
ALBERTA ENVIRONMENTAL APPEAL BOARD

Report and Recommendations

Date of Mediation Meeting - April 10, 2000

Date of Hearing - May 26, 2000

Date of Report and Recommendation - June 26, 2000

IN THE MATTER OF sections 84, 86, 87, 90, and 223 of the *Environmental Protection and Enhancement Act*, S.A. 1992, c. E-13.3;

- and -

IN THE MATTER OF two appeals and two stay applications filed January 20 and 21, 2000, by Ainsworth Lumber Co. Ltd. and Footner Forest Products Ltd. with respect to Amending Approval 1622-00-06 issued on December 21, 1999, to Ainsworth Lumber Co. Ltd. and with respect to Approval No. 76335-00-01 issued to Footner Forest Products Ltd. on December 23, 1999, both by the Director, Northwest Boreal Region, Alberta Environment.

Cite as: Ainsworth Lumber Co. Ltd. and Footner Forest Products Ltd. v. Director, Northwest Boreal Region, Alberta Environment.

HEARING BEFORE

Dr. Steve E. Hrudehy, Panel Chair
Dr. Curt Vos
Dr. M. Anne Naeth

APPEARANCES

Appellants: Mr. Dennis Thomas, Q.C., Fraser Milner representing Ainsworth Lumber Co. Ltd. and Footner Forest Products Ltd., and Mr. R. Drinnan.

Department: Mr. William McDonald, Counsel, Alberta Justice, representing Mr. Gary Sasseville, Director, Northwest Boreal Region, Alberta Environment, Mr. Matt Hoghighi, and Mr. Chow-Seng Liu.

Board Staff: Mr. Gilbert Van Nes, General Counsel, and Ms. Valerie Higgins, Hearing Officer.

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I. BACKGROUND

[1] These appeals concern Approval 76335-00-01 issued to Footner Forest Products Ltd. ("Appellant") for the construction, operation and reclamation of an oriented strand board plant near High Level, Alberta, and Amending Approval No. 1622-00-06 issued to Ainsworth Lumber Co. Ltd. ("Appellant") for the construction, operation and reclamation of an oriented strand board and value added products plant near Grande Prairie, Alberta. The Amending Approval and Approval were issued by Mr. Gary Sasseville, Director, Northwest Boreal Region, Alberta Environment ("Department").

[2] On January 20 and 21, 2000, the Environmental Appeal Board (□Board□) received Notices of Appeal regarding the Approval issued to Footner Forest Products Ltd. and the Amending Approval issued to Ainsworth Lumber Co. Ltd.¹ The Board acknowledged receipt of the Notices of Appeal on January 21 and 24, 2000, respectively and at that time requested a copy of all correspondence, documents and materials relative to these appeals from the Department.

[3] According to standard practice, the Board wrote to the Natural Resources Conservation Board ("NRCB") and the Alberta Energy and Utilities Board ("AEUB") asking whether these matters have been the subject of hearings or reviews under their respective legislation. Replies were received from the NRCB and the AEUB stating that they did not hold any hearings or reviews under their respective legislation.

II. THE MEDIATION MEETING

[4] With the consent of the parties, a mediation meeting/settlement conference was held on April 10, 2000, in Edmonton, Alberta. At this mediation meeting/settlement conference, the parties reached an agreement with respect to a number of issues. A copy of this agreement is attached to this Report and Recommendations. Further, with the agreement of the parties and in accordance

¹ Exhibit 2 (Notices of Appeal).

with s.13(d)² of the Environmental Appeal Board Regulation (A.R. 114/93), it was determined that the issues remaining in this hearing are:

- “1) EAB appeal 00-004
 - i) the level of formaldehyde emissions from the press vent stack;
 - ii) the level of particulate emissions from each of the two dryer stacks, from the press vent stack, and from all other sources.

- 2) EAB appeal 00-005
 - i) the level of particulate emissions from the dryer stack, from the press vapour system exhaust stack, the Olivine burner stack, and from all other sources in the plant. “³

III. THE HEARING

A. Preliminary Matters

[5] As agreed by the parties, the hearing was held on May 26, 2000, in Edmonton. By mutual agreement, the parties exchanged written submissions.⁴

[6] At the opening of the hearing the parties were asked if there were any procedural or preliminary matters. Mr. Dennis Thomas, Q.C., of Fraser Milner, made a motion on behalf of the Appellants to provide the Board with confidential information. The parties agreed that the Board should proceed with an *in camera* session to determine whether the confidential information should be received by the Board. Mr. Gilbert Van Nes, Counsel to the Board, offered the view that the Board was authorized to proceed in this matter. The Board agreed to hear submissions on this issue *in camera*. Following the discussions in the *in camera* session, Mr. Thomas withdrew his request.

