



Province of
British Columbia

Environmental Appeal Board

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APPEAL NO. 2000-WAS-004

In the matter of an appeal under section 44 of the *Waste Management Act*, R.S.B.C. 1996, c. 482.

BETWEEN: Tom Mesi **APPELLANT**

AND: Regional Waste Manager **RESPONDENT**

AND: Little Valley Forest Products (1993) Ltd. **THIRD PARTY**

BEFORE: A Panel of the Environmental Appeal Board
Katherine Hough, Panel Chair
Richard Cannings, Member
Phillip Wong, Member

DATE OF HEARING: July 18 and 19, 2000

PLACE OF HEARING: Hagensborg, B.C.

APPEARING: For the Appellant: Tom Mesi
For the Respondent: Joseph Negraeff
For the Third Party: Guiseppe Cerasa

APPEAL

This appeal is against the December 29, 1999 decision of J. Negraeff, Regional Waste Manager, to issue amended Permit PA - 3339 to Little Valley Forest Products (1993) Ltd. ("LVFP"), authorizing emissions from its sawmill in Hagensborg, B.C.

The authority for the Environmental Appeal Board to hear this appeal is found in section 11 of the *Environment Management Act* and section 40 of the *Waste Management Act*.

Pursuant to section 47 of the *Waste Management Act*, the Board may

- a) send the matter back to the person who made the decision, with directions,
- b) confirm, reverse or vary the decision being appealed, or
- c) make any decisions that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

Mr. Mesi seeks to have the amended permit cancelled.

BACKGROUND

Hagensborg is situated in the Bella Coola Valley, which has been economically depressed for some length of time. There has been a sawmill operating sporadically on the eastern outskirts of Hagensborg since the late 1940's. The Appellant, Mr. Mesi, owns property adjacent to the sawmill, on the eastern side, and his home is approximately 1/4 mile from the sawmill itself. There is an old mill pond directly behind the old sawmill building. The pond is part of an existing creek that was expanded into a holding pond. Mr. Mesi was aware of the sawmill operation when he moved onto his property over 10 years ago. He also worked at the sawmill under previous ownership. There is now a rural subdivision surrounding the sawmill property on two sides (the other two sides are highway and river). The sawmill has been permitted to discharge emissions since 1975. In 1993, Mr. Cerasa purchased the sawmill, changed the company's name to LVFP and, in 1995, the permit was amended to reflect the name change.

In 1995, the permit allowed emissions from a beehive burner five days a week, eight hours a day, with restrictions on the smoke opacity and requirements to reduce fugitive dust. LVFP did not comply with these permit requirements due, in part, to the poor state of the beehive burner. Complaints were lodged against the company. When the Ministry of the Environment, Lands and Parks ("MELP") ordered LVFP to comply with the permit requirements in May 1995, the company announced plans to build a new sawmill operation on the site. Part of the new sawmill operation was to include a wood-fueled power generator. A wood waste burner would eliminate the need for the beehive burner and would reduce emissions. LVFP also undertook some minor upgrades to the beehive burner and its operation. Despite these improvements, the smoke emissions continued to exceed permit limits.

Complaints from four individuals, including Mr. Mesi, were received about the sawmill's emissions and, in 1996, MELP ordered LVFP to submit a phase out schedule for the beehive burner. Later that year, the company supplied a letter of commitment to install the wood fired boiler, but without a time frame or emission control details.

In 1996, a ticket was issued to LVFP under section 54 of the *Waste Management Act*, and the mill was shut down for a few months. When it resumed operation, more complaints were made by Mr. Mesi. MELP sent LVFP a warning letter stating that LVFP had to comply with the permit or risk further legal action.

In 1997, LVFP applied to reduce the number of days of emission but increase the smoke opacity from 20% to 100%. A public meeting was held in Hagensborg in March 1998, with overwhelming public support for the continued operation of the sawmill. While the community was not happy with the pollution problems, it was prepared to tolerate them while a new sawmill was being built. Mr. Mesi, along with a few others, objected to the proposed amendment.

In 1998, the permit was amended to increase the smoke opacity to 40%, with variance to 80% for fuel interruptions and shutdowns/startups, to reduce the number of emission days from five to two, and to increase the daily period of operation to 24 hours per day. The permit also required weather conditions to be

taken into account before the beehive burner was to be fired up, dustfall and smoke opacity monitoring, and LVFP was to participate in an air quality/smoke management committee that the Central Coast Regional District agreed to organize.

The committee was never organized as there was no response to a request for volunteers that was published twice in the local newspaper. The permit also required LVFP to submit a phase out plan for the beehive burner, and required further information on the emission quality of the proposed wood-fueled boiler by December 31, 1998. If no satisfactory plan was received by the Regional Waste Manager, then the beehive burner was to cease operation by the end of 1999.

