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# ALBERTA ENVIRONMENTAL APPEALS BOARD

## Report and Recommendations

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Date of Report and Recommendations – January 18, 2021

**IN THE MATTER OF** sections 91, 92, 94, 95 and 99 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12;

**-and-**

**IN THE MATTER OF** an appeal filed by West Fraser Mills Ltd. with respect to *Environmental Protection and Enhancement Act* Approval No. 108-03-00 issued to West Fraser Mills Ltd. by the Director, Upper Athabasca Region, Operations Division, Alberta Environment and Parks.

Cite as: *West Fraser Mills Ltd. v. Director, Upper Athabasca Region, Alberta Environment and Parks* (18 January 2021), Appeal No. 18-019-R2 (A.E.A.B.), 2021 ABEAB 1.

**BEFORE:**

Meg Barker, Acting Board Chair.

**PARTIES:**

**Appellant:** West Fraser Mills Ltd., represented by Ms. Janice Walton and Mr. Tony Crossman, Blake, Cassels & Graydon LLP.

**Director:** Mr. Muhammad Aziz, Director, Upper Athabasca Region, Operations Division, Alberta Environment and Parks, represented by Ms. Alison Altmiks, Alberta Justice and Solicitor General.

## EXECUTIVE SUMMARY

West Fraser Mills Ltd. (the Appellant) applied for a renewal of an approval to operate a pulp mill issued by Alberta Environment and Parks (AEP) under the *Environmental Protection and Enhancement Act*. AEP issued the approval, which included changes to some conditions contained in the prior approval. The approval requires certain changes to the pulp mill's operations that are being implemented across the pulp industry to ensure current best practices are followed.

The Appellant filed a notice of appeal with the Environmental Appeals Board (the Board), appealing several of the new conditions and requested the Board grant a stay of those conditions pending the determination of its appeal.

The Board ordered a stay of the appealed conditions until the Board hears the appeal and the Minister of Environment and Parks issued his order or until the Board orders otherwise.

The Board held a mediation meeting with AEP and the Appellant (the Parties). At the mediation meeting, the Parties were able to reach an agreement on all but three of the issues raised by the Appellant in its appeal. These issues were:

1. the requirement to cease operation of the olivine wood waste incinerator;
2. the requirement for a wetland assessment; and
3. the requirement for a Cadmium Monitoring and Management Plan.

The Parties agreed to continue their discussion on two of the outstanding issues – the wetland assessment and cadmium plan - and agreed that the third issue relating to the usage of the olivine wood waste incinerator would likely be referred to a hearing before the Board.

Based on the discussions, the Parties were able to reach an agreement on two of the issues - the wetland assessment and cadmium plan - whereby the Parties requested the Board issue a Report and Recommendations to the Minister, recommending that the approval be varied to implement the Parties' agreement. The third issue may proceed to a hearing, however, the Appellant has requested that AEP reopen discussions on this issue.

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## **I. BACKGROUND**

[1] On November 30, 2018, the Director, Upper Athabasca Region, Operations Division, Alberta Environment and Parks (the “Director”), issued Approval No. 108-03-00 (the “Approval”) to West Fraser Mills Ltd. (the “Appellant”). The Approval, issued under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, (“EPEA”), authorizes the Appellant to operate the Slave Lake Pulp Mill, a bleached chemithermomechanical pulp manufacturing plant (the “Plant”) near Slave Lake, Alberta. The Plant has been in operation since 1990, and this is the third approval issued to the Plant under EPEA.

[2] The Approval requires the Appellant to make changes to its operations in order to be compliant with the current best practices applicable to the pulp industry in Alberta. Many of the changes made to the Approval are being made across the industry.

[3] On December 28, 2018, the Appellant filed a Notice of Appeal with the Environmental Appeals Board (the “Board”) appealing the following conditions of the Approval:

- 2.4.4 – the requirement for emissions controls on storages tanks;
- 4.2.14 – the requirement to cease operation of the olivine wood waste incinerator not later November 30, 2021;
- 4.2.16 and Table 4.2-D – downtime limit for pollution abatement equipment due to maintenance;
- 4.2.18 and Table 4.2-E – reporting requirements of the air emission source monitoring;
- 4.3.15(b) – downtime limits for inspection or repair of each continuous monitoring system associated with the industrial wastewater control system;
- 4.3.44 to 4.3.47 and Table 4.3-H – requirements for a wetland assessment and operational monitoring;
- 4.4.16 – the authorization to dispose of waste paper in the olivine wood waste incinerator;
- 4.4.18 – the requirement for the disposal of mechanical pulp mill sludge from the industrial wastewater control system;
- 4.4.20 to 4.4.23 – the requirements for a Cadmium Monitoring and Management Plan; and

- 4.6.9 – the requirement for a Groundwater Monitoring Report.

