issue of whether a notice is adequate. They argued the requirement to provide adequate notice is not simply a technical or administrative requirement. Rather, it is part of the rules of procedural fairness and if a statute does not contain provisions outlining a procedure for providing notice, the Courts will impose an obligation to provide adequate notice. The Cowlings and Jeffers argued that where the form of notice is prescribed in the statute, it does not prevent further inquiry as to whether the notice meets the

requirements of procedural fairness. They submitted the question is whether the specific notice meets the requirements of procedural fairness, and the statutory requirements are not the only factor considered. They submitted: "Technical compliance with statutory formalities does not automatically mean that adequate notice has been provided in any given circumstance, just as technical non-compliance will not always be considered to be inadequate notice."[12]

[47] The Cowlings and Jeffers stated the focus of the adequacy inquiry is procedural fairness, not compliance with technical formalities as prescribed by legislation.

[48] The Cowlings and Jeffers stated the EcoAg signs on-site were not installed until 2010, and they had never seen any vehicles with the EcoAg signage before the Notice of Application was published and were not familiar with the EcoAg name or logo at that time.

[49] The Cowlings and Jeffers noted the correct date when the notice was published in the Okotoks Western Wheel was November 14, 2007.

[50] The Cowlings and Jeffers stated the Director was aware of the deficiencies with the public notice in December 2008. They noted the Approval had not been issued at that stage and the Director did not take the opportunity to cure the defective notice at that time when the costs of doing so and the ability to provide direct and personal notice to adjacent property owners would not have been prohibitive or unwieldy.

[51] The Browns explained they live two miles west of the Facility and they own property immediately north of the Approval Holder. They stated they purchased their land when the Approval Holder operated a feedlot and they had no problem with that operation, but the land use has changed, causing problems they did not anticipate. The Browns explained the name of the operation that was familiar to them did not appear in the Notice of Application, and the name "EcoAg" meant nothing to them at the time the notice was published.

[52] The Zeers stated they own land surrounding the Facility site and their lifestyle has been directly affected. They stated they did not see the notice in the Okotoks Western Wheel and they do not receive the High River Times. The Zeers said that, if they had seen the notice, they would not have recognized the name "EcoAg" since the location of the Facility was known as Tongue Creek Feeders and the land location was incorrect. The Zeers argued there are many

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[12] Cowlings' and Jeffers' submission, dated November 15, 2010, at paragraph 5.

places seven miles west of High River. They stated the only trucks they saw owned by Mr. Morrison had "P&B Trucking" signage on them. The Zeers also stated the signs on the Approval Holder's property were not put up until 2010.

[53] The Haris and Viponds argued the notice of application was faulty in the following ways:

1. "EcoAg" was not a name on any legal land description on the Municipal District of Foothills map, and the wrong legal land description was on the Approval until after the Notices of Appeal were filed.
2. The description, "7 miles west of High River," was too vague since there are many roads west of High River and those that live in the area could not pinpoint the Approval Holder.
3. People who have moved into the area are not familiar with Mr. Morrison, the area, or the operations that exist in the area.
4. There are many people with the name Morrison in the area.
5. The signage at the Facility was not put up until 2010, and they have never seen vehicles in the area with the EcoAg signage.
6. Even though Mr. Morrison's name was on the notice, people in the area do not know whether Mr. Morrison has land or shares land west of High River, other than Tongue Creek Feeders or Roseburn Ranches.
7. The Approval Holder could have obtained the addresses of local residences to give to the Director to send out written notices to all those within a reasonable distance.
8. The notice in the Okotoks Western Wheel was hidden in the announcement pages and was in very fine print, making it difficult to read and locate. The Okotoks Western Wheel is mailed out to taxpayers, but otherwise a person has to pick it up in town or have a subscription. The High River Times must be picked up in High River. People may not have received the High River Times if they did not go into town that day or were away for the long weekend.

[54] In addition, the Viponds noted the public notice was published once in the local newspaper under an unfamiliar name. They stated the applicant felt he was well known in the area so an accurate legal land description was not necessary. The Viponds submitted this was unacceptable.

