
ALBERTA ENVIRONMENTAL APPEALS BOARD

Report and Recommendations

Date of Report and Recommendations – December 13, 2021

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

-and-

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

Cite as: *West Fraser Mills Ltd. v. Director, Upper Athabasca Region, Operations Division, Alberta Environment and Parks* (13 December 2021), Appeal No. 18-019-R3 (A.E.A.B.), 2021 ABEAB 37.

BEFORE:

Meg Barker, Acting Board Chair.

PARTIES:

Appellant: West Fraser Mills Ltd., represented by Mr. Tony Crossman, Blake, Cassels & Graydon LLP.

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

EXECUTIVE SUMMARY

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

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

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

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

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

The Parties continued their discussions and came to an agreement on issues 2 and 3. The Board subsequently issued a Report and Recommendations along with the Minister's Order reflecting their agreement

The Parties pursued a resolution of the final outstanding issue. An agreement was reached on the final issue – the olivine wood waste incinerator.

Based on the discussions, the Parties requested the Board issue a Report and Recommendations to the Minister, recommending that the approval be varied to implement the Parties' final agreement. The Board reviewed the agreement regarding the olivine wood waste incinerator and considered it appropriate to recommend the Minister vary the Approval in accordance with the Parties' agreement.

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I. BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

[9] On April 9, 2019, the Board issued a letter granting a stay of the appealed conditions of the Approval until the Board hears the appeal and the Minister issues an order, or the Board directs otherwise. The letter stated the Board would provide its reasons for granting the stay at a later date. On March 13, 2020, the Board issued its reasons for its decision on the stay.¹

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

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

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

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

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

the Parties.² The amendments to the Approval allowed the Plant to continue to operate while the Parties resolved the remaining issues in the appeal.

[13] The Parties agreed to continue their discussions on the following Approval conditions:

- 4.3.44 to 4.3.47 and Table 4.3-H – wetland assessment and operational monitoring requirements;
- 4.4.20 to 4.4.23 – requirements for a Cadmium Monitoring and Management Plan; and
- the requirement to stop using the olivine wood waste incinerator as of November 30, 2021;

[14] The Parties reached agreements with respect to conditions 4.3.44 to 4.3.47 following discussions with the Wetlands Assessment Mediation Working Group, and conditions 4.4.20 through 4.4.23 following discussions with the Cadmium Monitoring and Management Plan Mediation Working Group. The Parties also advised that discussions would continue with respect to the final issue regarding the olivine wood waste incinerator. As a result of the agreements, the Board recommended the Minister alter the Approval according to the agreements. The Minister agreed and issued a Ministerial Order.³

II. DISCUSSION

[15] Discussions continued on the final issue raised by the Appellant that was not resolved in the Board's first or second Report and Recommendations:

- the requirement to stop using the olivine wood waste incinerator as of November 30, 2021;

[16] On November 25, 2021, the Parties advised the Board they reached a resolution on the final outstanding issue and requested the Board recommend to the Minister to vary the Approval reflecting the Parties' agreement.

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

³ *West Fraser Mills Ltd. v. Director, Upper Athabasca Region, Alberta Environment and Parks* (18 January 2021), Appeal No. 18-019-R2 (A.E.A.B.), 2021 ABEAB 1.

III. RECOMMENDATIONS

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

1. Repealing condition 4.2.14 and replacing it as follows:

“4.2.14.1 The approval holder shall cease operation of the olivine wood waste incinerator not later than November 30, 2024.

4.2.14.2 The approval holder shall limit the quantity of wood waste incinerated in the olivine wood waste incinerator in accordance with TABLE 4.2-A1:

TABLE 4.2-A1 ANNUAL WOOD WASTE INCINERATION LIMIT

YEAR	MAXIMUM AMOUNT OF WOOD WASTE THAT CAN BE INCINERATED, GMT (GMT means green metric tonne)
2022	65,000
2023	55,000
2024	45,000

4.2.14.3 The approval holder shall dismantle the olivine wood waste incinerator not later than December 31, 2025.

4.2.14.4 The approval holder shall notify the Director in writing within fourteen days after the olivine wood waste incinerator is dismantled.

