

ALBERTA ENVIRONMENTAL APPEAL BOARD

Report and Recommendations

Date of Report and Recommendations - May 28, 1998

IN THE MATTER OF Sections 84, 85, 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 appeals filed by Mr. Walter Hardy *et al.* with
respect to the February 19, 1998, decision made by Mr. Wayne
Inkpen, Regional Director, Northeast Boreal & Parkland Regions,
Alberta Environmental Protection regarding Approval No. 144-00-00
issued to ADM Agri-Industries Ltd.

Cite as: Hardy *et al.* v. Regional Director of Northeast Boreal & Parkland Regions, Alberta
Environmental Protection

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MEDIATION MEETING BEFORE

Dr. John P. Ogilvie, Vice Chair

APPEARANCES

Appellants: Mr. Ron Milne, Mr. Gerald Smith, Mr. William Kuzyk and Mr. Roy Haugen

Other Parties: Ms. Joanne Esbaugh and Ms. Maureen Harquail, counsel, Alberta Justice and Mr. Chow-Seng Liu, Alberta Environmental Protection representing the Director of Northeast Boreal and Parkland Regions

Mr. Dave McInnes, counsel, Field Atkinson Perraton, representing Mr. Eric Fasnacht, ADM Agri-Industries Ltd.

BACKGROUND

[1] On February 19, 1998, Mr. Wayne Inkpen, Regional Director of Northeast Boreal and Parkland Regions (Director), Alberta Environmental Protection, issued in accordance with section 66 of the *Environmental Protection and Enhancement Act*¹ a decision extending the expiry date of Approval No. 144-00-00 (Approval) issued to ADM Agri-Industries Ltd. (Approval Holder) for the Lloydminster oilseed crushing plant to July 2, 1998.

[2] On March 10, 1998, the Environmental Appeal Board (the Board) received a letter dated March 5, 1998, from Mr. Walter Hardy advising that this was his Notice of Appeal with respect to the Approval issued to ADM Agri-Industries Ltd.

[3] Additional appeals were filed by Mr. Roy Haugen, Mr. Ron Milne, Mr. Gerald Smith, Mr. William Kuzyk and Mr. Dan Keating on March 18, 1998. Mr. Ron Milne filed an additional appeal on March 27, 1998 which he subsequently withdrew. Further appeals were received on March 27, 1998 and April 2, 1998 appointing Mr. Roy Haugen as their representative (the Appellants)².

¹ *Environmental Protection and Enhancement Act*, Statutes of Alberta, 1992, Chapter E-13.3 as amended.

² Annie Drummond, William Drummond, Donald Smith, Loretta Smith, O.P. Gupta, Shane Gustavson, Linda Gustavson, Mark Donnenworth, Lee Donnenworth, Heidi Donnenworth, George Bailey, Heather Bailey, Rene Dorval, Karen Dorval, Mike Tollestrup, George Walker, Phyllis Milne, Rose Meyers, Joan Ellis, Leslie Ellis, Doris Blize, Oscar Blize, Tyler Sandwick, Michael Lins, J. Steblyk, S. Steblyk, Ellen Hill, Kenneth Hill, Cedric Gall, Marc Fagnan, Patrick Ross, Tracy Mills, Kevin Mills, Wayne Keber, Leanna Keber, Lynn Taylor, Chris Stevens, Ray Stevens, Glenn De Schover, Michele De Schover, Adrien Beauvais, Eric La France, Dennis Polischuk, Patricia Polischuk, Margaret Haugen, Ronald Mailman, Linda Mailman, Earl Hegedus, Terrie Bolt, Vivian Scott, Kathryn McNeil, Robert McNeil, Kay Smith, Caroline Heise, Ernest Heise, W. Nidish, Duane Allchin, Tracey Allchin, Mary Vert, Barbara Henry, Monty Grant, Janet Kirsop, Paul Kirsop, Doug Burns, Maryann Burns, Loretta Nordquist, Mildred Okerstrom, George Payne, Mildred Payne, Shella Stewart, Shawn Stewart, Evelyn Holt, Steve Babyn, Ann Babyn, Ernest Wenzel, Helen Wenzel, Eileen Berry, John Berry, James King, Dorren King, John Biensch, Margaret Biensch, Joan Anderson, Robert Anderson, Victor Ostertag, Jean Ostertag, Jay Ostertag,