² A.R. 114/93, s.13(d): “Where the parties do not agree to a resolution of the subject matter of a notice of appeal, the presiding Board member, in consultation with the parties, may ... determine the matters to be included in the hearing of the appeal pursuant to section 87(2) and (3) of the Act, ...”

³ See the Board=s letter dated April 11, 2000.

⁴ Mr. Thomas provided a written submission, dated May 1, 2000, on behalf of the Appellant. Mr. McDonald and Ms. Joanne Smart replied with a written submission, dated May 9, 2000, on behalf of the Director. Mr. Thomas provided a written reply to the Director=s submission, dated May 15, 2000, on behalf of the Appellant.

[7] The parties agreed to limit their presentations to the submissions provided to the Board, including a sworn affidavit from each party. Mr. Thomas provided a sworn affidavit on behalf of the Appellants from Mr. Dick Drinnan.⁵ Mr. William McDonald of Alberta Justice, Counsel for the Director, provided a sworn affidavit from Mr. Chow-Seng Liu. Mr. Liu's affidavit was included in the Director's written submission of May 9, 2000. The parties agreed that neither party needed to cross-examine the individuals providing affidavits.

[8] The Board, having regard to the evidence filed by the parties and having regard to the submissions of the parties, considered whether it had any questions for Mr. Drinnan or Mr. Liu. The Board decided that they had no questions.

[9] The substance of the mediation agreement between the parties was entered into the record as part of the submission of the parties.⁶

[10] Prior to the start of the hearing, the parties also reached an agreement to delete the particulate limit of 0.4 g/kg of effluent that was specified in Approval No. 76335-00-01 for the Olivine burner emissions. This further reduced the outstanding issues in EAB Appeal 00-005.

[11] Mr. McDonald noted that two items in the Department's file regarding Footner Forest Products Ltd. were draft letters that were not sent to the Appellant. These items were: (1) a letter dated December 23, 1999, addressed to Mr. Drinnan, at Tab 81 and (2) an undated letter to Mr. Ainsworth, at Tab 95 in the package of documents provided by the Department to the Board.

B. Agreed Upon Facts

[12] The Parties agreed on the following facts:

⁵ Exhibit 3 (Affidavit of Dirk Drinnan).

⁶ Exhibit 4 (Written submissions of the parties).

- a. Ainsworth Lumber Inc. ("Ainsworth") owns and operates a "wood processing plant" (the "Ainsworth Plant"), as defined in section (2)(www) of the Activities Designation Regulation (A.R. 211/96) under the *Environmental Protection and Enhancement Act* (the "Act"), for the manufacture of oriented strand board ("OSB"). The Ainsworth Plant is located on Section 6, Township 70, Range 5, West of the 6th Meridian approximately 25 km south of the corporate limits of the City of Grande Prairie (1996 population 29,242). It lies within the Municipal District of Greenview (No. 16) (1996 population 5269).
- b. The Ainsworth Plant holds an approval issued under the Act. Approval No. 1622-00-00 was issued to Ainsworth in October 1994 for ten years. Since then a number of amendments have been made, the most recent being Amending Approval No. 1622-00-06, issued on December 21, 1999, now the subject of EAB Appeal 00-004.
- c. Footner Forest Products Ltd. ("Footner") owns and is in the process of constructing a "wood processing plant" (the "Footner Plant"), as that term is defined in s. 2(2)(www) of the Activities Designation Regulation under the Act. This Footner Plant is being constructed on a site located on Section 12 and portions of Sections 1, 2 and 11, Township 109, Range 20, West of the 5th Meridian. The Footner Plant is located 8 km south of the corporate limits of the Town of High Level (1996 population 2921) and within Municipal District No. 23 (1996 population 7620).
- d. The Footner Plant was issued Approval No. 76335-00-01 on December 23, 1999, now the subject of EAB Appeal 00-005.

