

SUMMARY OF ENVIRONMENTAL APPEAL BOARD DECISIONS
2007 – EMA – 007 (A) AND 2008 – EMA – 005 (A) Respecting Amendments to West Coast
Reduction Ltd. Air Permit

APPEALS

West Coast Reduction Ltd. (“West Coast”) appealed two decisions of the Greater Vancouver Regional District (“GVRD”) under the GVRD Air Quality Management Bylaw to amend West Coast’s Air Permit to include odour units and other requirements to reduce odour from West Coast’s facility. Several residents of the neighbourhood near West Coast’s facility also appealed the GVRD permit amendments essentially seeking stricter odour limits for West Coast.

RESULT

West Coast was successful in its appeals. The Environmental Appeal Board (the “Board”) allowed the West Coast appeals of the GVRD permit amendments and dismissed the appeals by the residents. In particular, the Board rejected the use of odour units in the West Coast permit because they cannot be relied upon for permit compliance purposes given that they are an imprecise measurement. The Board agreed with West Coast that the amendments by the GVRD to include odour units in the permit were made by the GVRD without authority or jurisdiction. The Board, recognizing that this is a complex issue, and based on West Coast’s proposals, also recommended that West Coast, the neighbourhood residents and the GVRD participate in a technological “round table”, that West Coast continue to investigate cold storage options for raw material and that West Coast continue to provide samples for odour testing and use of odour units for information and monitoring purposes only.

FACTUAL BACKGROUND

West Coast has been operating the rendering plant at this industrial location in Vancouver since 1964. Rendering is the manufacturing and cooking process used to convert raw materials (animal by-products and used cooking oil) into finished products. West Coast performs an important function in the management or recycling of waste created in the production of food, prevents producers from turning to less desirable methods of disposing of animal waste. Despite West Coast’s significant efforts over the years to reduce odour emissions, including installation of two thermal oxidizers to incinerate odours and the addition of ozone to the wet scrubbers, the GVRD’s position was that the permit amendments to include odour units were made in response to an increase in public complaints about odour from West Coast’s facility. West Coast took the position that the complaint process relied upon by the GVRD as justification for the permit amendments was flawed and that odour units themselves are an unreliable mechanism for measurement of odour as a compliance mechanism.

DISCUSSION

The Board heard extensive evidence from West Coast, the GVRD and the residents about neighbourhood odours, the GVRD complaint process and scientific evidence concerning odour units.

The Board reviewed GVRD complaint investigation forms and data for the years 2006 and 2007. The Board concluded that odour complaints are made at a variety of times, can occur on any given day of the week, and the descriptions of the odour are varied. There is no consistency in terms of when odour occurs, when it is experienced, or its duration. The Board further concluded that because the complaints received by GVRD are only “substantially verified” rather than “verified” there is uncertainty as to whether West Coast is a source of the odour. The Board found that a reasonable person would exercise caution when relying on the complaint numbers as the numbers may inflate the instances of West Coast odour and create a false impression of the extent of the problem within the community. The Board found that the geographical extent of the odour is far smaller than ever before. The Board concluded that without a detailed study there is no way to know what is really happening with West Coast odours and there is no way to track the severity or intensity of the odours complained of. Accordingly, the Board found that it was not reasonable for the GVRD to have made the permit amendments. The Board found that a reasonable person in the position of the GVRD District Director would not have found the amendments necessary for the protection of the environment. The Board further found that the GVRD did not have any confidence that the amendments would protect the environment.

Respecting the use of odour units as an enforcement tool in the West Coast permit, the Board heard extensive expert evidence and accepted the evidence of West Coast expert, Dr. David Parker, concerning the reliability of odour units. The Board found that the fact that odour units are recognized “standards” in other jurisdictions is not sufficient to justify their inclusion in the West Coast permit to measure compliance. The Board determined that the use of odour units in the context of measuring odour from rendering plants was not reasonable and appropriate as their use as an indicator of an environmental odour is too flawed to determine compliance. The Board found that odour units are based on subjective assumptions and building on those assumptions only increases the bias. The Board was of the view that the variability in testing and reporting of odour units was not acceptable when such results were used for compliance purposes in West Coast permit. The Board determined that the ultimate number or value coming out of the odour unit measurement cannot be relied upon as meaningful. The Board concluded that to impose such an imprecise measurement in the permits was an unreasonable exercise of discretion by the GVRD.

Respecting the curtailment of West Coast operations on weekends and statutory holidays, the Board determined that West Coast should continue its investigations into options that would reduce odour on weekends and statutory holidays. The Board accepted the evidence of Mr. Ken Ingram, the Director of Technical and Environmental Services for West Coast, that complete closure of all West Coast operations is not a feasible option given the nature of the raw material which would actually increase odours.

Respecting West Coast’s importance to the environment and to agriculture in British Columbia, the Board found that West Coast performs an important function in the management or recycling of waste created in the production of food, prevents producers from turning to less desirable methods of disposing of animal waste, and maintains an economic and symbiotic relationship with fish and meat packers and processors. The Board found that the need to balance the need and type of amendments with the role of the operation of West Coast and the B.C. sustainability regime is a relevant and appropriate consideration to be taken into account by the GVRD.