[4] The Board wrote to each of the Appellants acknowledging receipt of their appeals. The Board also wrote to the Department of Environmental Protection (the Department) on March 10, 1998, requesting copies of all related correspondence, documents and materials related to this matter.

[5] On March 20, 1998, the Board wrote to Mr. Eric Fasnacht, Plant Manager for ADM Agri-Industries Ltd. informing him that appeals had been filed with respect to the Approval issued to ADM Agri-Industries Ltd. and provided him with copies of the appeals filed. Mr. Fasnacht was provided copies of those additional appeals.

[6] According to standard practice, the Board wrote to the Natural Resources Conservation Board (NRCB) and the Alberta Energy and Utilities Board (AEUB) asking whether this matter had been the subject of a hearing or review under their respective Boards' legislation. Replies were subsequently received from both the NRCB and the AEUB stating that they did not hold any hearing or review under either of their Boards' legislation.

Joe Rooks, Patricia Rooks, Terry Keller, Brenda Keller, Margaret Lonsdale, S. Locke Lonsdale, Gloria Johnson, Wade Frasz, Bauni Frasz, Pat Styles, Bob Gabrielson, Rhonda Beaupre, Joan Roberge, Larry Lewis, Gloria Lewis, Leona Necember, Steve Necember, G.B. Hafstein, Annie Hafstein, Margaret Lightfoot, Ray Lightfoot, John Dow, K. North, Henry Knitter, Jean Knitter, D. Dale Jackson, Norma Jackson, Theodore William, Vera May William, Angela Little, Michelle Maier, Howard Cayford, Betty Cayford, Erwin Wenzel, Marlayne Wenzel, Jim Bonnar, Hilda Bonnar, Frank Spencer, Shirley Spencer, Gayla Cruikshank, Richard Cruikshank, Russell Colbowne, Holly Colbowne, Reginald Kilcup, Lois Kilcup, Angela Leonard and Mary Ann Stratton received on March 27, 1998. Barbara Vert, Clifford Vert, Todd Gustavson, Vivian Gustavson, Jill Lakins, Kenneth McGimpsey, Diana McGimpsey, Helen Manarey, Jim Manarey, Mary Kuzyk, J. Louise Swanson, Ralph Swanson, Walter Penny, David Watchel, Shirley Watchel, Heather Larson, Neil Larson, Lorna Hollington, Tom Hollington, Eunice Brazdil, Victor Brazdil, Walter Ens, Marlene Ens, Harold Almond, Iris Almond, Glenn Martin, Harold Hathaway, Louise Hathaway, Gary Bennett, Gloria Bennett, Denise Wright, Wilda Thumm, Mattheus Brost, Leola Brost, Norm Dallyn, Phyllis Dallyn, Olga Tandberg, Don Tandberg, David Bourne, Maria Lecomte, Margaret Gallagher, Joe Gallagher, Elaine Gunderson, Joanna Lakins, Lane Simpson, Greg Getz, Laura McMillan, Dorinda Thompson, Joseph Collins, Eliza Collins, Robert Ringland, Anne Ringland, Charlotte Bryce, Sergio Arriagada, Rose Arriagada, Diane Sakowsky, Don Spence, Doris Spence, Clifford McNeil, Shannon Potter, B. Tallon, Irene Keating, Jim Utley, Nancy Utley, Jacques Chauvin, Susan Chauvin, Melanie Brooks and Laurel Rohla received on April 2, 1998.

