ALBERTA
ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – December 11, 2019

IN THE MATTER OF sections 91, 92, 95, and 97 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12;

-and-

IN THE MATTER OF an appeal filed by Alberta-Pacific Forest Industries Inc., with respect to the decision of the Director, Upper Athabasca Region, Alberta Environment and Parks, to issue Approval No. 111-03-00 under the *Environmental Protection and Enhancement Act* to Alberta-Pacific Forest Industries Inc.

Cite as: Stay Decision: *Alberta-Pacific Forest Industries Inc.* v. *Director, Upper Athabasca Region, Alberta Environment and Parks* (11 December 2019), Appeal No. 18-021-ID1 (A.E.A.B.), 2019 ABEAB 35.

PRELIMINARY MOTIONS HEARING BEFORE:	Meg Barker, Board Member & Panel Chair Anjum Mullick, Board Member Line Lacasse, Board Member

SUBMISSIONS BY:

Appellant:	Alberta-Pacific Forest Industries Inc., represented by Ms. Teresa Meadows and Mr. Jacob Marchel, Meadows Law.
Director:	Mr. Muhammad Aziz, Director, Upper Athabasca Region, Alberta Environment and Parks, represented by Ms. Alison Altmiks, Alberta Justice and Solicitor General.

EXECUTIVE SUMMARY

Alberta-Pacific Forest Industries Inc. (the Appellant) applied for renewal of an Approval to operate a pulp mill issued by Alberta Environment and Parks (AEP) under the *Environmental Protection and Enhancement Act* (EPEA). AEP issued the renewed Approval, which included changes to some conditions contained in the prior approval. 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 determination of its appeal.

The Board asked the Appellant and AEP (collectively the Parties) to answer the following questions based on the test for granting stays established by the Supreme Court of Canada in *RJR-MacDonald* v. *Canada (Attorney General)*, [1994] 1 SCR 311, 1994 SCC 117:

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

The Board received written submissions from the Parties regarding the stay application. The Board convened a mediation meeting at which the Parties reached an agreement on many of the Approval conditions being appealed. The Parties continued to negotiate the conditions that remain outstanding in the appeal.

The Board did not need to consider a stay of the conditions the parties reached an agreement upon, but did proceed to make a determination regarding a stay of the unresolved conditions. The Board found the Appellant's appeal raised serious issues to be heard by the Board, which satisfied the first part of the *RJR-MacDonald* test. In considering the second part of the test, the Board found the Appellant did not demonstrate it would suffer irreparable harm if a stay was not granted. Many of the unresolved conditions did not have to be implemented under the Approval for one or more years, during which time the Appeal would likely be resolved. Additionally, the

parties continued to negotiate and may resolve many of the outstanding issues before a hearing is needed. In the Board's opinion, there was no irreparable harm to the Appellant from these Approval conditions.

In considering the balance of convenience and the public interest, the Board found the Director would suffer greater harm than the Appellant if a stay was granted, as a stay may undermine the Director's ability to implement regulatory change that would protect the environment.

Based on the foregoing, the Board dismissed the Appellant's application for a stay.

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I. INTRODUCTION

[1] This is the decision of the Environmental Appeals Board (the "Board") regarding a preliminary motion by Alberta-Pacific Forest Industries Inc. (the "Appellant") requesting the Board grant a stay of certain conditions of Approval No. 111-03-00 (the "Approval"), issued to the Appellant by the Director, Upper Athabasca Region, Alberta Environment and Parks (the "Director").

II. BACKGROUND

[2] The Appellant has operated the Athabasca Bleached Market Kraft Pulp Manufacturing Plant, (the "Plant") near Athabasca, Alberta, since 1993. The Plant operates under the authority of the approval, issued under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 ("EPEA"). The current Approval, which is under appeal, was issued on January 28, 2019. The Approval replaces Approval No. 111-02-00 (the "Previous Approval"), which expired on October 31, 2016. Alberta Environment and Parks ("AEP") extended the term of the Previous Approval for three successive one-year terms. The Plant operated under prior EPEA approvals issued in 1996 and 2006.

[3] On December 17, 2015, the Appellant applied for renewal of the Previous Approval. From the time of the renewal application until the issuance of the current Approval, the Appellant and the Director communicated extensively regarding its development.

[4] On January 28, 2019, the Director issued the current Approval, which the Appellant received on January 30, 2019.

[5] On February 26, 2019, the Appellant filed a Notice of Appeal with the Board, appealing the following conditions of the Approval (the "Appealed Conditions"):[1]

- 1.1.2(d) – the description of the air emission standards document;
- 1.1.2(g) – the description of the application documents incorporated into the Approval;

[1] See Appendix A for the wording of the conditions that have been appealed.

- 2.4.4 – the requirement for emission controls on storage tanks;
- 3.4.1 and 3.4.7 – the requirements to be met before new landfill cells may be constructed;
- 4.2.9 and Table 4.2-A – the emission limits for chlorine and chlorine dioxide;
- 4.3.5, 4.3.6, 4.4.40 to 4.4.42, including Table 4.4-B – the best practices to be followed for the management of industrial run off;
- 4.3.19 – the reduction of the limits for biochemical oxygen demand that may be required under the Approval;
- 4.3.31(c)(iii) and (iv), and 4.3.38 – the requirements of the Aquatic Monitoring and Assessment Program;
- 4.3.40 to 4.3.43 – the regulation of defoamers;
- 4.4.4 – the storage of hazardous waste and hazardous recyclables;
- 4.4.18 – the requirements for the Certified Operator for the landfill;
- 4.4.29 and 4.4.30 – the requirements for the management of leachate at the landfill; and
- 4.6.8(a) – the use of the Record of Site Condition Form.

[6] At the same time it filed its Notice of Appeal, the Appellant requested the Board grant a stay of the Appealed Conditions pending the determination of its appeal.

[7] On March 7, 2019, the Board acknowledged receipt of the Notice of Appeal and the stay application, and requested the Director advise if he was willing to agree to a stay of all or some of the Approval.

[8] On March 11, 2019, the Director advised he was willing to consent to a temporary stay of the following conditions:

- 2.4.4 – the requirement for emission controls on storage tanks;
- 4.2.9 and Table 4.2-A – the emission limit for chlorine and chlorine dioxide;
- 4.3.19; – the reduction of the limits for biochemical oxygen demand that may be required under the Approval;
- 4.3.31(c)(iii) and (iv), and 4.3.38 – the requirements of the Aquatic Monitoring and Assessment Program; and
- 4.4.30 – the requirements for the management of leachate at the landfill.