4.2.14.5 Commencing in 2022 the approval holder shall include, as part of the annual waste management report in 4.4.28, an annual progress report on elimination of the olivine wood waste incinerator with annual progress reports continuing until the olivine wood waste incinerator is dismantled.

4.2.14.6 The annual progress report in 4.2.14.5 shall include, at a minimum, the following:

- (a) the quantification method(s) used to measure the quantity of wood waste;
- (b) the quantity of wood waste generated in the plant each month in the preceding 12 months;
- (c) the quantity of wood waste incinerated in the olivine incinerator each month in the preceding 12 months;
- (d) the quantity of wood waste transferred off-site each month in the preceding 12 months;

⁴ Section 99 of EPEA provides:

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

- (e) the name(s) and location(s) of the transferee(s) in (d); and
- (f) an update on other disposal and beneficial use options considered and planned for the wood waste.”

2. Repealing condition 4.2.28(g) and replacing it as follows:

“(g) summary of olivine incinerator operating hours per month;”.

3. Repealing condition 4.4.28(e) and replacing it as follows:

“(e) the annual progress report on elimination of the olivine wood waste incinerator as specified in 4.2.14.5; and”.

[18] The decision by the Board on March 13, 2020 to issue a stay of certain conditions in the Approval is lifted in its entirety upon the issuance of the Minister’s Order.

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

- 1. Mr. Tony Crossman, Blake Cassells & Graydon LLP on behalf of West Fraser Mills Ltd.; and
- 2. Ms. Alison Altmiks, Alberta Justice and Solicitor General, on behalf of the Director, Upper Athabasca Region, Operations Division, Alberta Environment and Parks.

Dated on December 13, 2021, at Edmonton, Alberta.

-original signed by-

Meg Barker
Board Member and
Acting Board Chair

⁵ Section 100(2) of EPEA states:

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



ALBERTA

ENVIRONMENT AND PARKS

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

Ministerial Order
04 /2022

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

Order Respecting Environmental Appeals Board Appeal No. 18-019

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

Dated at the City of Edmonton, in the Province of Alberta, this 5 day of Feb, 2022.



Jason Nixon
Minister

APPENDIX

Order Respecting Environmental Appeals Board Appeal No. 18-019

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

1. Repealing condition 4.2.14 and replacing it as follows:

“4.2.14.1 The approval holder shall cease operation of the olivine wood waste incinerator not later than November 30, 2024.

4.2.14.2 The approval holder shall limit the quantity of wood waste incinerated in the olivine wood waste incinerator in accordance with TABLE 4.2-A1:

TABLE 4.2-A1 ANNUAL WOOD WASTE INCINERATION LIMIT

YEAR	MAXIMUM AMOUNT OF WOOD WASTE THAT CAN BE INCINERATED, GMT (GMT means green metric tonne)
2022	65,000
2023	55,000
2024	45,000

4.2.14.3 The approval holder shall dismantle the olivine wood waste incinerator not later than December 31, 2025.

4.2.14.4 The approval holder shall notify the Director in writing within fourteen days after the olivine wood waste incinerator is dismantled.

4.2.14.5 Commencing in 2022 the approval holder shall include, as part of the annual waste management report in 4.4.28, an annual progress report on elimination of the olivine wood waste incinerator with annual progress reports continuing until the olivine wood waste incinerator is dismantled.

4.2.14.6 The annual progress report in 4.2.14.5 shall include, at a minimum, the following:

- (a) the quantification method(s) used to measure the quantity of wood waste;
- (b) the quantity of wood waste generated in the plant each month in the preceding 12 months;
- (c) the quantity of wood waste incinerated in the olivine incinerator each month in the preceding 12 months;
- (d) the quantity of wood waste transferred off-site each month in the preceding 12 months;
- (e) the name(s) and location(s) of the transferee(s) in (d); and
- (f) an update on other disposal and beneficial use options considered and planned for the wood waste.”

2. Repealing condition 4.2.28(g) and replacing it as follows:

“(g) summary of olivine incinerator operating hours per month;”.

3. Repealing condition 4.4.28(e) and replacing it as follows:

“(e) the annual progress report on elimination of the olivine wood waste incinerator as specified in 4.2.14.5; and”.