

GVRD Air Quality Permitting Process and Decisions:
General Legal Framework and Guiding Principles

1. Introduction

- 1.1. In providing the service of air pollution control and air quality management, the Greater Vancouver Regional District (“GVRD”), also known as “Metro Vancouver”, authorizes the issuance of permits to entities whose operations may result in the discharge of air contaminants. This document is meant to assist interested parties in understanding the process, including the general legal framework, procedures and principles, applicable to the GVRD’s air quality permitting decisions.
- 1.2. The Provincial *Environmental Management Act*, S.B.C. 2003, c. 53 (the “Act”) authorizes the Board of Directors of the GVRD (the “Board”) to provide the service of air pollution control and air quality management and, for that purpose, the Board may, through the passage of bylaws - prohibit, regulate and otherwise control and prevent the discharge of air contaminants. The Act also requires the Board to appoint a district director with permitting powers.
- 1.3. Pursuant to the Act, the Board enacted the Greater Vancouver Regional District Air Quality Management Bylaw No. 1082, 2008 (the “Bylaw”), appointed a district director and defined “air contaminant” as a substance that is emitted into the air and that does, or has the capability of: injuring the health or safety of any person, property or any life form; interfering with visibility or the normal conduct of business; or, causing material physical discomfort to a person or damage to the environment.

2. Notification Process for Permit Applications

- 2.1. The Bylaw requires that all applications for new permits and amendments to permits be subject to the requirements of the *Public Notification Regulation*, B.C. Reg. 202/94, which was enacted under the Act. The *Public Notification Regulation* addresses the following:
 - The minimum information that must be included in an application for a permit or approval;
 - The requirements imposed upon the applicant for posting, publishing and providing notice of the application to the public;
 - The right of a person, who may be adversely affected by the granting of a permit (referred to as a “Concerned Person(s)” in this document), to notify the district director, in writing, stating how that person is affected;

- The ability of the District Director to consider the views of Concerned Persons that are communicated within 30 days of the public notice (and after 30 days, only if a decision has not yet been made);
 - The ability of the district director to require the applicant to meet with Concerned Persons to explain the application and proposed environmental protection measures;
 - The requirement for the district director to notify Concerned Persons when a decision is made on the application.
- 2.2. The purpose of the notification process is to notify the public and in particular, Concerned Persons, with information about the proposed discharge so that they, in turn, may provide informed comment to the district director.

3. Permit Decision-Making Process

General Process

- 3.1. In determining whether to conditionally authorize the discharge of air contaminants through a permit, the district director may consider relevant information provided by the applicant, Concerned Persons, government or private agencies, GVRD staff and others.

Procedural Fairness

- 3.2. The permitting decision-making process is intended to be procedurally fair and consistent with the principles of natural justice. Procedural fairness and natural justice require that *both* the applicant and Concerned Persons are given the opportunity to be “heard” such that their concerns and respective positions on issues are made known to the decision maker. The decision maker must also be unbiased, impartial and must not have any personal stake in the matter.

The Exercise of Discretion

- 3.3. The exercise of discretion by the district director in permitting decisions is allowed under the legislation and is expected. In exercising discretion, the district director is obliged to consider all relevant matters and not to consider any irrelevant matters. In addition, it is the decision maker, the person who has “heard” the matter, who must ultimately decide the issue – no one else. Consequently, the district director may not be fettered or directed by others in exercising discretion. The district director may consider government policy in exercising discretion but cannot apply that policy inflexibly. Ultimately, the district director must be independent in the permit decision-making process.

Appeal Provisions

- 3.4. Once a decision has been issued, the district director will notify the applicant and any Concerned Persons of the decision. The district director's decision may be appealed in accordance with the appeal provisions set out in Part 8 of the Act.

4. Policy Considerations

The Air Quality Management Plan

- 4.1. In an effort to maintain and improve air quality, the Board adopted the Integrated Air Quality and Greenhouse Gas Management Plan (the "Air Quality Management Plan") in October 2011. The Air Quality Management Plan is strategic in nature and provides a vision, goals, strategies, actions and ambient air quality objectives to guide air quality management in the region.

Requiring Best Available Control Technology

- 4.2. Air contaminants may cause harm at levels below pollution thresholds or ambient air quality objectives. Also, additional sources of air contaminants are expected in the future. Consequently, it is generally advisable to ensure that new discharges minimize emissions to the fullest extent practicable by utilizing the best available control technology.
- 4.3. This concept is similar to many US jurisdictions that attain ambient air quality standards and require new dischargers to implement Best Available Control Technology ("BACT" or "BAT"). BACT is a technology-based standard set at the lowest levels obtained by similar economically viable facilities already in operation. While similar to BACT rules in the US, the GVRD permitting approach is based on policy goals rather than prescriptive rules and therefore allows greater flexibility in considering site-specific circumstances. For example, a facility emitting harmful air contaminants in an urban area may expect more stringent requirements than a similar facility in a remote location. Such site-specific considerations allow for more efficient allocation of resources to provide maximum environmental protection benefit.
- 4.4. The economic viability of reducing air contaminant emissions may vary with location and over time. Consequently, the district director may consider local and temporal circumstances. Such local and temporal considerations are made within the context of continuous improvement such that any site-specific and/or temporary conditions allow air quality to improve throughout the region over the longer term.