Note the Director did not agree to a temporary stay of 4.4.29.

The Director stated his consent for a temporary stay would end upon the conclusion of a mediation meeting or six months from the date of the Notice of Appeal.

[9] On March 11, 2019, the Appellant refused the Director's proposed temporary stay of certain conditions because the Director did not include all of the Appealed Conditions, and the six-month timeline suggested for the temporary stay did not consider the Board's appeal process, which could take longer than six months if the appeal went to a hearing.

[10] On March 19, 2019, the Director provided the Board with a written response submission to the Appellant's stay application.

[11] On March 26, 2019, the Appellant provided the Board with a written rebuttal submission to the Director's response submission.

[12] The Board held a mediation meeting between the Appellant and the Director (collectively, the "Parties") on June 12, 2019, in Edmonton, with a Board member appointed as mediator. The mediation meeting resulted in an agreement between the Parties on the following Appealed Conditions:

- 1.1.2(d) – the description of the air emission standards document;
- 1.1.2(g) – the description of the application documents incorporated into the Approval;
- 2.4.4 (partial agreement) – the requirement for emission controls on storage tanks;
- 3.4.1 and 3.4.7 – the requirements to be met before new landfill cells may be constructed;
- 4.3.19 – the reduction of the limits for biochemical oxygen demand that may be required under the Approval;
- 4.4.18 – the requirements for the Certified Operator for the landfill;
- 4.4.29 and 4.4.30 – the requirements for the management of leachate at the landfill; and
- 4.6.8(a) – the use of the Record of Site Condition Form.

The agreement resulted in changes to the wording of the Appealed Conditions and they are no

longer part of the appeal.

[13] The Parties agreed to continue discussions on the other Appealed Conditions, with the exception of Appealed Conditions 4.4.40 to 4.4.42, for which there was no agreement.

[14] As the mediation did not resolve all of the issues of the appeal, the Board proceeded to consider and determine the Appellant's stay application.

III. SUBMISSIONS

A. Appellant's Initial Submission

[15] The Appellant stated the Approval included several amended conditions and new conditions that were significantly different from those in the Previous Approval. The Appellant submitted it requested a stay of the Appealed Conditions that would have an adverse impact on its ability to operate the Plant in the future. These Appealed Conditions include conditions that:

(a) interrupt the status quo operations of the Plant;

(b) impose additional compliance responsibilities which are contradictory or uncertain; and

(c) require modifications to previous emissions limits that are onerous, may be unattainable, and may limit the Plant's future operations.

[16] The Appellant said that prior to the Approval being issued it discussed possible Approval conditions with the Director. The Appellant stated it identified to the Director potential conditions that could have a negative impact on the ability of the Appellant to operate the Plant in the future, and requested further information regarding those proposed conditions. The Appellant stated the Director issued the Approval without providing any of the requested information or background to explain why such significant changes from the Previous Approval were being implemented.

[17] The Appellant noted the Board's four-part test for a stay was established by the

Supreme Court of Canada in *RJR-MacDonald Inc.* v. *Canada (Attorney General)* ("*RJR-MacDonald*").[2]

[18] The Appellant submitted the first part of the *RJR-MacDonald* test, namely whether there is a serious issue to be heard, was satisfied by the concerns the Appellant had with the Approval. The Appellant stated it anticipated the central issue to the appeal would be whether the amendments to the Previous Approval are necessary to protect the environment. The Appellant said the issues it raised in the Notice of Appeal are not frivolous or vexatious, and are important to the public, the pulp and paper industry, and the integrity of Alberta's regulatory approval system.

[19] The Appellant submitted it met the second part of the *RJR-MacDonald* test, being whether the Appellant would suffer irreparable harm if the stay was granted. The Appellant referenced the following quote from the Supreme Court of Canada in *RJR-MacDonald*:

> "At this stage, the only issue to be decided is whether a refusal to grant relief could so adversely affect the applicant's own interest that the harm could not be remedied even if the eventual decision on the merits does not accord with the result of the interlocutory application.
>
> 'Irreparable' refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other."[3] [emphasis added by the Appellant]

[20] The Appellant noted the Board, in its decision in *Wiebe et al.* v. *Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks, re: ATCO Electric Ltd.*,[4] determined that the nature of the harm, not its magnitude, is relevant in considering irreparable harm. The Appellant quoted the Board in *Wiebe*:

> "The harm must not be quantifiable; that is, the harm, to the applicant cannot be satisfied in monetary terms, or one party could not collect damages from the

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[2] *RJR-MacDonald Inc.* v. *Canada (Attorney General)*, [1994] S.C.R. 311 (SCC). Although the test was originally used for interlocutory injunctions, the Courts have stated the application for a stay should be assessed using the same test. See: *Manitoba (Attorney General)* v. *Metropolitan Stores*, [1987] 1 S.C.R. 110 at paragraph 30 ("*Metropolitan Stores*") and *RJR-MacDonald Inc.* v. *Canada (Attorney General)*, [1994] 1 S.C.R. 311 at paragraph 41.

[3] *RJR-MacDonald Inc.* v. *Canada (Attorney General)*, [1994] S.C.R. 311 (SCC), at paragraphs 63 and 64.

[4] Preliminary Motions: *Wiebe et al.* v. *Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks*, re: *ATCO Electric Ltd.* (29 July 2016), Appeal Nos. 15-033-034, 036-038-D (A.E.A.B.).

other."[5]

[21] The Appellant submitted if it were to make the changes required by the Approval, and was then later successful in the appeal, it would not be able to collect damages from AEP due to section 220 of EPEA.[6] The Appellant stated such a situation is precisely the example of irreparable harm contemplated by the Court in *RJR-MacDonald*.

[22] The Appellant said some of the irreparable harm it would suffer if a stay was not granted would be damage to its reputation, which is not quantifiable. The Appellant submitted several of the Appealed Conditions were unclear, referred to the wrong documents, were unattainable, or were financially onerous, and could cause the Appellant's operation of the Plant to be non-compliant with the Approval, even if conducted in good faith. The Appellant stated that such non-compliance could cause irreparable harm to its reputation.