[4] The Appellant submitted the appealed conditions were unworkable, unnecessary, too costly to implement, and would not provide additional protection to the environment. The Appellant also requested the Board grant a stay of appealed conditions pending the determination of its appeal.

[5] On December 29, 2018, the Board acknowledged receipt of the Notice of Appeal and requested the Director advise if he was prepared to consent to a stay being issued or undertake not to enforce some or all of the conditions under appeal.

[6] On January 9, 2019, the Director consented to a temporary stay of the following conditions:

- 2.4.4 - the requirement for emissions controls on storages tanks;
- 4.2.14 - the requirement to cease operation of the olivine wood waste incinerator not later November 30, 2021;
- 4.2.18 - reporting requirements of the air emission source monitoring;
- 4.4.20 to 4.4.23 - requirements for a Cadmium Monitoring Plan and Management Plan; and
- 4.6.9 - the requirement for a Groundwater Monitoring Report.

The Director stated his consent to a temporary stay would end upon the conclusion of a mediation meeting or June 28, 2019, whichever was earlier.

[7] On January 11, 2019, the Board requested the Appellant respond to the following questions if it wanted to proceed with the stay application:

- “1. What are the serious concerns of West Fraser Mills that should be heard by the Board?
2. Would West Fraser Mills suffer irreparable harm if the stay is refused?
3. Would West Fraser Mills suffer greater harm if the stay was refused pending a decision of the Board on the appeal, than the harm that could occur from the granting of a stay; and
4. Would the overall public interest warrant a stay?”

[8] The Appellant provided a written submission in support of its application for a stay on January 21, 2019. In its submission, the Appellant rejected the Director’s offer of a

temporary stay. The Director provided a written response on February 5, 2019. On March 4, 2019, the Appellant provided a written rebuttal to the Director's response.

[9] On April 9, 2019, the Board issued a letter granting a stay of the appealed conditions of the Approval until the Board hears the appeal and the Minister issues an order, or the Board directs otherwise. The letter stated the Board would provide its reasons for granting the stay at a later date.

[10] On March 13, 2020, the Board issued its reasons for its decision on the stay.<sup>1</sup>

[11] The Board held a mediation meeting between the Appellant and the Director (collectively, the "Parties") on April 15, 2019, in Edmonton, with a Board member appointed as mediator.

[12] The mediation meeting resulted in an agreement between the Parties on most of the issues raised by the Appellant in its appeal. Specifically, the Parties reached an agreement on the following issues:

- 2.4.4 – the requirement for emissions controls on storage tanks;
- 4.2.16 and Table 4.2-D – downtime limit for pollution abatement equipment due to maintenance;
- 4.2.18 and Table 4.2-E – reporting requirements of the air emission source monitoring;
- 4.3.15(b) – downtime limits for inspection or repair of each continuous monitoring system associated with the industrial wastewater control system;
- 4.4.16 – the authorization to dispose of waste paper in the olivine wood waste incinerator;
- 4.4.18 – requirements for the disposal of mechanical pulp mill sludge from the industrial wastewater control system; and
- 4.6.9 – the requirement for a Groundwater Monitoring Report.

[13] On August 13, 2019, the Board issued a Report and Recommendations recommending the Minister vary the Approval in accordance with the agreement reached

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<sup>1</sup> Stay Decision: *West Fraser Mills Ltd. v. Director, Upper Athabasca Region, Operations Division, Alberta Environment and Parks* (13 March 2020), Appeal No. 18-019-ID1 (A.E.A.B.), 2020 ABEAB 9.

between the Parties.<sup>2</sup> The amendments to the Approval allowed the Plant to continue to operate while the Parties worked on finding possible solutions to the remaining issues in the appeal. The Parties agreed to continue their discussions on the following conditions:

- 4.3.44 to 4.3.47 and Table 4.3-H – wetland assessment and operational monitoring requirements; and
- 4.4.20 to 4.4.23 – requirements for a Cadmium Monitoring and Management Plan.