B. Analysis

[55] The issue is whether the Notice of the Application published in the local newspapers was adequate. Section 2 of the Regulation clearly states what is required in a Notice of Application. Under this section, the notice must include the name of the applicant, a description of the nature of the activity, the location, capacity, and size of the activity, the

location where more information can be obtained, and a statement that a person who is directly affected by the application can file a Statement of Concern with the Director within 30 days of the last notice. To ensure the notice is sufficient, the Director provides the proponent with a template for the advertisement and the Director reviews it prior to publishing.

[56] The Appellants argued that publishing the Notice of Application once is insufficient. Section 2(1) of the Regulation requires the Notice of Application to be published in "one or more issues of a newspaper.…" The Notice of Application was published in two different newspapers. There is no requirement in the Regulation that requires a proponent to publish the public notice more than once.

[57] In this case, the Notice of Application provided the name of the proponent as EcoAg, which is the entity that will be constructing and operating the Facility for which the Approval was issued. Although the name may not have been familiar to the people in the area, EcoAg is the applicant and Approval Holder. EcoAg is a registered company in Alberta. The Notice of Application had to include the name of the applicant, which in this case was EcoAg and not Roseburn Ranches or Tongue Creek Feeders. Therefore, the Notice of Application satisfied the requirement of section 2(3)(a) of the Regulation.

[58] The Notice of Application had to include a description of the nature of the activity. The published Notice of Application described the activity as a biogas generation facility with a capacity of 635 tonnes per year of by-product processing. It also included a list of the raw materials that would be used. This information satisfied the requirements of section 2(3)(b) of the Regulation.

[59] The Notice of Application included a statement regarding the submission of a Statement of Concern by those who are directly affected by the operation within 30 days of the date of the notice. The Notice of Application also included a statement that copies of the application and additional information could be obtained through the applicant. These statements satisfied the requirements of sections 2(3)(d) and (e) of the Regulation.

[60] The Notice of Application also included information as to the location of the proposed activity. This is an important part of the Notice of Application. The published Notice of Application described the location as "about 7 miles west of High River." This is a vague description of where the Facility is located. It is common knowledge that, in rural areas, the

legal land description is used to locate property. It is also to be expected that rural landowners are more likely to take notice of activities proposed for certain lands if those lands are described in a manner that such landowners are used to dealing with – in this case, by section, township, range, and meridian – rather than by an approximate distance from a town. Similarly, in the case of an activity proposed to take place in an urban area, the Board would expect the Notice of Application to describe the location of the project by its municipal street address, rather than by "about so many blocks west of …" or simply by its legal description (plan, block, lot, etc.). There is the possibility that had this particular information been included, more of the Appellants would have filed a Statement of Concern.

[61] The Approval Holder referred to the Board's previous decision, *O'Neill* v. *Regional Director, Parkland Region, Alberta Environmental Protection* re: *Town of Olds*, Appeal No. 98-250-D (A.E.A.B.) ("*O'Neill*"), and argued the Appellants who did not file Statements of Concern needed to show this was an extremely unusual or exceptionally rare case and that they needed to show they had intent to file a Statement of Concern. Unlike the situation addressed by the Board in this case, in the *O'Neill* decision, the Notice of Application was clear, so if a potential appellant saw the notice, they would know if they should file a Statement of Concern. In the current case, it was the lack of particulars in the Notice of Application that placed the Appellants at a disadvantage.

[62] The Board notes that legal land descriptions are normally found in the published Notice of Application when the proposed project site is in a rural location. In this case, the Director did not provide any reasonable explanation as to why the legal land description was not required. Using a statement such as "about 7 miles west" is vague and can extend over a large area. It does not matter whether there are similar facilities in the area or not. Since the Notice of Application initiates the formal participation of the public in the approval process, the notice must be clear in order to be fair to all those who may be directly affected. In this case, additional ambiguity arose when the application submitted to Alberta Environment and the resulting Approval both included the wrong legal land description, so even if a directly affected person obtained the application and Approval, they still would not have known where the Facility was going to be located. All the requirements of section 2(3)(c) were not met. As a result in the circumstances of these appeals, the Board will grant standing to the Viponds, Browns, Zeers, and Haris and Haralta Ranches, even though they did not file Statements of Concern.