[23] The Appellant submitted it could suffer irreparable harm from Appealed Conditions 1.1.2(d), 1.1.2(g), 2.4.4, 4.3.19, and 4.4.4, which either contain references to incorrect documents, narrow wording, overly broad wording, or ambiguous terminology. The

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[5] Preliminary Motions: *Wiebe et al.* v. *Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks*, re: *ATCO Electric Ltd.* (29 July 2016), Appeal Nos. 15-033-034, 036-038-D (A.E.A.B.) at paragraph 76.

[6] Section 220 of EPEA states:

"No action for damages may be commenced against

(a) a person who is an employee or agent of or is under contract to the Government or is an employee or agent of or is under contract to a Government agency,

(b) a person who is designated as an inspector or investigator under section 25,

(c) a person to whom the Minister has, under section 9 of the *Government Organization Act*, delegated a power, duty or function under this Act,

(d) any person, including any employee of the Government, a Government agency, a local authority or the Government of Canada or an agency of that Government, to whom a power or duty has been delegated under section 17,

(d.1) any person, including any employee of the Government, a Government agency, a local authority or the Government of Canada or an agency of that Government, to whom the administration of a provision of this Act has been transferred under section 18,

(e) a member of the Environmental Appeals Board, or

(f) a member, employee or agent of, or a person under contract to, a delegated authority referred to in section 37(d),

for anything done or not done by that person in good faith while carrying out that person's duties for exercising that person's powers under this Act including, without limitation, any failure to do something when that person has discretionary authority to do something but does not do it."

Appellant said the wording of these Appealed Conditions could cause the Appellant and AEP to have different understandings of what industry standards, guidelines, and practices are to be followed.

[24] The Appellant stated Appealed Condition 4.2.9 and Table 4.2-A provide for significantly reduced chlorine dioxide and chlorine emission limits, which could be unattainable, create compliance issues, and severely restrict the operations of the Plant.

[25] The Appellant said the Approval's compliance requirements in Appealed Conditions 4.3.31(c)(iii) and (iv) add far-field sampling to the current sampling and monitoring program. The Appellant stated it advised AEP that previous far-field sampling did not yield useful or representative data. The Appellant submitted these Appealed Conditions should be stayed to avoid unnecessary expenses.

[26] The Appellant stated Appealed Conditions 4.3.40 to 4.3.43 should be stayed as the Appellant does not use "defoamers" as defined in the Approval. If these Appealed Conditions are not stayed, the Appellant said it will incur expenses testing for dioxins that are not in the defoamers it uses.

[27] The Appellant submitted the wording of Appealed Conditions 4.4.29 and 4.4.30 are unclear as to what the Appellant's obligations are under the Approval. The Appellant stated the uncertainty of the wording could result in the Appellant allocating an incorrect amount of human and financial resources to comply with these Appealed Conditions, or unintentionally being non-compliant with the Approval, causing irreparable harm to its reputation.

[28] The Appellant said the ambiguous wording of Appealed Conditions 4.4.40 to 4.4.44 and Table 4.4-B, cause confusion regarding the Appellant's responsibilities for the monitoring and reporting program related to landfill operations. The Appellant stated the Appealed Conditions seem to require continuous supervision of the landfill by a Certified Landfill Operator, and may require the Appellant's contractors to have the same certification, which is an onerous and possibly unattainable obligation.

[29] The Appellant submitted the requirement that the Appellant include a completed Record of Site Condition Form to the Groundwater Monitoring Report under Appealed

Condition 4.6.8(a) of the Approval would require the Appellant and third-party consultants to apply site assessment standards and complete a reclamation planning exercise on an active site, causing unnecessary expense and difficulties for both the Appellant and third-party consultants. The Appellant stated this Appealed Condition would place a considerable non-compensable financial burden on the Appellant, and should be stayed.

[30] Regarding the third part of the stay test, the Appellant submitted it would suffer greater harm if the stay application was refused than the Director would suffer if the stay was granted.

[31] The Appellant stated that if the Appealed Conditions were stayed, the Plant would continue to operate as it had under the Previous Approval. The Appellant noted the Director was comfortable with the status quo of the Plant's operations for three years after the Previous Appeal expired, which the Appellant suggested demonstrates there is no urgent need to implement the Appealed Conditions.

[32] The Appellant submitted if the Board does not grant the stay, the Appellant will suffer greater harm than the Director would suffer.

[33] The Appellant said the fourth part of the stay test, namely whether the overall public interest warrants a stay, includes the "…concerns of society generally and the particular interests of identifiable groups."[7] The Appellant submitted the Director has not provided any substantive reasons as to how implementation of the Appealed Conditions will protect the environment or is required in the public interest. The Appellant stated there is no evidence to suggest a stay would result in risk to any identifiable groups, the Director, human health, or the environment.

[34] The Appellant noted the Board, in *Northcott* v. *Director, Northern Region, Regional Services, Alberta Environment* re: *Lafarge Canada Inc.*,[8] found the appellant in that appeal had not demonstrated it would suffer greater harm than the approval holder if a stay was

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7 *RJR-MacDonald Inc.* v. *Canada (Attorney General)*, [1994] S.C.R. 311 (SCC), at paragraph 66.

8 *Northcott* v. *Director, Northern Region, Regional Services, Alberta Environment* re: *Lafarge Canada Inc.* 23 December 2005), Appeal Nos. 04-009, 04-0011, and 04-012-ID1 (A.E.A.B.).

granted. The Appellant stated the Board said if the approval holder continued its operations as it had in the past, no additional impact or harm would occur in the time it took to process the appeal.

[35] The Appellant submitted it was not aware of any evidence to show operating under the Previous Appeal until the appeal is resolved would result in additional impacts to the environment or public health and safety.

[36] The Appellant requested that any stay granted by the Board should be effective until the appeal is resolved, either through mediation or by the decision of the Minister.

B. Director's Response Submission

[37] The Director requested the Board deny the Appellant's application to stay the Appealed Conditions.

[38] The Director stated the Plant has operated with an approval under EPEA from the start of its operations and had its approval renewed three times and amended frequently. The Director said as the Plant has changed, so too has the approval.

[39] The Director submitted the onus is on the Appellant to satisfy all the steps of the *RJR-MacDonald* test for a stay.

[40] The Director stated the Appellant's appeal of the Approval is sufficient to satisfy the first part of the *RJR-MacDonald* test.