C. Summary of the Arguments

1. The Appellant

[13] Mr. Thomas identified the principal issue in these appeals is the application of the Director's

discretion in issuing approvals relying upon technology-based standards. This policy requires the implementation of the best available demonstrated technology (BADT) or best available technology (BAT) rather than applying the emission limits specified in the applicable regulation. This policy was explained in terms of the application for the Footner Plant in a letter from the Department dated January 27, 2000.⁷

[14] Both of the plants in question are covered by the Substance Release Regulation (A.R. 124/93). This regulation provides limits for particulate emissions from wood processing facilities according to whether the facility is located in a rural⁸ or an urban area⁹. Under this regulation, an urban area and a rural area are defined in a manner that both the Ainsworth Plant and the Footner Plant are located in rural areas. Accordingly, the Substance Release Regulation prescribes a limit for particulate emissions of 0.60 g/kg in each effluent stream.¹⁰ Mr. Thomas acknowledged that the Act provides the Director with permissive authority to apply a more stringent limit than mandated by the regulation,¹¹ but he argued that there needs to be some basis in evidence that a more stringent standard is appropriate. Mr. Thomas noted that there was no regulation under the Act specifying emission limits for formaldehyde. Mr. Thomas argued that evidence of adverse environmental effects was not a driver for requiring either more stringent emission limits than

⁷ Tab 4 of the written submission of the Appellant dated May 1, 2000. Letter from Matt Haghghi to Gordon Burrell dated January 27, 2000: “It is Alberta Environment’s policy to maintain a minimum standard of 0.20 g/kg of particulate for dryer exhaust for all OSB plants. This is a technology-based standard (Best Available Demonstrated Technology) that all plants meet. When local conditions warrant, a more stringent standard is applied. The Substance Release Regulation lists 0.6 as the minimum standard for all wood processing facilities, regardless of size, located in a rural area or a smaller urban area. A more stringent standard is applied for all OSB plants in Alberta. This is in keeping with Alberta Environment’s efforts to minimize emissions as allowed under Section 65 of the Environmental Protection and Enhancement Act.”

⁸ A.R. 124/93 s.1(1)(k): “... a ‘rural area’ is any area of land that is not an urban area;...”

⁹ A.R. 124/93 s.1(1)(n): “... an ‘urban area’ means (i) a city, town, new town, village or summer village, or (ii) an area of land, other than a city, town, new town, village or summer village, that has a population density of at least 3 persons per hectare and is declared by order of the Minister to be an urban area; ...”

¹⁰ A.R. 124/93 s.8(1)(c): “... 0.60 grams per kilogram of effluent resulting from ... (ii) wood processing or woodworking operations located in an urban area having a population of under 50,000 or in a rural area, ...”

¹¹ EPEA s.65(3): “The terms and conditions of an approval may be more stringent, but may not be less stringent, than applicable terms and conditions provided for in the regulations”

specified in the regulation for particulates or requiring any limit in the case of formaldehyde.

[15] The written submission of the Appellants noted that the departmental files produced for these appeals did not contain any evidence of a publicly available policy statement prepared by Alberta Environment in respect of its application of technology-based emission limits (i.e. BAT or BADT). In particular, the Appellants sought policy information that would address the analysis of available technologies relevant to emission limits for particulates or formaldehyde, including relative performance of abatement equipment or comparisons of capital or operating costs for such types of equipment. The Appellants noted that there were substantial cost differentials (both capital and operating costs) between different types of abatement equipment.

[16] The written submission of the Appellants noted that on December 21, 1999, the Director issued the Approval for the Ainsworth Plant and set a formaldehyde limit of 40 mg/m³ for releases from various sources. Two days later, on December 23, 1999, the Director issued the Approval for the Footner Plant and set a formaldehyde emission limit in that approval of 100 mg/m³. The lack of rationale for this inconsistency was questioned along with the observation that OSB plants operated by competitors in High Prairie and Slave Lake had no formaldehyde limits specified in their approvals. A concern was raised that the inconsistencies in applying formaldehyde limits placed the Appellants at a competitive disadvantage.

[17] The Appellants modified the relief being sought in their Notice of Appeal for the Ainsworth Plant (Appeal No. EAB 00-004) to change the formaldehyde emission limit being requested for the press vent stack from "not set" to 100 mg/m³.

[18] In their written reply to the written submission of the Director, the Appellants argued that the Director should have considered the principle of sustainable development.¹² This principle was represented as requiring the Director to balance environmental protection with economic considerations.

¹² EPEA s.2(c): "... the principle of sustainable development, which ensures that the use of resources and the environment today does not impair prospects for their use by future generations; ..."

[19] In summary, Mr. Thomas argued that there was no evidence of any detailed rationale for applying the policy of BAT or BADT and that this is unfair to the Appellants. The emission limits established in the Substance Release Regulation should, as a matter of law, take precedence over any informal policy being applied in the Director's discretion.