Mr. Cerasa testified that the company stopped pursuing a wood-fueled power generator because of a change in policy from B.C. Hydro. While the generator would have eliminated the smoke emissions, it is costly and would have generated more electricity than the sawmill required. LVFP had begun negotiations with B.C. Hydro for the co-generation of power using LVFP's equipment, but then "something changed in B.C. Hydro" such that it was no longer receptive to co-generation, and all negotiations stopped. LVFP then sought to continue the use of the beehive burner.

In July 1999, LVFP applied to amend its permit again to allow the beehive burner to operate seven days a week at 20%-40% smoke opacity emissions. Application fees were not paid until August 19, 1999.

On August 19, 1999, a neighbour informed MELP that the new sawmill was operational. Mr. Cerasa advised MELP that the sawmill would cease to operate if the two-day restriction on emissions was not lifted at once, and that amendments to the permit were required immediately. Given the nature of the amendment sought, the *Public Notification Regulation* required a minimum public comment period prior to any major amendments being approved. This process would take some time. LVFP was advised to request a Minister's Variance Order under section 15 of the *Waste Management Act*. The Central Coast Regional District and members of the community supported the request. The variance was granted on September 22, 1999. The variance allowed beehive burner emissions five days a week and 10 hours per day, and was effective until December 31, 1999. While operating under the Variance Order, LVFP undertook a number of burner improvements.

Following the issuance of the variance, MELP published LVFP's permit application, circulated the application to a number of government agencies, and sent a copy of the application directly to Mr. Mesi. No objections were received except from Mr. Mesi. The amended permit was issued on December 29, 1999. The issuance of the amended permit was appealed by Mr. Mesi and is the subject of this appeal.

The amended permit under appeal allows emissions to occur 24 hours a day, seven days a week, with a smoke opacity not to exceed 20% with a variance to 40% for fuel feed shutdowns. The authorized works in the permit incorporates the improvements made to the burner. Alternate disposal methods of the wood waste was removed from the permit. The amended permit also requires that fugitive dust be suppressed, combustible dustfall be monitored, and measured dustfall be compared to the Ministry Objective value of 1.75mg/dm²/d. Since the permit was amended, the smoke opacity has remained within the permitted levels. Mr.

Wagner, a MELP employee, testified that from December 1999 to May 2000, the smoke opacity remained generally within the permitted 10 to 20% with the odd increase to 30 to 40%. It is unclear from the evidence whether the increased readings occurred as a result of fuel feed shutdowns as allowed in the permit. As well, all dustfall monitoring results have compared favourably with the 1.75 mg/dm²/d Ministry Objective.

Mr. Mesi has complained almost weekly about the dustfall, smoke emissions and scum on the mill pond since the amended permit was issued. While the burner is operating, a large quantity of combustible dust lands on Mr. Mesi's property. There is no dispute that there is a clear path of discharge from the sawmill onto the Mesi property due to the prevailing wind conditions. If the wind changes and moves in a westerly direction, the dust lands in the opposite direction. The amount of dustfall has resulted in Mr. Mesi being unable to sell his comfrey crop, a medicinal herb, due to both the amount of particulate matter on the crop itself, and the purchaser's concern that oil residue in the soil from the mill dust would adversely affect the quality of the comfrey. No soil or plant tests have been done to determine if the concern about the oil residue is accurate. Mr. Padgett, owner of Northern Natural Health Products Ltd. advised that he would pay approximately \$30,000 per annum if the crop was free from sawmill contaminants.

Dustfall also lands in the mill pond and an oily scum was noted in areas of the mill pond. Several witnesses testified that the oil residue is similar to that present on other relatively stagnant water bodies.

Mr. Mesi requests that the Board order an environmental assessment of the mill pond. Mr. Mesi also seeks to have the amended permit cancelled on the grounds that:

- a) the emissions are injurious to his health;
- b) he is unable to sell his herb crop due to the dustfall;
- c) the dustfall is an unjustified nuisance; and
- d) the mill pond and its aquatic life is adversely affected.

The Panel attended the site on July 18th with all parties in attendance.

ISSUES

The issues raised by Mr. Mesi's grounds of appeal will be addressed as follows:

1. Whether the dustfall and oil residue from the sawmill operation adversely affect the mill pond.
2. Whether the permitted emissions of smoke and dustfall is unreasonable in all of the circumstances.

LEGISLATION

Waste Management Act

Definitions and interpretation

1 (1) In this Act:

...

“environment” means the air, land, water and all other external conditions or influences under which humans, animals and plants live or are developed.

Amendments of permits and approvals

13 (1) A manager may, subject to this section and the regulations, for the protection of the environment,

(a) on the manager’s own initiative if he or she considers it necessary, or

(b) on application by a holder of permit or holder of an approval,

amend the requirements of the permit or approval.