[41] The Director submitted the Appellant would not suffer irreparable harm if the Board refused to grant the stay. The Director stated the Appellant failed to satisfy the second part of the *RJR-MacDonald* test.

[42] The Director submitted the Appellant provided insufficient evidence to prove that compliance with the Appealed Conditions would be unduly difficult or result in such a cost that the Appellant would be unable to carry the financial burden. The Director noted it costs money to comply with regulatory approvals that may require monitoring programs, sampling, planning,

and reporting. The Director said the Appellant seemed to take the position that any potential cost is irreparable harm. The Director stated the Supreme Court of Canada could not have intended its decision in *RJR-MacDonald* to have such a meaning.

[43] The Director noted the Appellant did not claim irreparable harm from complying with Appealed Conditions 3.4.1, 4.3.5, 4.3.6, and 4.3.38. The Director submitted the Board and the Director should not have to speculate on the Appellant's views regarding those Appealed Conditions, and the Board should refuse to grant a stay of these Appealed Conditions. The Director stated the Board should not allow the Appellant to split its case by attempting to make submissions on the Appealed Conditions in its written rebuttal submission.

[44] The Director submitted the Board should not grant a stay of Appealed Conditions 1.1.2(g), 4.3.40 to 4.3.43, and 4.4.4, as the Appellant followed substantially the same or similar conditions for more than ten years under the Previous Approval, and had not reported any irreparable harm.

[45] The Director noted the Appellant included a Record of Site Condition in its previous groundwater monitoring report, as required under Appealed Condition 4.6.8(a). The Director said the Appellant already demonstrated it can comply with Appealed Condition 4.6.8(a) and, therefore, the Board should not stay this Appealed Condition.

[46] The Director stated there is no irreparable harm from complying with Appealed Condition 4.3.31, which requires the Appellant to identify potential sampling locations. The Director noted the Appellant has until May 31, 2021, to provide its first proposed location. As there is no irreparable harm from this Appealed Condition, and the Appellant has significant time to comply, the Director submitted the Board should not grant a stay of Appealed Condition 4.3.31.

[47] The Director noted Appealed Condition 4.4.18 is required under section 25 of the *Waste Control Regulation*, AR 192/96,[9] and there can be no irreparable harm from restating the

[9] Section 25 of the *Waste Control Regulation* provides:

> "(1) The person responsible for a Class II or Class III landfill or Class I or Class II compost facility shall ensure that the facility is supervised by a certified operator during its hours of operation.

legislation. The Director submitted a stay for this Appealed Condition should be refused by the Board.

[48] The Director stated the definition in Appealed Condition 1.1.2(d) is not uncertain and, even it if was, compliance would not amount to irreparable harm.

[49] The Director said Appealed Condition 4.4.29 should not be stayed as it imposes a limit on the leachate head, which is important for preventing contamination to groundwater, surface water, and soil. The Director stated Appealed Condition 4.4.30 benefits the Appellant as it provides time for the Appellant to bring the leachate head back into compliance if an exceedance is detected.

[50] The Director submitted there was no uncertainty with Appealed Conditions 4.4.40 to 4.4.42 and Table 4.4-B, and no irreparable harm to the Appellant. The Director said the Board should not stay these Appealed Conditions.

[51] The Director stated Appealed Condition 4.3.19 does not require the Appellant to take any actions at this time and, therefore, there is no need to stay it. The Director was willing to stay this Appealed Condition temporarily to allow for discussion at mediation.

[52] The Director noted the emission limit specified in the Approval does not come into effect for 20 months, and the Appellant should be able to reach the limit. The Director said he was willing to stay this Appealed Condition temporarily to allow for discussion at mediation.

[53] The Director stated the third part of the *RJR-MacDonald* test, the balance of convenience, requires the Board to weigh the burden granting a stay would have on the public interest in the administration of EPEA against the benefit to the Appellant if the stay is granted.

[54] The Director submitted granting a stay of the Appealed Conditions would

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(2) A certified operator may have one or more assistants who may supervise the facility in his temporary absence.

(3) The person responsible for a Class II or Class III landfill or Class I or Class II compost facility shall notify the Director in writing of the names of all certified operators and their assistants and any change in any of the certified operators or their assistants within 30 days of the change.

(4) Subsections (1), (2) and (3) do not apply until September 1, 2001."

negatively impact the Director's authority to regulate industrial activities consistent with the purposes of EPEA to support and promote the protection, enhancement, and wise use of the environment. The Director said the following examples demonstrate how a stay would result in greater harm to the environment and the regulatory system:

(a) Appealed Conditions 1.1.2(d) and 1.1.2(g) are definitions that relate to other definitions in the Approval, and staying them would impact those definitions and any conditions that use them;

(b) staying the monitoring and reporting called for in Appealed Conditions 4.4.40 to 4.4.42 and Table 4.4-B would negatively impact the regulatory scheme for the landfill's industrial runoff control system;

(c) staying Appealed Condition 4.2.9, and Table 4.2-A would result in no air emission limits, while staying Appealed Condition 4.4.29 would remove any limit on the leachate head and could lead to leaks and liner failure;

(d) staying Appealed Conditions 4.4.40 to 4.4.42 and Table 4.4-B would remove monitoring and reporting for the industrial runoff control system, and could result in exceedances not being detected, reported, and remedied;

(e) a stay of Appealed Conditions 4.3.40 to 4.3.43 would jeopardize AEP's obligations under an equivalency agreement with Canada that address defoamer use;

(f) staying Appealed Condition 4.4.4, which regulates the storage of hazardous recyclables, could potentially lead to a risk to the environment if hazardous recyclables are not stored in a safe manner consistent with hazardous waste;

(g) if Appealed Condition 4.4.18 is stayed, a certified operator would not be required to supervise the landfill, which is required under the *Waste Control Regulation*; and

(h) staying Appealed Condition 2.4.4, which regulates emission management of above ground storage tanks and is intended to prevent ground level ozone, could cause a risk to the environment.

[55] The Director stated consistent application of regulatory tools across an industry creates certainty and prevents competitors from obtaining an unfair advantage. The Director submitted a stay of the Appealed Conditions would cause greater harm to the regulatory scheme than any harm caused to the Appellant by not granting a stay.

[56] The Director submitted the harm to the public interest is greater than any potential

harm to the Appellant if the Board refuses the stay.