2. The Department

[20] Mr. McDonald reviewed the regulatory scheme set out in the Act for requiring an Approval.¹³ The Ainsworth Plant and Footner Plant are designated as requiring an approval under the applicable section¹⁴ of the Activities Designation Regulation because they manufacture OSB with an annual production of greater than 30 million square feet. A wood processing facility, including an OSB facility, that has a production level of less than 30 million square feet would not require an Approval. However, each effluent stream from such a smaller capacity wood processing facility would still at a minimum be subject to the applicable emission limits of the Substance Release Regulation. In the case of the Ainsworth Plant and Footner Plant locations, this baseline requirement for plants too small to require an approval would be the default regulation value of 0.60 g/kg of effluent. This is the default emission limit level that the Appellants are seeking in their appeals.

[21] Mr. McDonald explained that both plants in question require an Approval and the requirements under the Act governing issuance of an Approval applies to them. These requirements provide the Director with the discretion to make the emission limits more stringent for a facility large enough to require an Approval, but the Act prohibits the Director from allowing emission limits in an Approval to be

¹³ EPEA s.58: "No person shall knowingly commence or continue any activity designated by the regulations as requiring an approval or registration unless that person holds the required approval or registration." Section 59: "No person shall commence or continue any activity designated by the regulations as requiring an approval or registration unless that person holds the required approval or registration."

¹⁴ A.R. 211/96 s.2(2)(www): "... 'wood processing plant' means a plant that produces (i) lumber at an annual capacity greater than 20 million foot board measures, or (ii) plywood, oriented strand board, particle board or other panel board products made from organic material at an annual capacity greater than the equivalent of 30 million square feet of 3/8 inch panel; ..."

less stringent than those required under the applicable regulations.¹⁵ Mr. McDonald argued that the Act clearly authorizes the Director to issue the Approvals that are the subject of the current appeals.

[22] The Director's written submission referred to three publicly available statements¹⁶ articulating the policy of applying BAT or BADT as part of the overall strategy of the Department in protecting air quality under the Act. Only one of these documents¹⁷ was dated before the issuance of the Approvals. In that case, the report referred to the departmental approach to air quality management having been produced in consultation with industry and environmental groups as stakeholders of the Clean Air Strategic Alliance.¹⁸

[23] The awareness of the Appellants about policies involving technology-based standards, BAT or BADT, in Alberta was addressed in the Director's written submission with various citations from the Appellant's submissions to the Department.

¹⁵ EPEA s.65(3): "The terms and conditions of an approval may be more stringent, but may not be less stringent, than applicable terms and conditions provided for in the regulations."

¹⁶ Tabs 3, 4 and 5 of the Director's written submission dated May 9, 2000.

¹⁷ Tab 3 of the Director's written submission dated May 9, 2000 – Air Toxics Management Program in Alberta, April 1998.

¹⁸ Tab 3 of the Director's written submission dated May 9, 2000 – Air Toxics Management Program in Alberta, April 1998.

The policies were articulated at p.3 as: "Alberta has a number of key policies which guide the management of industrial air toxics. These are as follows:

- industrial facilities must be designed and operated in accordance with the pollution prevention principle;
- emissions from each industrial source must be controlled using:
 - (a) the best available control technology for carcinogens; and
 - (b) best available demonstrated technology that is economically achievable for other air toxics; ..."

and at p.11, as:

"The system is designed to ensure that emissions are minimized through the use of BAT or BADT and to ensure that ambient air quality meets the high standards that Albertan's desire."

[24] Ainsworth was aware of a technology-based particulate emission standard of 0.20 g/kg of effluent in their submissions for an approval in 1994.¹⁹ The Approval issued to Ainsworth in 1994 and all subsequent amendments have set an emissions limit for particulates at 0.20 g/kg of effluent, a limit which the plant has been able to meet. Likewise, total mass emission limits for formaldehyde of 7.2 kg/hr for the press vent exhaust stacks and 4.0 kg/hr from the dryer stacks were set.

[25] Footner also seemed to be aware of the concept of best available control technologies and made commitments to such technologies at various points in their submissions to the Department.²⁰ Given their association with Ainsworth, Footner has had the opportunity to be aware since 1994 of the particulate emission limit of 0.20 g/kg of effluent that was placed on the Ainsworth Plant emissions.

[26] Mr. McDonald noted that Footner raised a request for the less stringent limit specified in the regulations (0.60 g/kg of effluent)²¹, for the first time, in their response to the draft Approval dated December 15, 1999. Once constructed, the Footner Plant will be the largest OSB plant in Alberta and will

¹⁹ Tab 1 Department file on Ainsworth Approval 1622-00-00 and subsequent amendments.