DISCUSSION AND ANALYSIS**1. Whether the dustfall and oil residue from the sawmill operation adversely affect the millpond.**

While the millpond is on private property, MELP has jurisdiction and the mandate broadly to protect the environment and this includes private property. The evidence presented to the Panel indicates that historically the pond had been used to hold logs until they were used in the sawmill operation. Currently the millpond is not used for that purpose but old, partially submerged logs are still in the pond. All parties who had visited the site (both before and during the Panel’s site visit) noted an oily residue on the pond surface and some dustfall. The dustfall was more apparent on the land due to the dust sinking into the pond after a period of time. It is this combination of accumulated oils and sawmill dust, now sludge, that the Appellant says is detrimental to the mill pond environment. The Appellant points to the lack of fish in the millpond as evidence that the beehive burner emissions are harmful.

In his evidence, the Appellant referred to the toxicity of cedar oil to the receiving environment. However, no data was produced to substantiate this claim. Mr. Koroluk, a habitat technician for the Department of Fisheries and Oceans (“the DFO”) had visited the millpond in 1998 at the request of the Appellant and noted an abundance of fish. He testified that, if there were no fish in the pond in 2000, it could be due to a number of factors. These factors include poor water quality or low water so that the fry cannot get into the pond or nearby beaver dams. Mr. Koroluk testified that fry are washed into and out of the pond during high water times. In the Bella Coola Valley, it is not unusual to get an abundance of fish fry in the roadside ditches one year and not a single fry the next; therefore, he was not concerned that currently there are no fish in the pond.

When Mr. Koroluk visited the site in 1998, water quality tests were conducted and nothing unusual was noted. He attended while the beehive burner was operating

and noted dust falling into the pond and small amounts of an oily residue on the surface. Mr. Koroluk testified that bottom sludge would not affect the fish and there was insufficient dust remaining on the pond surface to adversely affect the oxygen needs of fish. He also noted that the blue oily residue on the pond surface was naturally occurring from wood break down and was within "normal parameters". Mr. Koroluk did acknowledge that there was little information about the effect of cedar wood waste on fish habitat, but that the combination of wood ash and wood particulate would render a neutral pH for the pond, which was beneficial for fish.

In a letter to Mr. Mesi dated June 20, 2000, which was entered in evidence, Rodger Stewart, the Regional Manager (Fish, Wildlife, and Habitat Protection), Cariboo Region, MELP, stated that expertise in MELP cannot conclude that ash deposition from the beehive burner is causing detrimental effects on fish and fish habitat in the millpond.

In his closing argument, Mr. Mesi requested that the Board order an environmental study on the millpond. Mr. Koroluk had testified that an in-depth, long term study would be necessary in order to differentiate between natural and man made deposits in the millpond and creek. He also stated that, based on limited information and his one site visit, such a study is not warranted. Mr. Negraeff testified that, given natural ecosystem variations, it would be very difficult to carry out a millpond study and achieve meaningful results.

It was noted that both Mr. Koroluk and Mr. Robert Tritschler, Watershed Stewardship Coordinator for the Lower Coast, indicated that they would be willing to investigate the mill pond with respect to the possibility of fish habitat enhancement.

It is the decision of the Panel that, from all of the evidence presented, there is insufficient evidence to find that the dustfall and oil residue from the sawmill operation adversely affects the millpond. Accordingly, the Panel will not require an environmental study of the millpond to be conducted.

2. Whether the amount of permitted emissions of smoke and dustfall is unreasonable in all of the circumstances.

Douglas McIntosh, head of the industrial and municipal section of Pollution Prevention, MELP, testified about the condition of the beehive burner. In addition to Mr. McIntosh's evidence, the Board heard from Richard Wagner, Pollution Prevention Officer with MELP. Mr. Wagner has inspected the burner and, as a certified opacity reader, has measured the smoke opacity of the burner. Both men have reviewed the results of the dustfall emissions tests. The problems with opacity in the early days of the sawmill operation were, in large part, due to the use of wet wood by the mill. Now that the source of logs has changed, the dense smoke from wet timber is no longer an issue. The mill was issued a ticket in 1999 because it was burning more often than the permit allowed. This prompted, in part, the permit amendment application.

MELP has received many complaints from Mr. Mesi with respect to combustible dustfall and oil on the millpond. Only complaints that were different from previous ones were investigated (e.g., the greater smoke opacity and the increased days of burning) and both of these complaints resulted in tickets being issued to LVFP.

Complaints about the fact that smoke was emitted during sawmill operation, or that dustfall was landing on Mr. Mesi's property, were not investigated as the permit allowed these discharges.