[7] All requested correspondence was received from the Department on April 22, 1998, and a copy was provided to Mr. Hardy, Mr. Milne, Mr. Smith, Mr. Kuzyk, Mr. Keating, Mr. Haugen and Mr. Fasnacht on April 28, 1998. Along with the information provided, the Board requested written representations of the Appellants regarding preliminary matters related to their appeals and informed them of a potential mediation meeting date of May 14, 1998.

[8] All written representations were received and on May 8, 1998, the Board wrote to the parties informing them that the mediation would be taking place in Lloydminster on May 14, 1998.

THE MEDIATION MEETING

[9] The Board conducted a mediation meeting in Lloydminster on May 14, 1998, with Dr. John Ogilvie as the presiding Board member.

[10] According to the Board's standard practice, the Board called the mediation in an attempt to mediate or facilitate the resolution of these appeals, or failing that, to structure procedural arrangements for the oral hearing. The Board invited representatives from each party to participate in the mediation.

[11] In conducting the mediation, Dr. Ogilvie reviewed the appeal and mediation process and explained the purpose of the mediation meeting. He then circulated copies of the "Participants' Agreement to Mediate". Upon reviewing the document, all parties signed the agreement and the mediation continued.

[12] Following productive and detailed discussions, the attached resolution evolved and was signed (see pages 4 to 7 of this report).

(13) **RESOLUTION OF APPEAL NO. 98-014, 98-016 – 98-020, 98-024 – 98-226 REGARDING APPROVAL NO. 144-00-00 ISSUED TO ADM AGRI-INDUSTRIES LTD.**

All parties to the appeal have agreed to the following terms and conditions:

1. THAT approval No. 144-00-00 shall be extended to March 31, 1999.
2. THAT approval No. 144-00-00 shall be varied to include the following clauses:

Construction

- a) The approval holder shall construct the following modifications as described in application No. 006-144;
 - i) increase the boiler #3 stack height;
 - ii) add a thermal oxidizer;
 - iii) remove the pre-scrubber in the final vent system after the thermal oxidizer is operational;
 - iv) remove the hotwell caustic scrubber in the refinery;
 - v) increase the pellet cooler stack height;
 - vi) together with any other piping, modifications and ancillary equipment necessary to accomplish the foregoing.
- b) The hotwell caustic scrubber shall be removed no later than six months after the commencement of operation of the thermal oxidizer.
- c) The approval holder shall construct the following stacks according to the following height requirements as prescribed in Table 3.2-A.

Table 3.2-A

STACK	Minimum Height Above Grade (Meters)
Boiler #3 Stack	21
Thermal Oxidizer Stack	40
Pellet Cooler Stack	27.1

- d) The stacks listed in Table 3.2-A shall be constructed and equipped with sampling facilities as prescribed in the *Alberta Stack Sampling Code*, Alberta Environmental Protection, as amended.
- e) The approval holder shall by December 31, 1998, install and operate the following pollution abatement equipment:

(a) A thermal oxidizer for the incineration of the effluent and streams from:

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- (i) the hotwell and the clarifier enclosures; and
- (ii) the final vent system.

f) The approval holder shall notify the Director in writing at least 14 days before the thermal oxidizer commence operation following the completion of all commissioning activities.

Operations

- g) The approval holder shall emit effluent streams to the atmosphere from the following additional sources only:
 - (a) the thermal oxidizer stack;
 - (b) the hotwell caustic scrubber stack until the thermal oxidizer stack is operational.