Ainsworth Lumber Co. Ltd. October 18, 1994 Screening Report, p.15: "Alberta's air emissions regulations stipulate that particulate emissions from wood processing facilities must be below 0.20 g/kg in urban areas and 0.60 g/kg in rural areas. In granting approvals Alberta Environmental Protection requires companies, regardless of their location, to install pollution abatement equipment that will limit emissions to below 0.20 g/kg."

²⁰ Department file on Footner Approval 76335-00-01:

Tab 8, Footner Forest Products Ltd. Public Disclosure Document, p.6: "Dryers will be fitted with high efficiency primary cyclones which will feed into electrified filter bed, wet electrostatic precipitator, or similar best available abatement control units."

Tab 40, Footner Forest Products Ltd. Application for Approval to Construct, p.9: "Dryer exhaust will be drawn through high efficiency primary cyclones and then through electrified filter bed, wet electrostatic precipitators, or other types of units that meet best available abatement technology. Air will be exhausted through 38.1 m stacks. Exhaust from the units will be guaranteed by the manufacturer to be less than 0.028 grains per actual cubic foot (0.05 g/kg) at the rated capacity of the dryers."

Tab 40, Footner Forest Products Ltd. Application for Approval to Construct, p.11: "Best available abatement control technology will be used for emissions to the environment to remove contaminants to the greatest extent practical."

²¹ A.R. 124/93 s.8(1)(c): "... 0.60 grams per kilogram of effluent resulting from (ii) wood processing or woodworking operations located in an urban area having a population of under 50,000 or in a rural area."

have the largest emissions of volumes and mass of all other OSB plants in Alberta. All six OSB plants currently operating under Approvals in Alberta are required to meet a particulate emission level of 0.20 g/kg of effluent, even for rural locations. Two plants that are located closer to populated areas must meet a particulate emission level of 0.10 g/kg of effluent.

[27] Mr. McDonald noted that the need for emission limits on formaldehyde is well established, and the absence of a specific regulation on formaldehyde is not relevant. With regard to the apparent inconsistency in formaldehyde limits between the two Approvals issued two days apart, Mr. McDonald indicated that the 100 mg/m³ limit provided in the Footner Approval (76335-00-01) was a mistake. The Director will be taking action to reduce this limit to 40 mg/m³, which will be consistent with the formaldehyde limit specified in the Ainsworth Amending Approval (1622-00-06).

IV. CONSIDERATIONS OF THE BOARD

[28] The written submissions and arguments for both parties acknowledge that the Director has the authority under the Act to exercise discretion in issuing an Approval that requires emission levels that are more stringent than are specified in applicable regulations. The issue for the Board to decide is whether the Director's discretion has been properly and reasonably exercised in the context of the authority provided to the Director under the Act and applicable regulations.

[29] The authority provided to the Director by s.65(2) of the Act is very broad. The Director may issue an Approval subject to any terms and conditions the Director considers appropriate. Section 65(3) expressly contemplates that the Director may specify terms and conditions that are "...more stringent ... than applicable terms and conditions provided for in the regulations." The only restrictions explicitly placed on the Director's ability to prescribe terms and conditions is found in s.65(3) of the Act which provides that

the Director cannot make terms and conditions "... less stringent, than applicable terms and conditions provided for in the regulations." (The Director is also required by s.65(4) of the Act to consider any criteria that the regulations may require him to consider as well as any applicable written decisions of the Energy Resources Conservation Board or the Natural Resources Conservation Board, none of which apply in this case.)

[30] The Appellants have not identified any requirement of the Act or the applicable regulations that limits the Director from applying his discretion in requiring more stringent emission limits than are specified in the applicable regulations. Nor have the Appellants identified any requirement of the Act or the applicable regulations that specify factors or criteria that the Director should have considered in exercising his discretion that he failed to consider.

[31] Because there are no explicit prohibitions nor any required factors or criteria that must be considered by the Director in exercising the discretion authorized by the Act, the Board is left to judge a more general standard on the evidence before us whether the Director has been reasonable in exercising his discretion in issuing those Approval requirements that remain under appeal.

[32] In judging whether the Director's discretion was reasonable, the Board should consider relevant factors such as whether:

- a. the emission limits specified can be achieved;
- b. the emission limits are consistent with similar requirements for similar facilities under similar circumstances;
- c. the decision reflects a consideration of the evidence provided by the Applicant for the Approval;
and
- d. the discretion exercised serves the purposes of the Act.