[57] The Director stated when a private applicant, such as the Appellant, claims the public interest will be harmed if a stay is not granted, the onus is on that applicant to demonstrate the harm, as it is generally assumed private applicants are pursuing their own interests rather than the public interest. The Director quoted from *RJR-MacDonald*:

> "In the case of a public authority, the onus of demonstrating irreparable harm to the public interest is less than that of a private applicant. This is partly a function of the nature of the public authority, and partly a function of the action sought to be enjoined. The test will nearly always be satisfied simply upon proof that the authority is charged with the duty of promoting or protecting the public interest and upon some indication that the impugned legislation, regulation, or activity was undertaken pursuant to that responsibility. Once these minimal requirements have been met, the Court should, in most cases assume that irreparable harm to the public interest would result from the restraint of that action."[10]

[58] The Director submitted there is greater public interest in safeguarding the Director's ability to effectively regulate industrial development consistent with EPEA and preventing harm to the environment, than there is in allowing the Appellant to stay the Appealed Conditions which would impact other regulatory requirements.

[59] The Director stated it is in the public interest to refuse to grant the stay, and have the Appellant comply with the Approval until this appeal is resolved. The Director submitted the Appellant failed to meet the test for a stay.

C. Appellant's Rebuttal Submission

[60] The Appellant submitted in rebuttal that it met the *RJR-MacDonald* test for a stay, and the Director failed to provide sufficient evidence to justify a refusal by the Board of the stay application.

[61] The Appellant stated its submissions are not silent on Appealed Conditions 3.4.1, 4.3.5, 4.3.6, and 4.3.38, as claimed by the Director. The Appellant said it addressed these Appealed Conditions in the Notice of Appeal, which should be viewed as a central document in

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[10] *RJR-MacDonald Inc.* v. *Canada (Attorney General)*, [1994] S.C.R. 311 (SCC), at paragraph 76.

combination with the stay application.

[62] The Appellant submitted the wording of Appealed Condition 3.4.1 is incorrect and contradictory, and could lead to noncompliance with the Approval.

[63] The Appellant stated the wording of Appealed Conditions 4.3.5 and 4.3.6 is unreasonable and seems to indicate the Appellant would be required to amend the Approval each time it updated its best management practice plan. The Appellant said a requirement to amend the Approval could cause a significant delay resulting in noncompliance or delayed implementation of improvements to its best management practice plan.

[64] The Appellant submitted the terminology used in Appealed Condition 4.3.38 was ambiguous and did not communicate clear expectations regarding the frequency of monitoring and reporting requirements.

[65] The Appellant stated "irreparable harm" does not mean harm to the extent that the Appellant would be unable to continue its operations under the Approval. The Appellant referred to the Court's decision in *RJR-MacDonald*:

> "'Irreparable'" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other."[11] (emphasis by the Appellant)

[66] The Appellant submitted if a party to whom an order is directed complies with the order and does the work, but is later successful in an appeal, that party is statute-barred from collecting damages against the Government, unless the Government acted in bad faith.

[67] The Appellant said, in this situation, if a stay is not granted it is in a position where harm may be suffered that cannot be cured, and even if the Appellant is successful in the appeal, it would be unable to collect damages.

[68] The Appellant stated that just because it complied with the conditions in the Previous Approval, does not mean it would not suffer irreparable harm by complying with an Appealed Condition in the Approval that is later found by the Board to be unreasonable.

[69] The Appellant submitted the terms and conditions of the Approval should be clear, and if the Appellant is unsure of the conditions it must follow, there is the possibility of noncompliance and, therefore, the possibility of suffering financial or reputational harm, which would be irreparable.

[70] The Appellant said the potential costly operational risks that may occur from the ambiguous wording of some of the Appealed Conditions could result in irreparable harm including Appealed Conditions which may not take effect until a few years in the future, but still represent potential irreparable harm.

[71] The Appellant submitted it is not contesting the laws or regulations of EPEA, or challenging being regulated. The Appellant stated it is contesting Appealed Conditions that have no justifiable reasons and are so vague, uncertain, and difficult to implement, that the Appellant is unsure how to comply with them.

[72] The Appellant stated a stay of the Appealed Conditions would not result in exceedances of emissions or a refusal to report. The Appellant confirmed it is committed to ongoing compliance with all applicable regulatory requirements, including its site-specific Approval.

[73] The Appellant said it is not contesting the general provisions of the *Waste Control Regulation*, but rather the imposition of the *Hazardous Waste Storage Guidelines* (the "Storage Guidelines")[12] from 1988, to the collection, storage, and disposal of hazardous recyclables. The Appellant submitted the Storage Guidelines were developed for hazardous waste management, and are not applicable to hazardous recyclables.

[74] The Appellant submitted the wording of Appealed Condition 2.4.4 suggests the *Guidelines for Secondary Containment for Above Ground Storage Tanks*[13] would apply to storage tanks containing wood pulp, necessitating upgrades or construction of additional storage tanks that could cost the Appellant $4 million to $18 million.

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11 *RJR-MacDonald Inc.* v. *Canada (Attorney General)*, [1994] S.C.R. 311 (SCC), at paragraph 64.

12 *Hazardous Waste Storage Guidelines*, Alberta Environment, June 1998.

13 *Guidelines for Secondary Containment for Above Ground Storage Tanks*, Alberta Environmental

[75] The Appellant stated the public interest includes the "…concerns of society generally and the particular interests of identifiable groups"[14] (emphasis is the Appellants). The Appellant submitted it is not just pursuing its own interests by seeking a stay, but is benefiting AEP as well as the regulated community, by working to ensure the Approval conditions are clear, achievable, reasonable, and rationally connected to regulatory purposes. The Appellant submitted the regulated community is an identifiable group.

[76] The Appellant stated any stay granted by the Board should remain in effect until the issues between the Parties are resolved.

IV. LEGAL BASIS FOR A STAY

[77] The Board is authorized to grant a stay under section 97 of EPEA. This section provides, in part:

> "(1) Subject to subsection (2), submitting a notice of appeal does not operate to stay the decision objected to.
>
> (2) The Board may, on the application of a party to a proceeding before the Board, stay a decision in respect of which a notice of appeal has been submitted."