Ambient Air Quality Impact Assessment

- 4.5. Regardless of the technology employed to reduce the quantity and impact of air emissions, it is necessary to ensure that the environment is protected from serious adverse impacts and/or pollution. Consequently, an assessment of the likely impact of the discharge upon local and regional air quality is required. The extent of the ambient air quality impact assessment will vary widely depending upon the quantity of emissions, the quality of the emissions and the sensitivity of the receiving environment.

Views of the Board

- 4.6. From time to time, the Board may express its policy position on the issuance of a particular permit. The Board is distinct from the district director and the GVRD staff responsible for processing a permit application. Although the district director may consider the views of the Board, the district director and GVRD staff must, at all times, be impartial in processing and deciding on the issuance of a permit.

5. Permit Requirements

- 5.1. Under the Bylaw, the district director may do any of the following:
- (1) place limits and restrictions on the quantity, frequency and nature of an air contaminant permitted to be discharged and the term for which such discharge may occur;
 - (2) require the holder of a permit to repair, alter, remove, improve or add to works or to construct new works and to submit plans and specifications for works specified in the permit;
 - (3) require the holder of a permit to give security in the amount and form and subject to conditions the district director specifies;
 - (4) require the holder of a permit to monitor, in the manner specified by the district director, an air contaminant, the method of discharging the air contaminant and the places and things that the district director considers will be affected by the discharge of the air contaminant;
 - (5) require the holder of a permit to conduct studies, keep records and to report information specified by the district director in the manner specified by the district director;
 - (6) specify procedures for sampling, monitoring and analyses, and procedures or requirements respecting the discharge of an air contaminant that the holder of a permit must fulfill.

5.2. Permits authorize the discharge of air contaminant(s) to the environment if, and only if, all conditions or requirements of the permit are met. Permit conditions generally fall into the following categories:

- Quantity and Quality
- Works and Measures
- Monitoring, Record Keeping and Reporting

Quantity and Quality of Emissions

5.3. Permits generally specify the quantity of emissions, for instance the volume (at referenced conditions) of contaminated air that may be discharged to the environment. The concentrations of contaminants, expressed usually as mass per unit volume, are also often specified. The frequency and/or hours or days of authorized discharge may also be stipulated.

5.4. Quantity and quality requirements are effective for point sources, but fugitive sources (such as dust emanating from handling or storing substances outside a building) may require the use of alternative requirements to restrict the quantity of air emissions; such as limiting the rate of throughput or amount of dust-producing material stored on site and/or requiring the use of dust suppression equipment.

Works and Measures

5.5. Permits often identify specific works, i.e. pollution control equipment, that must be in operation for the discharge to be allowed. Permits may also specify measures that must be followed if the discharge is allowed to occur. Measures can include operating in accordance with approved dust or odour management plans and standard operating procedures.

Monitoring, Record Keeping and Reporting

5.6. Monitoring may include sampling and analysis of emission quantity and quality to determine compliance. Receiving environment monitoring, i.e. sampling and analysis of air quality and/or impacts from air emissions extending beyond the source property, may be required.

5.7. Monitoring may also include checking operating conditions and procedures.

5.8. Records of monitoring information and other relevant information may be required to be kept and/or submitted to the district director.

6. Limits on Decision Making Powers

- 6.1. The permitting powers of the district director are specified by the legislation and the district director may not include matters outside the statutory authority provided by the enabling legislation. Permitting decisions are guided by the following words from the Bylaw:

“The district director may issue a permit to allow the discharge of an air contaminant subject to requirements for the protection of the environment that the district director considers advisable and without limiting the generality of the foregoing...”

- 6.2. In addition to the above, the Bylaw prohibits the district director from allowing the discharge of any air contaminant so as to cause pollution. Pollution is defined in the Bylaw as *“the presence in the environment of substances or contaminants that substantially alter or impair the usefulness of the environment”*.
- 6.3. Because the powers of the GVRD and the district director are derived from Provincial legislation and jurisdiction, GVRD air quality permits cannot address matters outside Provincial jurisdiction. In addition, concerns related solely to zoning, land use, noise and aesthetics are not generally considered in permitting decisions. Finally, political matters such as whether an entity has social license or public acceptance are not to be considered in permit decisions that are technical or legal in nature.

7. Conclusion and Disclaimer

- 7.1. This document is meant to provide general information on the GVRD air quality permitting process and is in no way meant to constitute an exhaustive list of the factors that may be considered by the district director when deciding on the issuance of a permit.
- 7.2. This document is not intended to endorse or recommend for or against the issuance of an air quality permit.
- 7.3. This document does not constitute legal, professional or other advice and should not be relied upon for that purpose. The GVRD shall not be held liable for any losses caused by reliance on the information provided in this document.