

Alberta Treasury Branches Plaza
400, 9925 - 109 Street
Edmonton, Alberta
Canada T5K 2J8

Telephone 403/427-6207
Fax 403,427-4693
Bulletin Board 403/422-4992

1995 ABEAB 13

Appeal No. 95-002

July 6, 1995

IN THE MATTER OF Sections 84, 86, 87, 91, 92 and 93 of the *Environmental Protection and Enhancement Act*, (S.A. 1992, ch. E-13.3 as amended);

- and -

IN THE MATTER OF the notice of objection filed by members of the Hazeldean Community League with respect to Amending Approval No. 94-IND-125A issued to Zeidler Forest Industries Ltd. by the Director of Air and Water Approvals, Alberta Environmental Protection.

Report and Recommendations

Cite as: Hazeldean Community League v. Director of Air and Water Approvals, Alberta Environmental Protection.

PRE-HEARING MEETING BEFORE: David FL Marko and John P. Ogilvie

APPEARANCES:

**Appellant: Hazeldean Community League, represented by Cornelia Boldt and Leslie Klingbeil
Zeidler Forest Industries Ltd., represented by John Heffernan, Bruno Drachenberg and
Dennis R. Thomas, Q.C.**

Director of Air and Water Approvals, represented by Neil Shelly and William McDonald

L FACTUAL BACKGROUND

In January and February of 1995, the Environmental Appeal Board received three notices of objection with respect to the decision of the Director of Air and Water Approvals, Alberta Environmental Protection (the "Director") to *issue* Amending Approval No. 94-TND-125A (the "Approval") to Zeidler Forest Industries Ltd. ("Zeidler") in response to Application No. RS0889. This Approval authorized Zeidler to add a new emission source, a veneer dryer, to its existing operating approval. The Director issued the Approval on November 28, 1994, and the notice of his decision was advertised on December 13, 1994 in the Edmonton Journal.

The three appeals were filed by Randall Lawrence on behalf of himself and EcoCity Society, John E. Logan, and Cornelia Boldt on behalf of the Hazeldean Community League (the "Community"). As described in the Decision which it issued on May 11, 1995 in respect to this appeal, the Board asked several questions of the three appellants, the Director and Zeidler including: how Randall Lawrence and EcoCity Society, John E. Logan and the Hazeldean Community League were directly affected by the issuance of the Approval; and the extent of past health and odour complaints about the Zeidler plant, particularly involving the local health authorities.

Following receipt of the written responses from all of the parties, the Board considered the following matters:

- 1. Which appellants, if any, are directly affected by the Approval?**
- 2. That if the Board decided to proceed to a hearing, what issues would be considered in the hearing?**

The Board concluded that only the Community was directly affected by the issuance of this Approval, and it directed that an oral hearing of the appellant Community's notice of objection be held on July 5, 1995. It further determined the following issues for the hearing:

1. What impact will the Approval have on the residents of the Community?
2. If there is an adverse affect upon these residents because of this Approval, what can be done to ameliorate it?

In the Notice of Hearing which the Board published on May 20, 1995, an opportunity was provided for persons wishing to make a representation before the Board to submit a request in writing by June 9, 1995. The Board received only one such request, from Dennis R. Thomas, Q.C. on behalf of Zeidler. This request was granted, and the Board decided that there would be three parties to this appeal at the hearing: Hazeldean Community League; the Director of Air and Water Approvals, Alberta Environmental Protection; and Zeidler Forest Industries Ltd.

On June 2, 1995, William McDonald of Alberta Justice wrote to the Board to request that it consider calling a pre-hearing meeting to attempt to resolve this appeal. The Board received indications from Ms. Boldt and Mr. Thomas that they would be agreeable to such a procedure prior to the scheduled hearing date, and it agreed to convene a meeting.

II. THE PRE-HEARING MEETING

The pre-hearing meeting was held on June 23, 1995 at the Board's office in Edmonton. The parties and their representatives were in attendance as follows:

- Cornelia Boldt and Leslie Klingbeil representing the appellant Hazeldean Community League;

- **Neil Shelly and William McDonald representing the Director of Air and Water Approvals, Alberta Environmental Protection; and**

- **John Heffernan, Bruno Drachenberg and Dennis Thomas, Q.C. representing Zeidler Forest Industries Ltd.**

The meeting was chaired by David Marko, Vice Chair of the Environmental Appeal Board, who was assisted by Board member John Ogilvie.