[78] The Board's test for a stay, as stated in its previous decisions of *Pryzbylski*[15] and *Stelter*,[16] is adapted from *RJR-MacDonald*. The steps in that test are:

> "First, a preliminary assessment must be made of the merits of the case that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits."[17]

Protection, 1997.

[14] *RJR-MacDonald Inc.* v. *Canada (Attorney General)*, [1994] S.C.R. 311 (SCC), at paragraph 66.

[15] *Pryzbylski* v. *Director of Air and Water Approvals Division, Alberta Environmental Protection* re: *Cool Spring Farms Dairy Ltd.* (6 June 1997), Appeal No. 96-070 (A.E.A.B.).

[16] *Stelter* v. *Director of Air and Water Approvals Division, Alberta Environmental Protection*, *Stay Decision* re: *GMB Property Rental Ltd*. (14 May 1998), Appeal No. 97-051 (A.E.A.B.).

[17] *RJR-MacDonald Inc.* v. *Canada (Attorney General)*, [1994] 1 S.C.R. 311 at paragraph 43.

[79] The first step of the test requires the applicant for a stay to show there is a serious issue to be tried. The applicant has to demonstrate through the evidence submitted that there is some basis on which to present an argument.

[80] The second step in the test requires the decision-maker to decide whether the applicant seeking the stay would suffer irreparable harm if the stay is not granted. It is the nature of the harm that is relevant, not its magnitude. The harm must not be quantifiable; that is, the harm to the applicant could not be satisfied in monetary terms, or one party could not collect damages from the other.

[81] In *Ominayak* v. *Norcen Energy Resources*, the Alberta Court of Appeal defined irreparable harm as follows:

> "[b]y irreparable injury is not meant that the injury is beyond the possibility of repair by money compensation but it must be of such a nature that no fair and reasonable redress may be had in a court of law and that to refuse the injunction would be a denial of justice."[18]

The party claiming that damages awarded as a remedy would be inadequate compensation for the harm done must show there is a real risk that harm will occur. It cannot be mere conjecture.[19] Damage that may be suffered by third parties can also be considered.[20]

[82] The third step in the test is the balance of convenience, which is determined by asking "...which of the parties will suffer the greater harm from the granting or refusal of an interlocutory injunction, pending a decision on the merits."[21] The decision-maker is required to weigh the burden the stay would impose on the respondent against the benefit the applicant would receive. This weighing is not strictly a cost-benefit analysis but rather a consideration of significant factors. The courts have considered factors such as the cumulative effect of granting a stay,[22] third parties who may suffer damage,[23] or if the reputation and goodwill of a party will

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18 *Ominayak* v. *Norcen Energy Resources*, 1985 ABCA 12 (CanLll) at paragraph 30.

19 *Edmonton Northlands* v. *Edmonton Oilers Hockey Corp*., [1993] A.J. No. 1001 (Q.B.) at paragraph 78.

20 *Edmonton Northlands* v. *Edmonton Oilers Hockey Corp*., [1993] A.J. No. 1001 (Q.B.) at paragraph 78.

21 *Manitoba (Attorney General)* v. *Metropolitan Stores*, [1987] 1 S.C.R. 110 at paragraph 36.

22 *MacMillan Bloedel* v. *Mullin*, [1985] B.C.J. No. 2355 (C.A.) at paragraph 121.

23 *Edmonton Northlands* v. *Edmonton Oilers Hockey Corp*., [1993] A.J. No. 1001 (Q.B.) at paragraph 78.

be affected.[24]

[83] The Courts have recognized that any alleged harm to the public is to be assessed at the third stage of the test. The public interest includes the "... concerns of society generally and the particular interests of identifiable groups."[25] The effect on the public may sway the balance for one party over the other.

V. ANALYSIS

[84] In the mediation meeting, the Parties agreed to reword several of the Appealed Conditions, resolving the Appellant's concerns. The Board finds there is no need to stay the Appealed Conditions which were resolved during the mediation. With the exception of Appealed Conditions 4.4.40 to 4.4.42, including Table 4.4-B, the Parties agreed to continue discussions regarding the remaining Appealed Conditions, which are 2.4.4 (the Parties reached a partial agreement); 4.2.9 and Table 4.2-A; 4.3.5; 4.3.6; 4.3.31(c)(iii) and (iv); 4.3.38; 4.3.40 to 4.3.43; 4.4.4; and 4.4.29.

[85] The Board has reviewed the remaining Appealed Conditions (4.4.40 and 4.4.42, including Table 4.4-B) to determine if it should grant the Appellant's application for a stay of these conditions.

[86] The first step of the *RJR-MacDonald* test requires the Appellant to show there is a serious issue to be tried. The Appellant has to demonstrate, through the evidence submitted, that there is some basis on which to present an argument. As not all of the evidence will be before the Board at the time the decision is made regarding a stay application, "...a prolonged examination of the merits is generally neither necessary nor desirable."[26]

[87] The Appellant raised concerns in its submissions and in the Notice of Appeal, regarding the potential impact the Appealed Conditions will have on the Plant's operations. The Director submitted the Appellant's appeal of the Approval was sufficient to satisfy the first part

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24 *Edmonton Northlands* v. *Edmonton Oilers Hockey Corp*., [1993] A.J. No. 1001 (Q.B.) at paragraph 79.

25 *RJR-MacDonald Inc.* v. *Canada (Attorney General)*, [1994] 1 S.C.R. 311 at paragraph 66.

26 *RJR-MacDonald Inc.* v. *Canada (Attorney General)*, [1994] 1 S.C.R. 311 at paragraph 50.

of the test. The Board finds the potential impacts resulting from the Appealed Conditions are a serious issue and, therefore, the first step in the stay test has been met.

[88] The second step in the test requires the Board to decide whether the Appellant would suffer irreparable harm if the stay is not granted. Irreparable harm may occur when the Appellant would be adversely affected to the extent the harm could not be remedied if the Appellant should succeed at the hearing. It is the nature of the harm that is relevant, not its magnitude. The harm must not be quantifiable; that is, the harm to the Appellant could not be satisfied in monetary terms, or one party could not collect damages from the other.

[89] As the Appellant is claiming that damages awarded as a remedy would be inadequate compensation for the harm done, the onus is on the Appellant to show there is a real risk that harm will occur. It cannot be mere conjecture.[27]

[90] The Appellant submitted compliance with the Appealed Conditions would:

(a) interrupt the status quo operations of the Plant;

(b) impose additional compliance responsibilities which are contradictory or uncertain; and

(c) require modifications to previous emissions limits that are onerous, may be unattainable, and may limit the Plant's future operations.