[14] On November 8, 2019, the Appellant wrote the Board and advised the Board the Appellant and the Director had come to an agreement regarding clauses 4.4.20 through 4.4.23 of the Approval as a result of the discussions of the Cadmium Monitoring and Management Plan Mediation Working Group.

[15] On December 11, 2020, the Appellant advised the Board the Parties had reached an agreement with respect to clauses 4.3.44 to 4.3.47 of the Approval as a result of the discussions of the Wetlands Assessment Mediation Working Group.

## **II. DISCUSSION**

[16] There were three issues raised by the Appellant that were not resolved in the Board's earlier Report and Recommendations:<sup>3</sup>

1. the requirement to stop using the olivine wood waste incinerator as of November 30, 2021;
2. the requirement for a wetland assessment and operational monitoring; and
3. the requirements for a Cadmium Monitoring and Management Plan.

[17] The Appellant has now advised the Board that the issues related to the requirements for a wetland assessment and the requirements of the cadmium plan have been resolved. The requirement to stop using the olivine wood waste incinerator as of November 30, 2021, remains outstanding.

<sup>2</sup> *West Fraser Mills Ltd. v. Director, Upper Athabasca Region, Operations Division, Alberta Environment and Parks* (13 August 2019), Appeal No. 18-019-R1 (A.E.A.B.), 2019 ABEAB 25.

<sup>3</sup> *West Fraser Mills Ltd. v. Director, Upper Athabasca Region, Operations Division, Alberta Environment and Parks* (13 August 2019), Appeal No. 18-019-R1 (A.E.A.B.), 2019 ABEAB 25.



[18] The Parties had initially indicated they expected the requirement to stop using the olivine wood waste incinerator as of November 30, 2021, would proceed to a hearing. However, the Appellant has now indicated they have approached the Director to reopen discussions on this issue. Once this issue is resolved through either mediation or a hearing, a further Report and Recommendations may be required.

### III. RECOMMENDATIONS

[19] In accordance with section 99 of EPEA,<sup>4</sup> the Board recommends the Minister of Environment and Parks order Approval No. 108-03-00 be varied in accordance with the agreement reached by the Parties. Specifically, the Board recommends the agreement of the Parties be implemented by way of a Minister's order and the Approval be varied by:

1. Condition 4.3.21 is repealed and replaced as follows:

“4.3.21 Releases from the Industrial Runoff Control System to the Lesser Slave River via the wetlands shall meet the limits for the parameters specified in Table 4.3-B.”

2. Table 4.3-B, entitled INDUSTRIAL RUNOFF CONTROL SYSTEM LIMITS, is repealed and replaced as follows:

“Table 4.3-B INDUSTRIAL RUNOFF CONTROL SYSTEM LIMITS

PARAMETER	LIMITS
Discharge volume	(volume to be reported)
pH	$\geq 6.0$ and $\leq 9.5$ pH units
Oil and grease	No visible sheen
TSS	As per 4.3.22.1(a)
BOD <sub>5</sub>	As per 4.3.22.1(a)
Sulfate	$\leq 250.0$ mg/l
Chloride	$\leq 250.0$ mg/l
Ammonia-nitrogen	$\leq 5.0$ mg/l (effective from July 1, 2022)”

<sup>4</sup> Section 99 of EPEA provides:

“In the case of a notice of appeal referred to in section 91(1)(a) to (m) of this Act or in section 115(1)(a) to (i), (k), (m) to (p) and (r) of the *Water Act*, the Board shall within 30 days after the completion of the hearing of the appeal submit a report to the Minister, including its recommendations and the representations or a summary of the representations that were made to it.”

3. Condition 4.3.22 is repealed and replaced as follows:

“4.3.22.1 The approval holder shall not discharge from either or both of the two storm water ponds directly, via the wetlands, into the Lesser Slave River, unless the following condition is met:

(a) the sum of BOD<sub>5</sub> and TSS in the industrial runoff discharge, when added to the BOD<sub>5</sub> and TSS respectively in the wastewater discharge from the Industrial Wastewater Control System, shall not exceed the maximum daily discharge or the maximum daily average (for any month) discharge of BOD<sub>5</sub> and TSS allowed in Table 4.3-A.