Mr. Marko provided an overview of the appeal and mediation processes and explained the purpose of the pre-hearing meeting. All of the parties expressed a willingness to enter into mediation immediately in an attempt to resolve the issues as quickly as possible. Each was asked to make a presentation.

Ms. Boldt reviewed the issues that concerned the Community. In response, Mr. Shelly discussed some of the background to the approvals granted to Zeidler and provided a list of steps that the Director was willing to take to alleviate the Community's concerns. Mr. Shelly said that, had the Director been aware of the Community's objections prior to the appeal, he would have been prepared to undertake the agreed upon measures at an earlier stage.

Mr. Thomas expressed the willingness of Zeidler to promote cooperation and communications with the Community. The representatives of the Community agreed that the steps suggested by Mr. Shelly and Mr. Thomas were an appropriate response to their concerns.

After a period of discussion, a resolution of the appeal was agreed upon by all parties. The public hearing scheduled for July 5, 1995 was cancelled.

**III. RESOLUTION OF APPEAL NO. 95-002
REGARDING AMENDING APPROVAL NO. 94-M-125A**

All parties to the appeal agree to the following terms and conditions:

1. (a) The Director of Air and Water Approvals, Alberta Environmental Protection, will co-ordinate ambient air monitoring for total suspended particulates (TSPs) for one year to determine ground level concentrations. This testing will begin by January 1, 1996.
- (b) Termination of that testing before the end of the one year period will only occur with the consent of the Hazeldean Community League.
- (c) The Director will determine, in consultation with the Hazeldean Community League, the location of testing equipment, and will use best efforts to locate the equipment within the Hazeldean community.
- (d) It at the end of the TSP testing period, the results indicate high levels of particulates, the Director will use best efforts to acquire the specialized equipment to test for PM10s.
2. The Director will conduct one short-term test (12 - 24 hour) for ambient levels of formaldehyde and total hydrocarbons This test will occur prior to January 1, 1996.
3. The Director will undertake a literature review with respect to the health effects of terpenes.
4. (a) The Director will co-ordinate, at a cost not to exceed \$2000.00, a review by an independent professional of the ambient air issues related to Zeidler Forest Industries Ltd. and the Hazeldean Community League.
- (b) The Director will select the independent professional in consultation with the Hazeldean Community League and Zeidler Forest Industries Ltd.

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5. (a) An odour response protocol will be established by the parties. The Hazeldean Community League will provide 4 - 12 volunteers to monitor odours for a minimum of six months.

(b) All affected parties will review the odour monitoring responses by the Hazeldean Community League and the actions to mitigate odorous emissions by Zeidler Forest Industries Ltd. This review will occur on a quarterly basis.
6. Each party will exchange all information collected under this agreement with the other parties.
7. The Hazeldean Community League agrees that this agreement resolves its Notice of Objection.

RESOLUTION AGREED TO BY:

“original signed by”

Hazeldean Community League,
Represented by Cornelia Boldt and
Leslie Klingbeil

Date: June 23, 1995

“original signed by”

Director of Air and Water Approvals,
Represented by Neil Shelly

Date: June 23, 1995

“original signed by”

Zeidler Forest Industries Ltd.,
Represented by John Heffernan

Date: June 23, 1995

IV. RECOMMENDATIONS

The Board recommends that the Minister of Environmental Protection confirm the decision of the Director of Air and Water Approvals to issue Amending Approval No. 94-1ND-125A, subject to the Resolution contained herein.

Further, with respect to section 92(2) of the Act, the Board recommends that copies of this Report and Recommendations and of any decision by the Minister be sent by the Board to the following parties:

- the Hazeldean Community League;
- Randall Lawrence and EcoCity Society;
- John E. Logan;
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- the Director, Air and Water Approvals Division,
Alberta Environmental Protection; and
- Zeidler Forest Industries Ltd.

Dated on July 6, 1995, at Edmonton, Alberta.

“original signed by”

David H. Marko

“original signed by”

John P. Ogilvie

ORDER

I, Ty Lund, Minister of Environmental Protection:

Agree with the Recommendations of the Environmental Appeal Board and Order that they be implemented.

Do not agree with the Recommendations of the Environmental Appeal Board and make the alternative Order set out below or attached.

Dated at Edmonton this 8th day of July, 1995.

“original signed by”

Honourable Ty Lund
Minister of Environmental Protection

Refer to attachments (only if applicable)