[33] There was no issue about the ability of these plants being able to meet the emission

requirements proposed by the Director. The Ainsworth Plant has been meeting these standards for over five years of operation and according to the Footner application for their Approval, the manufacturers will guarantee meeting particulate emission levels that are only a fraction (25%) of those specified according to the Director's discretion in the Approval.²²

[34] The evidence is that the Director has been consistent in specifying the particulate emission limit for OSB wood processing plants such as those that are the subject of these appeals. The particulate emission levels specified by the Director's discretion are no more stringent than have been applied in an Approval to any other OSB plant in Alberta.²³

[35] The Director's consistency in applying the formaldehyde limits was less apparent, but the Board notes the Director's admission of an error in specifying differing emission levels between the two plants and the Director's intention to make the two levels consistent at 40 mg/m³. This will leave the plants in question consistent with two other plants operating under Approvals issued or amended in 1995 and 1997, respectively. Two other plants that currently have no formaldehyde limits are operating under older Approvals or amendments issued in 1993 and 1994. With the information that consistency between the Ainsworth and Footner Plant Approvals at the 40 mg/m³ level will be pursued by the Director, a consistent time trend towards more stringent formaldehyde emission controls from OSB plants becomes evident.

[36] The Approval applications submitted by Ainsworth and Footner represent the evidence provided to the Director by these Applicants. These applications clearly contemplate the premise of

²² Department file on Footner Approval 76335-00-01:

Tab 40, Footner Forest Products Ltd. Application for Approval to Construct, p.9: "Exhaust from the units will be guaranteed by the manufacturer to be less than 0.028 grains per actual cubic foot (0.05 g/kg) at the rated capacity of the dryers."

²³ Tab 1 Department file on Ainsworth Approval 1622-00-00 and subsequent amendments.

Ainsworth Lumber Co. Ltd. October 18, 1994 Screening Report, p.15: "In granting approvals Alberta Environmental Protection requires companies, regardless of their location, to install pollution abatement equipment that will limit emissions to below 0.20 g/kg."

technology-based standards being applied to these plants.²⁴ That recognition was very specific to the emission levels that were ultimately provided in the Approvals and conveys recognition of common usage within the industry. The Director's discretion that is now being challenged produced requirements that are consistent with the relevant evidence provided by the Appellants in their respective applications for Approvals. Accordingly, the Director appears to have considered the evidence provided by the Appellants.

[37] The Director's decision is also consistent with the purposes of the Act. One of the purposes of the Act is that "... protection of the environment is essential to the integrity of ecosystems and human health...".²⁵ In its "Air Toxics Management Program in Alberta", Alberta Environment identifies the importance of the protection of air quality. It is clear that Alberta Environment has been working with the various OSB plants across the Province to reduce the emissions coming from these facilities. It is clear that the reduction of these emissions provides for the protection of the environment and the integrity of ecosystems and human health.

[38] The Board is not able to find anything in how the Director has exercised discretion in these circumstances that is contrary to the purposes of the Act. Asking the Director to approve the request by Ainsworth to relax an emission control performance that Ainsworth has been able to maintain for the past five years, using equipment that is already installed and paid for, appears to be substantially inconsistent with the principal purpose of the Act, namely "to support and promote protection, enhancement and wise use of the environment."²⁶

[39] The Board found the Appellants' reference to the need for the Director to consider the

²⁴ Department file on Footner Approval 76335-00-01:

Tab 40, Footner Forest Products Ltd. Application for Approval to Construct, p.11: "Best available abatement control technology will be used for emissions to the environment to remove contaminants to the greatest extent practical."

²⁵ EPEA s.2(a): "The purpose of this Act is to support and promote the protection, enhancement and wise use of the environment while recognizing ... the protection of the environment is essential to the integrity of ecosystems and human health and to the well-being of society; ..."

²⁶ EPEA s.2.

principle of sustainable development²⁷ unpersuasive. We could find no relevance of this principle to deciding whether the discretion that was exercised by the Director in these cases was reasonable. A principle that resources should be developed in a manner that is sustainable for the use by future generations certainly does not prevent the Director from imposing more stringent standards for emissions. Sustainable development also does not support the use of the lowest cost emissions control alternative by the Appellant.

[40] Overall, the Appellants have argued that the Director's application of a technology-based standard in these cases is not reasonable. The concept of technology-based standards for emission controls appears to have been fully understood by the Appellants and their consultants when they submitted applications for their respective Approvals. The Appellants provided no substantive basis that would allow the Board to characterize technology-based standards as inherently unreasonable.

[41] Further, the Appellants argue that the regulations specified under the Act are intended to take precedence over the Director's discretion. Yet, the Act is very clear in providing the Director with the ability to exercise discretion only in one direction, to be more stringent. The Director has done so in the cases in question. The Director is prohibited from exercising discretion in the opposite direction. The Act is silent about specifying any specific criteria that the Director must apply to exercise this uni-directional discretion that the Act authorizes.