4.3.22.2 The approval holder shall undertake an investigative study to determine the source and formation of ammonia-nitrogen in the Industrial Runoff Control System, as described in the document entitled “Ammonia-Nitrogen Investigative Study in the Industrial Runoff Control System”, Aquality Environmental Consulting, dated November 17, 2020.

4.3.22.3 The approval holder shall prepare a written report based on the investigate study in 4.3.22.2 that includes at a minimum, all of the following, unless otherwise authorized in writing by the Director:

(a) dates of sampling events;  
(b) description of sampling locations;  
(c) map of sampling locations;  
(d) map of plant showing the location of the outdoor activities and runoff collection ditches contributing to the Industrial Runoff Collection System;  
(e) all of the sampling results from each sampling event;  
(f) interpretation of the sampling results by a qualified professional; and  
(g) any other information requested by the Director.

4.3.22.4 The approval holder shall submit the written report in 4.3.22.3 to the Director on or before January 31, 2022, to support a review of the ammonia-nitrogen limit specified in Table 4.3-B, unless otherwise authorized in writing by the Director.”

4. Conditions 4.3.44 to 4.3.47, including the heading WETLAND ASSESSMENT AND OPERATIONAL MONITORING REQUIREMENTS, are repealed.

5. Condition 4.4.20 is repealed and replaced as follows:

“4.4.20 The approval holder shall implement the MP Sludge Cadmium Proposal as described in:

- (a) Mechanical Pulp Mill Sludge Cadmium Risk Assessment Study and Field Verification, InnoTech Alberta Inc., dated July 31, 2019; and
- (b) letter from West Fraser to Alberta Environment and Parks, re: MP Sludge Mediation Proposal, dated September 30, 2019.”

6. Condition 4.4.21 is repealed and replaced as follows:

“4.4.21 The approval holder shall submit the following reports as described in the document entitled “Mechanical Pulp Mill Sludge Cadmium Risk Assessment Study and Field Verification”, to the Director in accordance with the following schedule:

- (a) Desktop Cadmium Assessment Report by March 31, 2020; and
- (b) Field Verification Final Report by March 31, 2021.”

7. Conditions 4.4.22 and 4.4.23 are repealed.

[20] The decision by the Board on March 13, 2020 to issue a stay of certain conditions in the Approval is lifted upon the issuance of the Minister’s Order, with the exception of the stay of condition 4.2.14. The stay of the requirement to stop using the olivine wood waste incinerator remains in place until the Minister makes an order regarding the incinerator or until the Board orders otherwise.

[21] Under section 100(2) of EPEA,<sup>5</sup> copies of this report and recommendations and any decision by the Minister are to be provided to:

- 1. Ms. Janice Walton and Mr. Tony Crossman, Blake Cassells & Graydon LLP on behalf of West Fraser Mills Ltd.; and

<sup>5</sup> Section 100(2) of EPEA states:

“The Minister shall immediately give notice of any decision made under this section to the Board and the Board shall, immediately on receipt of notice of the decision, give notice of the decision to all persons who submitted notices of appeal or made representations or written submissions to the Board and to all other persons who the Board considers should receive notice of the decision.”

2. Ms. Alison Altmiks, Alberta Justice and Solicitor General, on behalf of the Director, Upper Athabasca Region, Operations Division, Alberta Environment and Parks.

Dated on January 18, 2021, at Edmonton, Alberta.

*-original signed by-*

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Meg Barker  
Acting Board Chair



ALBERTA  
ENVIRONMENT AND PARKS

*Office of the Minister  
Government House Leader  
MLA, Rimbey-Rocky Mountain House-Sundre*

**Ministerial Order  
37/2021**

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

**Order Respecting Environmental Appeals Board Appeal No. 18-019**

I, Jason Nixon, Minister of Environment and Parks, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeals Board Appeal No. 18-019.

Dated at the City of Edmonton, in the Province of Alberta, this 26 day of JAN, 2021.