Limits

h) Releases of air contaminants shall not exceed the limits specified in Table 4.1-A

Table 4.1-A

Emission Source	Air Contaminant	Limit
Thermal Oxidizer Stack	Total Reduced Sulphur	Subject to technical considerations
Thermal Oxidizer Stack	Total Hydrocarbons	Subject to technical considerations

Monitoring and Reprting

- i) The approval holder shall monitor as required in Table 4.1-B
- j) The approval holder shall report as required in Table 4.1-B

Table 4.1-B

Effluent Stream/Emission Source	Parameter	Frequency	Methods of Monitoring	Sample Location	Monthly	Annually	Special	Report to
Thermal Oxidizer	Total Reduced Sulphur	Once in 1998 and once in the first quarter in 1999	Manual Stack Survey	In Stack			Within 30 days after completion of manual Stack Survey	Director
Thermal Oxidizer	Total Hydrocarbons	Once in 1998 and once in the first quarter in 1999	Manual Stack Survey	In Stack			Within 30 days after completion of manual Stack Survey	Director

3. This resolution is subject to acceptance by **ADM's** (Approval Holder) Corporate Office by June 2, 1998.
4. Any technical deficiencies identified by **ADM's** (Approval Holder) and the Director in this resolution maybe be corrected by June 2, 1998 as necessary.
5. That, based on the conditions above, all appeals relating to EAB file No.s 98-014, 98-016, 98-020, 98-024-0226, be held in abeyance with the Environmental Appeal Board until June 2, 1998.
6. THAT upon acceptance of the resolution by **ADM's** (Approval Holder), the Appellants represented by Roy Haugen being Walter Hardy, Dan Keating, Annie Drummond, William Drummond, Donald Smith, Loretta Smith, O.P Gupta, Shane Gustavson, Linda Gustavson, Mark Donnenworth, Lee Donnenworth, Heidi Donnenworth, George Bailey, Heather Bailey, Rene Dorval, Karen Dorval, Mike Tollestrup, George Walker, Phyllis Milne, Rose Meyers, Joan Ellis, Leslie Ellis, Doris Blize, Oscar Blize, Tyler Sandwick, Michael Lins, J Steblyk, S. Steblyk, Ellen Hill, Kenneth Hill, Cedric Gall, Marc Fagnan, Patrick Ross, Tracy Mills, Kevin Mills, Wayne Keber, Leanna Keber, Lynn Taylor, Chris Stevens, Ray Stevens, Glenn De Schover, Michele De Schover, Adrien Beauvais, Eric La France, Dennis Polischuk, Patricia Polishuk, Margaret Haugen, Ronald Mailman, Linda Mailman, Earl Hegedus, Terrie Bolt, Vivian Scott, Kathryn McNeil, Robert McNeil, Kay Smith, Caroline Heise, Ernest Heise, W. Nidish, Duane Allchin, Tracey Allchin, Mary Vert, Barbara Henry, Monty Grant, Janet Kirsop, Paul Kirsop, Doug Burns, Maryann Burns, Loretta Nordquist, Mildred Okerstrom, George Payne, Mildred Payne, Shella Stewart, Shawn Stewart, Evelyn Holt, Steve Babyn, Ann Babyn, Ernest Wenzel, Helen Wenzel, Eileen Berry, John Berry, James King, Doreen King, John Biensch, Margaret Biensch, Joan Anderson, Robert Anderson, Victor Ostertag, Jean Ostertag, Jay Ostertag, Joe Rooks, Patricia Rooks, Terry Keller, Brenda Keller, Margaret Lonsdale, S. Locke Lonsdale, Gloria Johnson, Wade Frasz, Bauni Frasz, Pat Styles, Bob Gabrielson, Rhonda Beaupre, Joan Roberge, Larry Lewis, Gloria Lewis, Leona Necember, Steve Necember, G.B. Hafstein, Annie Hafstein, Margaret Lightfoot, Ray Lightfoot, John Dow, K. North, Henry Knitter, Jean Knitter, D. Dale Jackson, Norma Jackson, Theodore William, Vera May William, Angela Little, Michelle Maier, Howard Cayford, Betty Cayford, Erwin Wenzel, Marlayne Wenzel, Jim Bonnar, Hilda Bonnar, Frank Spencer, Shirley Spencer, Gayla Cruikshank, Richard Cruikshank, Russell Colbowne, Holly