V. CONCLUSION

[42] The discretion exercised by the Director in issuing the Approval (76335-00-01) and the Amending Approval (1622-00-06) was within the Director's authority under the Act and was reasonable.

²⁷ EPEA s.2(c): "The purpose of this Act is to support and promote the protection, enhancement and wise use of the environment while recognizing ... the principle of sustainable development, which ensures that the use of resources and the environment today does not impair prospects for their use by future generations..."

The Act expressly provides the Director with the discretion to impose terms and conditions that are more stringent than terms and conditions provided for in the regulation. There was also evidence before the Director on which to base the exercise of his discretion.

[43] Although there was substantive evidence that the Appellants adequately understood the concept of technology-based emission standards, the Department may be able to forestall future misunderstandings on this issue by developing a summary document outlining how technology-based emission standards have been commonly applied to various industrial sectors in Alberta.

VI. RECOMMENDATIONS

[44] The Board recommends that the Minister of Environment approve the conditions of the Mediation Agreement entered into between the parties on April 10, 2000, and included on page 17 of this Report and Recommendations.

[45] The Board also recommends that the Minister of Environment approve the additional agreement reached by the parties to remove the explicit particulate emission limit for the effluent stream from the Olivine burners from the Approval for the Footner Plant (76335-00-01).

[46] The Board also recommends that the Minister of Environment dismiss the remaining issues in these appeals more specifically identified in paragraph 4 of this Report and Recommendations.

[47] Attached for the Minister's consideration is a draft Ministerial Order implementing these recommendations.

[48] Finally, with respect to ss.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:

- Ainsworth Lumber Co. Ltd. and Footner Forest Products Ltd., represented by Mr. Dennis Thomas, Q.C., counsel, Fraser Milner; and
- Director, Northwest Boreal Region, Alberta Environment, represented by Mr. William McDonald, counsel, Alberta Justice.

Dated June 26, 2000, at Edmonton, Alberta.

“original signed by”
Dr. Steve E. Hruday

“original signed by”
Dr. Curt Vos

“original signed by”
Dr. M. Anne Naeth

VII.

MEDIATION AGREEMENT

BEFORE THE ENVIRONMENTAL APPEAL BOARD
EAB 00-004 and 00-005

MEDIATION AGREEMENT

A. The Parties to the appeals agree that Approval No. 76335-00-01 is amended as follows:

- 1) s. 4.2.2(b) to read:
"The dryer exhaust stacks emissions control system specified in clause 4.2.3(a)."
- 2) s. 4.2.3(a) to read:
"High efficiency primary cyclones and any one of the following:
 - i) electrified filter beds (EFB), or
 - ii) wet electrostatic precipitators, or
 - iii) other technologies such as high efficiency multicones or wet scrubbing technologies subject to the written authorization of the Director."
- 3) Add s. 3.1.3
"With respect to the pollution abatement equipment referred to in clause 4.2.3 the Approval Holder shall, prior to installation, submit the design of all such equipment to the Director for review and comment."

B. The Appellants abandon their appeals with respect to the contaminant 'formaldehyde' at the High Level plant (EAB 00-005) and for the dryer stacks only at the Grande Prairie plant (EAB 00-004). The appeal remains alive with respect to the formaldehyde emission limit from the press stack at the Grande Prairie plant.

AGREED TO BY ALL THE PARTIES ON APRIL 10, 2000

“original signed by” _____

Footner Forest Products Ltd.
Represented by Mr. Dennis Thomas, Q.C.

“original signed by” _____

Ainsworth Lumber Co. Ltd.
Represented by Mr. Dennis Thomas, Q.C.

“original signed by”
Mr. Gary Sasseville, Director, Alberta Environment

VIII. EXHIBITS**Exhibits from Hearing of May 26, 2000**

| Exhibit No. | • Description |
|-------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | <p>A Notice of Public Hearing advertisement placed in the Rycroft Central Signal and the Hay River Hub on April 18, 2000.</p> <p>A News Release that was forwarded to the Public Affairs Bureau and placed on the Government of Alberta website on April 17, 2000.</p> |
| 2 | <p>Notices of Appeal filed by Mr. Dennis Thomas, Q.C., Fraser Milner on behalf on his clients Ainsworth Lumber Co. Ltd. on January 20, 2000 and Footner Forest Products on January 21, 2000.</p> |
| 3 | <p>Affidavit of Dirk Drinnan.</p> |
| 4 | <p>Submissions, volume three of documents.</p> |

IX. DRAFT ORDER

**Ministerial Order
/2000**

Environmental Protection and Enhancement Act
S.A. 1992, c.E-13.3.