V. DOCUMENT PRODUCTION

A. Submissions

1. Cowlings and Jeffers

[63] The Cowlings and Jeffers acknowledged only those documents relevant to the issues should be disclosed. They considered the following documents relevant to the issues they identified:

1. updated information regarding facility technology and processes as constructed and as it will be operated;
2. updated information regarding presence or absence of emission stacks at the Facility;
3. waste stream profiles for all wastes to be processed at the Facility;
4. reclamation plans and information on the security for reclamation;
5. updated information and operating information regarding drainage at the Facility, including storm water storage and/or surface water management ponds used by the facility;
6. updated information regarding groundwater use, flows, and direction at the site;
7. emergency response information to address all emergency situations such as fire, explosion, accidental releases to air, land, or water, and odour emissions;
8. information regarding plans for feedstock staging in terms of processing plans (will wastes from the exiting feedstock sites be processed as a priority or only when new wastes stored at the Facility have been processed?);
9. annual and monthly waste reports submitted to Alberta Environment with respect to the existing feedstock so that the type and likely volumes of existing feedstock processed can be determined;
10. reclamation plans associated with the drawdown of existing feedstock;
11. information regarding air and odour emissions and surface water and groundwater impacts associated with the combination of the feedstock sites and the Facility; and
12. information regarding nuisance animals and disease vector controls and management plans at the Facility and feedstock sites.

[64] In response to the Approval Holder's argument that some of the information sought by the Appellants is exempted from disclosure under section 35(9) of EPEA,[13] the Cowlings and Jeffers argued the exemption is very narrow and it does not mean all information

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[13] Section 35(9) of EPEA states:

"Information relating to a matter that is the subject of an investigation or proceeding under this Act may not be released under subsection (1) or (3)."

provided to Alberta Environment to demonstrate compliance with an environmental enforcement order is automatically exempt. They submitted the documents exempted from disclosure must be limited and specific, and the exemption should not prevent disclosure of facts relating to environmental impacts at the site, site characterization, and monitoring data generated in respect of the site and waste management reports filed to demonstrate compliance.

2. Zeers

[65] The Zeers submitted the information that should be provided includes that relating to the following issues:

1. What plan does the Approval Holder have to stop odours that come from the site?
2. The full disclosure of the waste that will be used including the source and the amount.
3. How will the Approval Holder ensure there will be no water, soil, or air contamination?
4. Does the Approval Holder have an emergency plan, and if yes, what is it?
5. Does the Approval Holder intend to do a study on nuisance animals and scavenger birds for disease?
6. Does the Approval Holder have a bond in place for reclamation of the site?
7. Is the equipment being used certified?

3. Browns and Haris

[66] The Browns and Haris stated all available documents should be disclosed and provided.

4. Viponds

[67] The Viponds stated all information from the environmental enforcement order should be produced including waste streams and tonnages.

5. Approval Holder

[68] The Approval Holder submitted that it is not possible to determine whether a document is properly producible without a prior determination of the issues properly before the Board. The Approval Holder stated it has produced and provided extensive material relating to every aspect of the Facility and the terms and conditions of the Approval. The Approval Holder argued it has made every effort to be transparent regarding the nature of the Facility. The

Approval Holder said there is no further material available that is relevant and necessary to determine whether the Approval adequately addresses the impacts of the Facility.

[69] The Approval Holder argued the composting sites operated by Mr. Morrison pursuant to Registrations are not relevant to these appeals. Requesting material relating to these sites is an attempt to have the Board scrutinize the composting sites and is inappropriate.

[70] The Approval Holder submitted that no further document production is required.

6. Director

[71] The Director stated that, until the Board makes a determination of the issues, it is difficult to provide substantive submissions on the issue of document production.

[72] The Director noted that documents produced in an appeal are those that relate to the specific decision under appeal and, in this case, the Director provided the Record in relation to the Facility. The Director explained he did not provide the files regarding the compost registrations, investigation file, or water licences that relate to the operations involving Mr. Morrison.

[73] The Director argued it would be contrary to the intentions of the legislation to interpret section 35(9) of EPEA in the manner suggested by the Cowlings and Jeffers. The Director stated the enforcement order is not under appeal, and to require production of the wide range of information as suggested by the Appellants would have the effect of allowing an appeal of the enforcement order.