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Jason Nixon  
Minister

## APPENDIX

### Order Respecting Environmental Appeals Board Appeal No. 18-019

With respect to the decision of the Director, Upper Athabasca Region, Operations Division, Alberta Environment and Parks (the "Director"), to issue Approval No. 108-03-00 (the "Approval") under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 ("EPEA"), to West Fraser Mills Ltd., I, Jason Nixon, Minister of Environment and Parks, order that:

1. The decision of the Director to issue the Approval is varied as follows.
2. Condition 4.3.21 is repealed and replaced as follows:

"4.3.21 Releases from the Industrial Runoff Control System to the Lesser Slave River via the wetlands shall meet the limits for the parameters specified in Table 4.3-B."

3. Table 4.3-B, entitled INDUSTRIAL RUNOFF CONTROL SYSTEM LIMITS, is repealed and replaced as follows:

**"Table 4.3-B INDUSTRIAL RUNOFF CONTROL SYSTEM LIMITS**

PARAMETER	LIMITS
Discharge volume	(volume to be reported)
pH	$\geq 6.0$ and $\leq 9.5$ pH units
Oil and grease	No visible sheen
TSS	As per 4.3.22.1(a)
BOD <sub>5</sub>	As per 4.3.22.1(a)
Sulfate	$\leq 250.0$ mg/l
Chloride	$\leq 250.0$ mg/l
Ammonia-nitrogen	$\leq 5.0$ mg/l (effective from July 1, 2022)"

4. Condition 4.3.22 is repealed and replaced as follows:

"4.3.22.1 The approval holder shall not discharge from either or both of the two storm water ponds directly, via the wetlands, into the Lesser Slave River, unless the following condition is met:

- (a) the sum of BOD<sub>5</sub> and TSS in the industrial runoff discharge, when added to the BOD<sub>5</sub> and TSS respectively in the wastewater discharge from the Industrial Wastewater Control System, shall not exceed the maximum daily discharge or the maximum daily average (for any month) discharge of BOD<sub>5</sub> and TSS allowed in Table 4.3-A.

- 4.3.22.2 The approval holder shall undertake an investigative study to determine the source and formation of ammonia-nitrogen in the Industrial Runoff Control System, as described in the document entitled "Ammonia-Nitrogen Investigative Study in the Industrial Runoff Control System", Aquality Environmental Consulting, dated November 17, 2020.
- 4.3.22.3 The approval holder shall prepare a written report based on the investigate study in 4.3.22.2 that includes at a minimum, all of the following, unless otherwise authorized in writing by the Director:
- (a) dates of sampling events;
  - (b) description of sampling locations;
  - (c) map of sampling locations;
  - (d) map of plant showing the location of the outdoor activities and runoff collection ditches contributing to the Industrial Runoff Collection System;
  - (e) all of the sampling results from each sampling event;
  - (f) interpretation of the sampling results by a qualified professional; and
  - (g) any other information requested by the Director.
- 4.3.22.4 The approval holder shall submit the written report in 4.3.22.3 to the Director on or before January 31, 2022, to support a review of the ammonia-nitrogen limit specified in Table 4.3-B, unless otherwise authorized in writing by the Director."
5. Conditions 4.3.44 to 4.3.47, including the heading WETLAND ASSESSMENT AND OPERATIONAL MONITORING REQUIREMENTS, are repealed.
6. Condition 4.4.20 is repealed and replaced as follows:
- "4.4.20 The approval holder shall implement the MP Sludge Cadmium Proposal as described in:
- (a) Mechanical Pulp Mill Sludge Cadmium Risk Assessment Study and Field Verification, InnoTech Alberta Inc., dated July 31, 2019; and
  - (b) letter from West Fraser to Alberta Environment and Parks, re: MP Sludge Mediation Proposal, dated September 30, 2019."

7. Condition 4.4.21 is repealed and replaced as follows:

“4.4.21 The approval holder shall submit the following reports as described in the document entitled “Mechanical Pulp Mill Sludge Cadmium Risk Assessment Study and Field Verification”, to the Director in accordance with the following schedule:

- (a) Desktop Cadmium Assessment Report by March 31, 2020;  
and
- (b) Field Verification Final Report by March 31, 2021.”

8. Conditions 4.4.22 and 4.4.23 are repealed.