MELP witnesses related a history of difficulty with getting the current sawmill owner to comply with the permit. When MELP insisted on compliance, LVFP has either threatened to shut down the mill, or promised upgrades or changes to improve the burner emissions. Over the past five years, both have occurred as a result of MELP's involvement. The recent upgrades have greatly improved burner performance. However, the Panel agrees with the MELP witness that beehive burners are only crude incineration devices. The upgrades, including burning the wood waste at a hotter temperature and in a restricted space within the burner itself, have resulted in reduced smoke opacity but greater combustible dustfall. According to MELP, the probable reasons for the flyash problem are the lack of cyclonic action during the burning process and the size of the wood residue which is largely trim ends and waste slabs. The MELP Technical Assessment report explored these problems and suggested solutions. The report indicated that these solutions were not implemented in the amended permit in light of the urgency to adjudicate the amendment request, and were to be dealt with as routine permit administrative issues.

Mr. McIntosh testified that dust cups have been installed to measure the amount of the combustible dustfall from the mill in both an easterly and westerly direction. However, both the Appellant and the MELP witnesses agree that the amount of detritus in the surrounding area appears to be greater than the amount collected in the dust cups. It appears that the dust cups are not placed where the majority of dust flows from the sawmill in an easterly direction onto the Mesi property. The MELP Technical Assessment report states that the dustfall monitoring locations may not be positioned in the most heavily impacted areas but that the monitors are placed in secure areas where vandalism could be prevented. The report also proposed that the west station be moved to an area which appears to be more in the typical plume path for out flow winds. This was not included in the amended permit due to the same time restrictions noted above.

The Appellant presented no tests or studies on the impact of the dustfall on the receiving environment.

Based upon the evidence presented, the Panel finds that the amount of dustfall and smoke emissions is directly related to the mill's increased operation, the lack of tangential air flow in the burner, and the large size of the wood residue. Also, the westerly winds that prevail most of the year ensure that a large proportion of this dustfall occurs on Mr. Mesi's property. Currently, the sawmill is operating only one shift per day but the owner has indicated that, as the market improves, another shift will be added. Since the permit was amended LVFP has complied with its permit conditions. LVFP has taken the position that it is committed to fixing the lack of swirl in the burner and will continue to comply with the permit conditions, but will not voluntarily undertake further remedial action.

The Appellant has been unable to prove that either the permitted levels of smoke or the dustfall are health hazards or that the receiving environment has been adversely affected. The opacity level of smoke emissions have decreased due to

the upgrades implemented by LVFP. Unfortunately, in reducing the smoke levels, the combustible dustfall being deposited into the environment has increased. This increase in dustfall is also tied to the increased mill operation and the likelihood is that the dustfall will continue to increase when further shifts are added. The Panel finds that in all of the circumstances of this case, the increase of the dustfall is unreasonable.

An "air contaminant" is defined in section 1 of the *Waste Management Act* as a substance that is emitted into the air and includes a substance that "(b) injures or is capable of injuring property or any life form" and "(d) interferes or is capable of interfering with the normal conduct of business". When the permit amendment was authorized, the Panel believes it was made "for the further protection of the environment" as required under section 13 of the *Act*. However, from the evidence presented, it appears that the increased dustfall was either not anticipated, or not anticipated to the extent that it has occurred and with the consequences to Mr. Mesi.

The dustfall is unsightly and has adversely affected Mr. Mesi's ability to earn an income from his farm. LVFP argued that it is trying to be a good corporate citizen but maintained that if it cannot operate as is currently permitted, it will close the mill and the Valley will go into an economic decline. The Panel has taken these submissions into account and, after weighing the various interests, concludes that it is important to reduce the amount of dustfall through the methods set out below and require the installation of better monitoring.

DECISION

In making this decision, the Panel of the Environmental Appeal Board has carefully considered all the evidence placed before it, whether or not it has been reiterated within the body of this document.

The Panel therefore upholds the amended permit and directs the Regional Waste Manager to add the following conditions to the permit, using the appropriate language:

- (a) the authorized works are to be modified so that a cyclonic action results during the burning process;
- (b) the wood waste portions to be burned are to be reduced in size through a knife Hogg or similar process to be approved by the Regional Waste Manager; and
- (c) the number of dust cups is to be increased to three, with the additional cup placed in a north-easterly direction, clearly in the wind path that flows from the sawmill to Mr. Mesi's property. If necessary, an area will have to be cleared on LVFP's property to facilitate the testing. The west station is to be moved to an area more in line with the typical plume path during out flow winds.

The Panel is also of the view that alternative waste disposal should be considered for inclusion in the permit.

The Panel is satisfied that the two orders improving the burning process should reduce the dustfall significantly. If there continues to be problems with dustfall the Regional Waste Manager, by virtue of the conditions of the amended permit, can require LVFP to undertake further remedial action.

The appeal is allowed, in part.

Katherine Hough, Panel Chair
Environmental Appeal Board

December 11, 2000