B. Analysis

[74] The Board has reviewed the submissions on document production. The Board appreciates the arguments presented by the Participants that it is difficult to determine which documents should be requested without first knowing the issues framed by the Board further on in this Decision. If the Appellants believe the documents they are requesting are: (1) not included in the Records or in the public documents provided during mediation; (2) relevant to the issue that will be heard at the hearing; and (3) required to make their case before the Board, then the Appellants can request the documents from the Approval Holder or the Director. If the documents are not provided, the Appellants can submit a formal request to the Board for the documents. The request must include an explanation why the Appellants think the documents

should be produced, keeping in mind relevance to the issue and how the documents will support their arguments at the hearing. The Board would then ask the Approval Holder and Director for their submissions in respect of the document request, and the Board would then render its decision on the request.

[75] The Board urges the Participants to cooperate and be reasonable with each other in making and responding to requests for documents.

VI. ISSUES

A. Submissions

1. Cowlings and Jeffers

[76] The Cowlings and Jeffers noted the Board has jurisdiction to consider matters addressed by the Director in reviewing an application for an approval, including the potential for, and mitigation of, environmental impacts from releases into the air, land, and water, site suitability, conservation and reclamation issues, aesthetics, litter, odour, noise, and cumulative effects associated with the proposed Facility. They argued there was no indication the Director considered the cumulative effects created by the proposed Facility due to the fact that it would be:

1. sited on the same land as one of the existing feedstock sites; and
2. part of a larger waste management chain that starts with the handling of the waste feedstock for the Facility at the existing feedstock sites and culminates with processing of the various waste streams at the Facility.

[77] The Cowlings and Jeffers argued the Director's failure to include terms and conditions in the Approval to mitigate the potential for cumulative effects arising from the linkage of the Facility and the feedstock sites was a significant error.

[78] The Cowlings and Jeffers listed two issues that should be considered by the Board:

1. Are the terms and conditions of the Approval appropriate and adequate to mitigate the current and projected environmental impacts of the Facility?
2. Do the terms and conditions of the Approval adequately address the current and projected impacts of the Facility when the cumulative effects of the Facility and the feedstock sites are taken into account?

[79] Both of these issues should be assessed in terms of:

1. air emissions (including dust);
2. odour;
3. releases to surface water;
4. impacts to groundwater from consumption and contamination;
5. effects on the surrounding watershed;
6. litter;
7. noise;
8. aesthetics;
9. soil contamination;
10. reclamation of the Facility and feedstock;
11. effects on wildlife and native vegetation;
12. emergency response for incidents (fire, explosion, spills, etc.) at the Facility and feedstock sites that could lead to releases to air, water, and land; and
13. effects on human and animal health from the increased presence of nuisance animals and disease vectors attracted to the wastes at the Facility and feedstock sites, and storage and processing of high risk waste materials such as specified risk materials, paunch, and municipal sewer sludge.

2. Zeers

[80] The Zeers submitted the issues that should be heard are:

1. What plan does the Approval Holder have to stop odours that come from the site?
2. The full disclosure of the waste that will be used including the source and the amount.
3. How will the Approval Holder ensure there will be no water, soil, or air contamination?
4. Does the Approval Holder have an emergency plan, and if yes, what is it?
5. Does the Approval Holder intend to do a study on nuisance animals and scavenger birds for disease?
6. Does the Approval Holder have a bond in place for reclamation of the site?
7. Is the equipment being used certified?

3. Browns

[81] The Browns submitted the issues are:

1. odour;
2. water;
3. waste material;
4. dust control;

5. weeds;
6. possible reclamation;
7. increase in the number of coyotes and magpies;
8. effects of dust;
9. effect of number of crows and magpies on the surrounding trees;
10. emergency and fire response plan;
11. effects of holding ponds;
12. water usage; and
13. water requirements.

4. Haris

[82] The Haris stated the issues are:

1. odour;
2. nuisance animals;
3. dust; and
4. industrial land use in an agricultural area.

5. Viponds

[83] The Viponds said the following issues should be considered by the Board:

1. waste;
2. waste streams;
3. odour and odour response plan;
4. air emissions;
5. air quality;
6. dust control;
7. weeds;
8. reclamation;
9. nuisance animals;
10. emergency and fire response plans;
11. cumulative effects on and off site;
12. the narrow focus of the Approval;
13. surface water;
14. holding ponds;
15. industrial runoff;
16. water usage; and
17. water requirements.