Colbowne, Reginald Kilcup, Lois Kilcup, Angela Leonard, Mary Ann Stratton, Barbara Vert, Clifford Vert, Todd Gustavson, Vivian Gustavson, Jill Lakins, Kenneth McGimpsey, Diana McGimpsey, Helen Manarey, Jim Manarey, Mary Kuzyk, J Louise Swanson, Ralph

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Swanson, Walter Penny, David Watchel, Shirley Watchel, Heather Larson, Neil Larson, Lorna Hollington, Tom Hollington, Eunice Brazdil, Victor Brazdil, Walter Ens, Marlene Ens, Harold Almond, Iris Almond, Glenn Martin, Harold Hathaway, Louise Hathaway, Gary Bennett, Gloria Bennett, Denise Wright, Wilda Thumm, Mattheus Brost, Leola Brost, Norm Dallyn, Phyllis Dallyn, Olga Tandberg, Don Tandberg, David Bourne, Maria Lecomte, Margaret Gallagher, Joe Gallagher, Elaine Gunderson, Joanna Lakins, Lane Simpson, Greg Getz, Laura McMillan, Dorina Thompson, Joseph Collins, Eliza Collins, Robert Ringland, Anne Ringland, Charlotte Bryce, Sergio Arriagada, Rose Arriagada, Diane Sakowsky, Don Spence, Doris Spence, Clifford McNeil, Shannon Potter, B. Tallon, Irene Keating, Jim Utley, Nancy Utley, Jacques Chauvin, William Kuzyk, Susan Chauvin, Melanie Brooks, Laurel Rohla, and Appellants Ron Milne, Gerald Smith, and Roy Haugen agree to withdraw their Notices of Objections.

7. THAT should ADM Corporate Office (Approval Holder) not accept this resolution by June 2, 1998, the appellants as listed above, may continue with their appeals.
8. THAT the approval holder shall provide notice to the Environmental Appeal Board with a carbon copy to the appellants of their acceptance or non-acceptance of this resolution by June 2, 1998.
9. The parties agree that this resolution shall be governed by the laws of the Province of Alberta.

RESOLUTION AGREED TO BY:

Dated at Lloydminster, Saskatchewan on May 14, 1998,

“original signed by”
Mr. Walter Hardy

“original signed by”
Mr. Roy Haugen

“original signed by”
Mr. Ron Milne

“original signed by”
Mr. William Kuzyk

“original signed by”
Mr. Gerald Smith

“original signed by”
Mr. Dan Keating

“original signed by”

Director
Alberta Environmental Protection

“original signed by”

ADM Agri-Industries Ltd.

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[14] On May 28, 1998, a letter was received from Mr. Eric Fasnacht, Plant Manager, ADM Agri-Industries Ltd., stating:

“In reference to the Resolution and in particular Paragraphs 3 and 8, we confirm that the corporate office of ADM has reviewed and accepted the Resolution and in addition to this notice to you, we will provide a copy of this letter to the Appellants.”

RECOMMENDATIONS

[15] The Board recommends that the Minister of Environmental Protection approve the conditions of the Resolution contained herein.

[16] Further with respect to section 92(2) and 93 of the *Environmental Protection and Enhancement Act*, the Board recommends that copies of this Report and Recommendations and of any decision by the Minister be sent to the following parties:

- Mr. Walter Hardy, Mr. Ron Milne, Mr. Gerald Smith, Mr. Roy Haugen, Mr. William Kuzyk and Mr. Dan Keating;
- ADM Agri-Industries Ltd., represented by Mr. J.D. McInnes, counsel, Field Atkinson Perraton; and
- Director, Alberta Environmental Protection, represented by Ms. Joanne Esbaugh, counsel, Alberta Justice.

Dated May 28, 1998, at Edmonton, Alberta.

“original signed by”
Dr. John P. Ogilvie

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ORDER

I, Ty Lund, Minister of Environmental Protection:

yes 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 1 day of June 1998.

“original signed by”
Honourable Ty Lund
Minister of Environmental Protection

___ Refer to Attachments (only if applicable)