

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** Fairmount Developments Inc. v. Nova Scotia (Environment and Labour), 2004 NSSC 126

**Date:** 20040623

**Docket:** S.H.211363A and S.H.212164A

**Registry:** Halifax

**Between:**

Fairmount Developments Inc. and Armstrong Morrell  
Incorporated

Appellants

and

Nova Scotia (Minister of Environment and Labour)

Respondent

and

IN THE MATTER OF Chapter 1 of the Statutes of Nova Scotia 1994-95,  
the *Environment Act*

and

IN THE MATTER OF a decision of the Minister of Environment and  
Labour pursuant to s. 137 of the *Environment Act* and dated November  
17, 2003, denying an appeal filed by Fairmount Developments Inc.  
("Fairmount") and Armstrong Morrell Incorporated ("AMI") of the  
refusal by an Administrator of the Department of Environment and  
Labour ("NSDEL") to approve a Remedial Action Plan ("RAP") and  
Certificate of Compliance ("CoC") for property known as the Fairmount  
Ridge Property

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**Judge:** Justice C. Richard Coughlan

**Heard:** February 23 and 24, April 16 and 27, 2004 (in Chambers), at Halifax,  
Nova Scotia

**Decision:** June 23, 2004

**Subject:** Administrative Law - Statutory Appeal - Persons with Standing to Appeal - Whether Guidelines are an Administrative Directive or have the Force of Law - Review of Minister's Decision

**Summary:** Over the years three environmental reports had concluded the subject property was contaminated. The property was being developed on the basis it contained contaminated material. In 2003 a report using a method not previously used in Nova Scotia determined the property was not contaminated. The Site Professional issued a Remedial Action Plan and Certificate of Compliance as set out in "Guidelines for Management of Contaminated Sites in Nova Scotia". The Department of Environment and Labour took issue with the conclusion the site was not contaminated. The Owner and Site Professional appealed to the Minister. The Minister held the Site Professional was not "a person aggrieved" with a right to appeal a decision and denied the Owner's appeal. The Owner and Site Professional appealed to the Court.

**Issues:** Did the Minister err in not providing adequate reasons for his decision?

Is the Site Professional "a person who is aggrieved" within the meaning of s. 137 of the *Environment Act*?

Are the Guidelines for Management of Contaminated Sites in Nova Scotia an administrative directive or a document which has the force of law, and if the Guidelines have the force of law, what is the appropriate standard of review and did the Minister meet the standard?

**Result:** The Site Professional was "a person who is aggrieved" within the meaning of the *Environment Act* as the decision of the Minister is prejudicial to its interests.

The Guidelines are administrative in nature. They establish a voluntary process. The Guidelines deal with contaminated sites. The Appellants say the site is not contaminated. If the site is not contaminated, the Owner can exit the Guideline process. The Appellants do not have the right to the remedy sought. If the Guidelines are enforceable, the standard of review is reasonableness *simpliciter* and the Minister's decision was not unreasonable.