6. Approval Holder

[84] The Approval Holder noted that, in order for an issue to be properly before the Board, it must be raised in the Notice of Appeal and it must be related to a matter included in the Approval. It argued that, since only the Cowlings' and Jeffers' Notices of Appeal are properly

before the Board, only the issues raised in their Notices of Appeal that relate to the Approval are within the Board's jurisdiction.

[85] The Approval Holder submitted that the only issue properly before the Board is whether the terms and conditions of the Approval adequately address the impact of the Facility on the environment.

[86] The Approval Holder argued the following regarding the issues raised by the Appellants:

1. Noise falls within the jurisdiction of the municipal district and is therefore outside the jurisdiction of the Board. Noise is not an issue that relates to a matter addressed in the Approval.
2. Aesthetics falls outside the jurisdiction of the Board given that people hold widely varying views with respect to what is visually appealing. It is difficult to understand how the Board could issue a meaningful decision on the topic.
3. The Director's choice not to address the cumulative effects of the Facility and the composting sites was part of the process used by the Director and is not reviewable by the Board. The Cowlings and Jeffers are using the cumulative effects issues as an attempt to use the appeal process to bring the Appellants' complaints concerning the registered compost sites before the Board. The issue of cumulative effects should not be considered by the Board in these appeals.

7. Director

[87] The Director agreed that the following issues are within the Board's jurisdiction:

1. air emissions;
2. odour;
3. releases to surface water, within the confines of condition 4.2.4 of the Approval;[14]
4. contamination of groundwater;
5. litter;

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[14] Condition 4.2.4 of the Approval states:

"The approval holder shall only release the contents from the Industrial Runoff and Stormwater Retention Pond System as follows:

(a) into the facility to be used within the process or composting operations; or

(b) to a wastewater treatment facility that is subject of the appropriate Approval or Registration under the Act; or

(c) by land application provided the safe conditions specified in Alberta Environment *Guidelines for Municipal Wastewater Irrigation*, April 2000, as amended, are satisfied; or

(d) as authorized in writing by the Director."

6. noise;
7. aesthetics;
8. soil contamination;
9. site reclamation; and
10. emergency response for incidents such as fire, explosion, spills that could lead to releases to air, water, or land.

[88] The Director argued the issue of the effects of the Facility on wildlife and native vegetation is not within the Board's jurisdiction. He stated he was unsure of what was intended by the issue of the "effects on the surrounding watershed."

[89] In response to the Cowlings' and Jeffers' comments regarding cumulative effects, the Director noted their submission raised the issue of the Approval and the Registrations relating to the compost sites. The Director stated these compost sites are governed by Registrations and their corresponding Codes of Practice under EPEA, and are not appealable to the Board. The Director argued the attempt to include the feedstock sites that hold Registrations under cumulative effects is, in effect, appealing the regulation of certain waste streams that can be used by the approved Facility, in particular, the waste stream subject to Registrations held by Mr. Morrison. The Director explained the feedstock allowed under Condition 3.1.4 of the Approval[15] can come from seven sources, including Cargill, Mr. Morrison's compost sites regulated by Registrations, other agricultural operations in the area, and surrounding municipalities. The Director argued the Appellants cannot use the appeal process to scrutinize how Cargill or the municipalities produce or treat their wastes. Similarly, the appeal process cannot be used to scrutinize how Mr. Morrison's companies operate under valid Registrations.

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[15] Condition 3.1.4(a) of the Approval provides:

"The approval holder shall construct the Process Building as described in the application and shall include, at a minimum, all of the following, unless otherwise authorized in writing by the Director:

(a) a receiving and unloading concrete bay for the following feed stocks, unless otherwise authorized in writing by the Director:

(i) animal by-products,

(ii) waste materials from the meat industry,

(iii) animal carcasses,

(iv) organic resources derived from animal cadavers,

(v) agricultural and food processing wastes,

(vi) treated or semi-treated municipal bio-solids, and

(vii) livestock manure feed stocks…."

[90] The Director argued the issues should be restricted to the Approval only, and any attempt to have an inquiry into all of Mr. Morrison's approvals, registrations, and licences should not be allowed under the guise of considering cumulative effects.