[91] The Board noted the Parties reached an agreement in the mediation meeting to reword several of the Appealed Conditions to provide clarity. The Parties are continuing negotiations on the unresolved Appealed Conditions and have set specific dates for providing reports and exchanging information and proposals, some of which are several months away. Many of the Appealed Conditions are not required in the Approval to be implemented until next year, or the year after. At this point in the appeal process, a stay is not warranted because the Appellant is not currently suffering, or at any real risk of suffering, irreparable harm.

[92] The Board finds the evidence did not demonstrate the Appellant would suffer irreparable harm if a stay was not granted for the Appealed Conditions, along with conditions 4.4.40 to 4.4.42, including Table 4.4-B. The Board finds the Appealed Conditions are not so

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[27] *Edmonton Northlands* v. *Edmonton Oilers Hockey Corp*., [1993] A.J. No. 1001 (Q.B.) at paragraph 78.

unreasonably onerous or financially burdensome that they warrant a stay, pending the resolution of the appeal. The Board finds the costs associated with complying with these Appealed Conditions can be quantified.

[93] The Board finds the Appellant did not meet the requirements of the second part of the stay test.

[94] The third part of the test is the balance of convenience. This test requires the applicant for a stay to demonstrate he or she would suffer greater harm from the refusal of a stay than the other parties would suffer if a stay were granted. The Board is required to weigh the burden a stay would impose on other parties against the benefit the applicant would receive. This part of the test is not strictly a cost-benefit analysis but rather a balancing of significant factors. Here, the Board must assess and compare the Appellant's position with that of the Director's in assessing the balance of convenience. The effect on the public interest may sway the balance for one party over the other.

[95] In determining who will suffer the greater harm, the Board considers the timeframe in which the appeal would be resolved. The question the Board considers is would the Appellant suffer greater harm during the time the appeal is considered and the Minister's decision released? It is only after the Board hears all of the arguments at the hearing that it will be able to determine if the Appealed Conditions are reasonable.

[96] The Director, through the Approval, is attempting to implement improved best practices across the pulp industry in order to protect the environment. The Appellant has raised its concerns regarding specific conditions in the Approval. As the Parties are negotiating to resolve the Appellant's concerns, a stay is not necessary at this point in the appeal process. The Board finds the Appellant will not suffer greater harm than the Director if a stay is not granted. The balance of convenience favours not granting a stay.

[97] If the Parties are unable to reach an agreement on the remaining Appealed Conditions, the appeal will proceed to a hearing and the Board will submit a Report and Recommendations to the Minister for his decision. The Board does not consider the timeline to resolve the appeal to be unreasonable, especially as the appeal process will likely conclude

before the Appellant is required to comply with some of the remaining Appealed Conditions.

[98] While it is in the public interest to encourage economic activity, it is also in the public interest to effectively regulate industrial activity in a consistent manner, and protect the environment, which is the specific responsibility of the Director. Both Parties are contributing to these goals by engaging in the Board's appeal process and negotiating changes to the Approval. The Board is concerned a stay, in this situation, may undermine the Director's ability to regulate and implement best practices for the pulp industry, which would further protect the environment. The Board finds it would not be in the public interest to grant a stay at this time.

[99] If a situation arises where the Appellant determines it needs a stay of any particular Appealed Condition, it can seek temporary relief from the Director. If that is not successful, it may come back to the Board and request a stay.

[100] Although the Appellant demonstrated there is a serious issue to be determined, the Appellant did not convince the Board the Appellant would suffer irreparable harm. The balance of convenience and the public interest favours the refusal of the stay to avoid undermining the Director's ability to implement regulatory change that would protect the environment.

VI. DECISION

[101] The Board denies the Appellant's stay request. The Board will continue to process the appeal while the Parties negotiate. Any remaining Appealed Conditions may go to a mediation or a hearing.

Dated on December 11, 2019, at Edmonton, Alberta.

"*original signed by*"
Meg Barker
Board Member & Panel Chair

"*original signed by*"
Anjum Mullick
Board Member

"*original signed by*"
Line Lacasse
Board Member

VII. Appendix A – Appealed Conditions*

Excerpt: Approval Terms and Conditions Subject to Appeal

Clause 1.1.2

In all PARTS of this approval:

…

(d) "Alberta Air Emission Standards for Electricity Generation" means the document of that name published by the Department of Environment as amended or replaced from time to time;

…

(g) "application" means the written submissions from the approval holder to the Director in respect of application number 015-111 and any subsequent applications where amendments are issued for this approval;

Clause 2.4.4.

Effective from March 01, 2020, all above ground storage tanks containing liquid hydrocarbons or volatile organic liquids shall conform to the *Environmental Guidelines for Controlling Emissions of Volatile Organic Compounds from Aboveground Storage Tanks*, Canadian Council of Ministers of the Environment, PN 1180, 1995, as amended.

CLAUSE 3.4.1

Subject to 3.4.7, the approval holder shall not commence construction of a landfill cell until the approval holder has received written authorization from the Director as specified in this approval.

CLAUSE 4.2.9

Releases of the following substances to the atmosphere shall not exceed the limits specified in TABLE 4.2-A.

TABLE 4.2 A AIR EMISSION LIMITS

EFFLUENT STREAM SOURCES	EFFLUENT STREAM PARAMETERS	LIMIT
Recovery Boiler	TRS	12 hour average of 5.0 parts/million by volume on a dry basis, corrected to 8% oxygen, when oxygen concentration in the effluent stream is 15% or less
Recovery Boiler	Particulates	1 hour average of 0.10 gram/dry standard cubic metre, corrected to 8% oxygen when oxygen concentration in the effluent stream is 15% or less

* See Appendix A of the Appellant's Notice of Appeal dated February 26, 2019.