Order Respecting EAB Appeals No. 00-004 and 00-005

I, Halvar Jonson, Minister of Environment, pursuant to s.92(1) of the *Environmental Protection and Enhancement Act*, S.A. 1992, c.E-13.3, make the order in the attached Appendix, being the Order Respecting EAB Appeals No. 00-004 and 00-005.

Dated at the City of Edmonton, in the Province of Alberta, this _____, day of _____, 2000.

Halvar Jonson
Minister of Environment

DRAFT APPENDIX

Order Respecting EAB Appeals 00-004 and 00-005

I, Halvar Johnson, Minister of Environment, order:

1) that Approval No. 76335-00-01 issued to Footner Forest Products Ltd. is amended as follows:

a) s. 4.2.2(b) is amended to read:

"The dryer exhaust stacks emissions control system specified in clause 4.2.3(a)."

b) s. 4.2.3(a) is amended to read:

"High efficiency primary cyclones and any of the following:

- i) electrified filter beds (EFB), or
- ii) wet electrostatic precipitators, or
- iii) other technologies such as high efficiency multicones or wet scrubbing technologies subject to the written authorization of the Director."

c) the following is added as s. 3.1.3:

"With respect to the pollution abatement equipment referred to in clause 4.2.3 the Approval Holder shall, prior to installation, submit the design of all such equipment to the Director for review and comment."

2) that Approval No. 76335-00-01 issued to Footner Forest Products Ltd. is amended as follows:

a) table 4.2-A: Limits is amended by deleting the limit "0.40 g/kg of effluent" for the air contaminant "Particulate" from the emission source "Olivine burner stack" and replacing it with the limit "not set".

3) the remaining grounds of appeal in EAB Appeals 00-004 and 00-005 are dismissed.



ALBERTA ENVIRONMENT

Office of the Minister

MINISTERIAL ORDER 58/2000

Environmental Protection and Enhancement Act
S.A. 1992. c. E-13.3

Order Respecting Environmental Appeal Board Appeal No. 00-005

1, Helvar Jonson, Minister of Environment, pursuant to Section 92 of the *Environmental Protection and Enhancement Act* hereby make the order set forth in Appendix I.

DATED at the City of Edmonton, in the Province of Alberta, this 28 day of July, 2000.

“original signed by”
Honourable Halvar Jonson,
Minister of Environment

APPENDIX I

The decision of Director Mr. Gary Sasseville, Director of Northwest Boreal Region, to Issue Approval No. 76335-00-01 to Footner Forest Products Ltd. on December 23, 1999, is varied as follows:

1. Section 3.1.3 is added to read as follows:

"3.1.3 With respect to the pollution abatement equipment referred to in clause 4.2.3 the Approval Holder shall, prior to installation, submit the design of all such equipment to the Director for review and comment."
2. Clause 4.2.2(b) is varied to read as follows:

"(b) the dryer exhaust stacks emissions control system specified in clause 4.2.3(a);"
3. Clause 4.2.3(a) is varied to read as follows:

**"(a) high efficiency primary cyclones and any of the following:
(i) electrified filter beds (EFB), or
(ii) wet electrostatic precipitators, or
(iii) other technologies such as high efficiency multicones or wet scrubbing technologies subject to the written authorization of the Director."**
4. The portion of Table 4.2-A referencing emission limits for the Olivine burner stack is varied to read as follows:

| EMISSION SOURCE | AIR CONTAMINANT | LIMIT |
|----------------------|-----------------|---------|
| Olivine burner stack | Particulate | Not Set |



ALBERTA ENVIRONMENT

Office of the Minister

MINISTERIAL ORDER 59/2000

Environmental Protection and enhancement Act
S.A. 1992, c. E-13.3

Order Respecting Environmental Appeal Board Appeal No. 00-004

I, Halvar Jonson, Minister of Environment, pursuant to Section 92 of the *Environmental Protection and Enhancement Act* hereby make the order set forth in Appendix I.

DATED at the City of Edmonton, in the Province of Alberta, this 28 day of July, 2000.

“original signed by”

Honourable Halvar Jonson
Minister of Environment

228 Legislature Building, Edmonton, Alberta, Canada T5K 2B6 Telephone 780/427-2391 Fax 780/422-6259

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APPENDIX I

The decision of Director Mr. Gary Sasseville, Director of Northwest Boreat Region, to issue Amending Approval NO. 1622-00-06 to Ainsworth Lumber Co. Ltd. on December 21, 1999, is hereby confirmed.