8. Rebuttal Submissions

[91] The Cowlings and Jeffers noted the Board has, in previous decisions, recognized it has jurisdiction to consider noise and aesthetic effects. They noted the Director accepted the Board's jurisdiction to consider noise and aesthetics.

[92] The Cowlings and Jeffers argued the environmental protection mandate of the Director is broad enough to include consideration of the potential for effects of the Facility on wildlife and native vegetation as these are components of the environment as defined under section 1 of EPEA.[16]

[93] The Cowlings and Jeffers objected to the Approval Holder's and Director's characterization of the issue of cumulative effects as a collateral attack on the regulation of the feedstock sites. These Appellants noted that Alberta Environment states on its website that addressing cumulative effects of development on the environment is a specific mandate for Alberta Environment.

[94] The Cowlings and Jeffers argued that, in cases such as this, when there may be odour impacts, air emissions, noise impacts, releases to groundwater, potential groundwater and soil impacts, effects on aesthetics, and impacts on wildlife and native vegetation, it is essential these impacts be considered in the context of adjacent land uses, regardless of who owns or operates the adjacent facilities. The Cowlings and Jeffers argued it would be absurd if the adjacent land uses contributing to existing impacts could not be considered in combination with the impacts of the Facility to assess cumulative effects just because the adjacent land uses are operated by the same person. The Cowlings and Jeffers submitted the consideration of known and projected impacts from adjacent land uses is necessary to establish background conditions against which the Facility's contribution to the impacts are considered. The Cowlings and Jeffers submitted that: "Impacts from the new facility, when viewed in isolation may be

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[16] Section 1(t)(iii) of EPEA defines "environment" as: "the components of the earth and includes … all organic and inorganic matter and living organisms…"

acceptable, but when viewed in conjunction with existing impacts may be entirely unacceptable."[17]

[95] The Cowlings and Jeffers stated the management of cumulative impacts in an airshed, watershed, soil management area, or habitat area, requires assessing the level of impact from adjacent land uses when combined with the Facility, and the ownership or regulatory status of adjacent land uses is not required in the assessment, but common ownership of all sources of impacts could affect the ability of the Facility operator to mitigate cumulative effects on the area.

[96] The Cowlings and Jeffers acknowledged the application was for the Facility only and the Approval does not regulate the feedstock sites. They stated the Facility is located in an area that has various environmental impacts, and it is inappropriate to view the Facility's impacts in isolation from the existing background conditions created by the feedstock sites. The Cowlings and Jeffers argued there are clear linkages between the Facility and the adjacent feedstock sites so the review of the Facility's impacts and the terms and conditions of the Approval need to be reviewed in conjunction with the operations and impacts of the feedstock sites.

[97] The Browns listed the issues impacting them:

1. odours;
2. increase in the number of flies, coyotes, magpies, and crows;
3. debris including plastic and other garbage on the fenceline between their property and the Approval Holder's property and on the Brown's property;
4. Tongue Creek runs across their land and runoff from the operation flows down the hill into the water that is next to the farm houses;
5. their cattle are in close proximity to materials that are a nuisance and potentially hazardous; and
6. property values.

[98] The Zeers stated the following issues need to be addressed:

1. cumulative effects including the compost that is the feedstock for the Facility which has caused concern regarding air, water, and soil contamination;
2. aesthetics;
3. odours;
4. water;
5. soil contamination; and

[17] Cowlings' and Jeffers' submission, dated November 15, 2010, at paragraph17.

6. human and animal health.

[99] The Haris and Viponds stated the issues should include:

1. aesthetics;
2. nuisance animals;
3. odour;
4. litter;
5. noise;
6. weeds;
7. cumulative effects on the soil, water, air, human and animal health, and reclamation and the long term effects; and
8. emissions.

[100] In addition, the Viponds added the compost sites are relevant to the appeals because the Facility cannot operate without feedstock which comes from the composting sites. They stated the regional landfill does not smell or look as unappealing as the Approval Holder's site.

B. Analysis

[101] The Appellants have raised a number of issues they believe should be considered by the Board. Some of the issues, such as land use and property values, are clearly not within the Board's jurisdiction and will not be considered by the Board. To be properly before the Board, the issues must be in response to the issuance of the Approval, which allows for the construction, operation, and reclamation of the Facility.