Lime Kiln	TRS	12 hour average of 8.0 parts/million by volume on a dry basis, corrected to 10% oxygen when oxygen concentration in the effluent stream is 15% or less
Lime Kiln	Particulates	1 hour average of 0.15 gram per dry standard cubic metre, corrected to 10% oxygen when oxygen concentration in the effluent stream is 15% or less
Power Boiler	Particulates	1 hour average of 0.10 gram/dry standard cubic metre, corrected to 7% oxygen when oxygen concentration In the effluent stream is 15% or less
Smelt Dissolving Tank Scrubber	TRS (emission rate)	1. 75 kg per hour
Smelt Dissolving Tank Scrubber	Particulate (emission rate)	11.0 kg per hour
Bleach Plant	Chlorine and Chlorine Dioxide (emission rate)	5.50 kg per hour (until December 31, 2020) 2.11 kg per hour (from January 01, 2021)

Clause 4.3.5

The approval holder shall not store any material outside the Industrial Runoff Control System except as described in the best management practice plan, July 2018, unless otherwise authorized in writing by the Director.

Clause 4.3.6

The approval holder shall manage industrial runoff as described in the best management practice plan, July 2018, unless otherwise authorized in writing by the Director.

Clause 4.3.19

Releases from the Industrial Wastewater Control System shall meet a more stringent limit for BOD_5 when directed to so in writing by the Director based on the Director being satisfied that the approval holder has received an adequate opportunity to plan for the proposed change in the BOD_5 limit.

Clause 4.3.31

The approval holder shall develop an Aquatic Monitoring and Assessment Program proposal which shall contain, at a minimum, all of the following, unless otherwise authorized in writing by the Director:

…

(c) proposed sampling site locations with respect to the effluent plume delineation including:

…

(iii) far-field site(s) near the boundary of the effluent mixing zone; and

(iv) far-far field site(s).

Clause 4.3.38

The approval holder shall increase the frequency of monitoring and reporting requirements under the Aquatic Monitoring and Assessment Program upon written notice by the Director:

Clause 4.3.40

The approval holder shall submit to the Director for each quarter year, not later than 60 days after the last day of the quarter, a report containing all of the following information:

(a) the name and address of the plant;

(b) for each batch of defoamer;

(i) the quantity of defoamer in each batch;

(ii) the batch number of each batch of that defoamer; and

(iii) the name of the manufacturer, importer or vendor from which each batch of defoamer was received during the quarter;

(c) a copy of the analysis referred to in 4(1)(a) of the *Pulp and Paper Mill Defoamer and Wood Chip Regulations* or of the certificate referred to in 4(1)(b) of the *Pulp and Paper Mill Defoamer and Wood Chip Regulations*; and

(d) the name, title, telephone number and signature of the person who provides the information on behalf of the plant.

Clause 4.3.41

Where the concentration of dibenzofuran and dibenzo-para-dioxin set out in reports in respect of four consecutive quarters that are or have been submitted by a person pursuant to this approval or requirements pursuant to the *Pulp and Paper Mill Defoamer and Wood Chip Regulations* have not exceeded the concentrations set out in Section 4(1) of the *Pulp and Paper Mill Defoamer and Wood Chip Regulations,* the person may, for the next quarter, submit to the Director a copy of an analysis of a sample of each type of defoamers used or a copy of a certificate provided by the manufacturer of each defoamer that indicates that the type of defoamer contains the following:

(a) 40 ppb or less by weight of dibenzofuran, and

(b) 10 ppb or less by weight of dibenzo-para-dioxin.

Clause 4.3.42

Where the approval holder receives a defoamer for use in the plant, the approval holder shall record the following:

(a) the quantity, and the name of the manufacturer, importer or vendor, of each shipment of a defoamer received by the plant, and the date of delivery of the shipment; and

(b) a copy of the certificate referred to in 4(1)(b) of the *Pulp and Paper Mill Defoamer and Wood Chip Regulations*, in respect of each batch of the defoamer provided by the manufacturer, importer or vendor of the defoamer, or the concentrations of dibenzofuran and dibenzo-para-dioxin in each batch of the defoamer delivered to the plant.

Clause 4.3.43

The approval holder shall ensure concentrations of dibenzofuran and dibenzo-para-dioxin

are measured in accordance with the *Reference Method for Determination of Dibenzofurans and Dibenzo-para-dioxins in Defoamers*, published by the Department of the Environment, Report 1/RM/20, 1991, as amended from time to time.

Clause 4.4.4

Hazardous waste or hazardous recyclable stored in containers or tanks shall be stored in accordance with the *Hazardous Waste Storage Guidelines*, Alberta Environment, June 1988, as amended.

Clause 4.4.18

The operation of the landfills shall be supervised by a Certified Operator in accordance with Section 4.1 of the Landfill Standards, as amended.

Clause 4.4.29

For any cell constructed after July 1, 2009 within the class II landfill, the approval holder shall maintain the leachate head at or below the maximum acceptable leachate head of 300 mm at the lowest point of liner excluding the sumps and leachate pipe trenches.

Clause 4.4.30

Upon detection of any exceedances of the maximum acceptable leachate head referred to in 4.4.29, the approval holder shall reduce the leachate head level below the maximum acceptable level within a maximum of 14 calendar days subsequent to the detection.

Clause 4.4.40

The approval holder shall monitor the release from the class Ill landfill industrial runoff control system to the surrounding watershed as required in TABLE 4.4-B, unless otherwise authorized in writing by the Director.

Clause 4.4.41

The approval holder shall report to the Director the monitoring results for the class Ill landfill industrial runoff control system as required in TABLE 4.4-B, unless otherwise authorized in writing by the Director.

Clause 4.4.42

For the purpose of TABLE 4.4-B:

(a) sampling location A is defined as the North Sump;

(b) sampling location B is defined as the Middle Sump; and

(c) sampling location C is defined as the South Sump;

TABLE 4.4-B CLASS Ill LANDFILL INDUSTRIAL RUNOFF CONTROL SYSTEM MONITORING AND REPORTING

MONITORING				REPORTING
PARAMETER	PRIOR TO RELEASE			
	Frequency	Sample Type	Sample Location	
pH	Once	Representative Grab	A, B, C	Annually by March 31
Oli and grease	Once	Representative Grab	A, B, C	
TSS (mg/L)	Once	Representative Grab	A, B, C	

Specific Conductivity (µS/cm)	Once	Representative Grab	A, B, C	
COD (mg/L)	Once	Representative Grab	A, B ,C	

Clause 4.6.8

The approval holder shall compile a Groundwater Monitoring Report which shall include, at a minimum, all of the following information:

(a) a completed up-to-date *Record of Site Condition Form*, Alberta Environment, 2009, as amended;

….