[102] The issues raised by the Appellants can be summarized as the following: noise; odour; aesthetics; surface water impacts; groundwater impacts; water usage; air emissions; litter; soil impacts; reclamation; emergency response plans; nuisance animals; cumulative effects; feedstock and waste; and weeds.

[103] It is unclear what the Appellants' are referring to when they state that water usage should be an issue. The amount of water used and the rate of water use are licensed under the *Water Act*, R.S.A. 2000, c. W-3, and any water licences the Approval Holder may hold are not part of the Approval under appeal. The issue of water usage as it may apply to existing water licences is not properly before the Board.

[104] The Board has looked at the issue of noise in previous decisions.[18] Although the Approval Holder argued noise is a municipal issue, it also falls within Alberta Environment's jurisdiction. It is an issue of concurrent jurisdiction and is a proper issue for the hearing.

[105] Odours, pests, and aesthetics issues are also issues of concurrent jurisdiction and can be considered in these appeals.

[106] The remaining issues that have been raised, including groundwater and surface water impacts, air emissions, emergency response plans, litter, and reclamation and soil impacts are also properly before the Board, provided any impacts identified are a result of the Facility.

[107] The Board cannot hear arguments regarding the enforcement order or the operation of the facilities that are regulated pursuant to a Registration. The handling of the feedstock as it enters the Facility is an acceptable issue for the hearing; however, the source of the feedstock is not within the Board's jurisdiction. The facilities that provide the feedstock operate under their own approvals or registrations.

[108] The Appellants raised the argument that cumulative effects should be considered an issue. The Board recognizes the Facility will not be operating in isolation, but it is the Facility itself that is the subject of the Approval. Therefore, the Participants must look at the operation of the Facility, assess what environmental impacts it will cause, if any, and determine if the conditions in the Approval adequately protect the environment.

[109] Based on the submissions and discussion above, the Board considers that the subjects identified above as falling within its jurisdiction in these appeals can be subsumed under the following overall issue: Do the terms and conditions of the Approval adequately address the impacts of the Facility on the environment?

[110] The Appellants are encouraged to work co-operatively to minimize duplication of evidence and arguments at the hearing. In accordance with its standard procedures, the Board will set a time schedule for the hearing with strict time limits for oral submissions by the Participants.

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[18] 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.).

[111] As is the Board's practice, it will publish notice of the hearing in the local newspapers, and part of the advertisement will include a statement that those who want to participate in the hearing process may apply for intervenor status. If the Board receives any intervenor requests, it will allow the Participants to provide submissions on whether the person(s) should be allowed to participate at the hearing as intervenor(s). The Board will then rule on such requests.

VII. DECISION

[112] The appeal of Mr. Wendel and Ms. Christy Wickenheiser is dismissed for failing to respond to the Board's request for a written submission for the preliminary motions.

[113] The Notices of Appeal filed by Mr. Robert and Ms. Lisa Cowling and Mr. Bruce and Ms. Marcia Jeffers are valid, as these persons had previously submitted Statements of Concern to Alberta Environment within the legislated timeframe.

[114] The Board accepts the Notices of Appeal filed by Mr. Kent and Ms. Ingrid Vipond, Mr. Bernie and Ms. Margie Brown, Mr. Ian and Ms. Corrinne Zeer, and Mr. Jesse, Ms. Sarah, and Mr. Harji Hari and Haralta Ranches, even though these persons did not submit Statements of Concern, as the Notice of Application did not comply with the requirements in the Regulation in that it did not properly describe the location of the activity to which the Notice of Application applied.

[115] The issue that will be heard at the hearing is: Do the terms and conditions of the Approval adequately address the impacts of the Facility on the environment?

[116] As the Board stated, the issues of noise, odours, pests, and aesthetics are within the Board's jurisdiction. Groundwater and surface water impacts, air emissions, emergency response plans, litter, reclamation and soil impacts, and the handling of feedstock as it enters the Facility are properly before the Board, provided the impacts identified, if any, are the result of the operation of the Facility.

[117] The hearing is scheduled for February 9, 10, and 11, 2011, in Okotoks, Alberta.

Dated on January 6, 2011, at Edmonton, Alberta.

"*original signed by*"

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Alex G. MacWilliam
Panel Chair

"*original signed by*"

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Jim Barlishen
Board Member

"*original signed by*"

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A.J. Fox
Board Member