

September 11, 2009

Mr. Edwin Yee, Chairperson
The Manitoba Clean Environment Commission
305-155 Carlton Street
Winnipeg, Manitoba
R3C 3H8

Dear Respected Panel Members:

**RE: LOUISIANA PACIFIC'S REQUEST TO AMEND EMISSION LIMITS TO
ENVIRONMENT ACT LICENCE No. 2861.**

Pursuant to Minister Struthers' Terms of Reference with respect to Louisiana Pacific's request to amend its emission levels at its Oriented Strandboard mill in Minitonas, Manitoba (LP Swan Valley), we, the Concerned Citizens of the Valley and the Boreal Forest Network, wish to provide our further input and recommendations. As we believe this is an important decision that has the potential to significantly impact the community and the environment, we wish to provide our comments on:

1. The decision to amend Licence No. 2861;
2. The process undertaken by Manitoba Conservation to conduct an investigation rather than a full public hearing; and
3. Environmental regulations in Manitoba generally.

We wish to stress that if Louisiana Pacific's licence is granted and its Regenerative Thermal Oxidizers (RTOs) are permanently decommissioned, Manitoba Conservation will be allowing a staggering **33-fold increase** in emissions of volatile organic compounds (VOCs) and **100-fold increase** in actual emissions of hazardous air pollutants (HAPs) from the dryers and press at LP Swan Valley. Emissions from the plant will rise from approximately 25 tons per year with properly operated controls to at least 825 tons per year.¹ Manitoba Conservation will be allowing LP Swan Valley to go from a low VOC, high NOx emitting facility to a high VOC, high NOx emitting facility. In our opinion, it is not in the best interests of Manitobans to allow for such an increase.

1. Decision to Amend Licence No. 2861

As demonstrated by our expert evidence, Louisiana Pacific's proposal contains material deficiencies and does not conform to best practices. The evidence of Dr. Gordon Brown² shows that Louisiana Pacific did not employ best practices in conducting its human

¹ Expert Report of Dr. Charles Simon (September 9, 2009) at 2.

² Expert Report of Dr. Gordon Brown (September 9, 2009).

health risk assessment. Further, the evidence of Mr. David Chadder³ shows that Louisiana Pacific did not employ best practices in conducting its air dispersion modelling and that uncertainty exists respecting the validity of inputs to the models. Therefore, adequate information has not been placed before the Clean Environment Commission and Manitoba Conservation with which to make an informed decision. In addition, alternatives to permanently decommissioning RTOs have not been explored. The evidence of Dr. Charles Simon supports the contention that Louisiana Pacific can employ best available control technology (BACT) while ensuring that the plant remains viable within the OSB industry.⁴

Recommendations

- **The proposal to amend Louisiana Pacific's licence should be rejected.**
- **In the alternative, Louisiana Pacific must be compelled to redo its human health risk assessment and air dispersion modelling before a decision is made. New consultants should be selected to conduct the work. Concerned Citizens of the Valley, Boreal Forest Network and/or its representatives would wish to be integrally involved in the process, including the selection of consultants.**
- **Alternatives to permanently decommissioning RTOs and increasing emissions must be considered before a decision is made.**
- **LP Swan Valley must be required to employ BACT.** The modern and evolving environmental paradigm is to strive to reduce the emission of toxins to our planet. Concerned Citizens of the Valley has seen first-hand the blue haze that people in the vicinity of the mill have been forced to breathe with the interim shutdown of the RTOs. Concerned Citizens of the Valley and Boreal Forest Network believe that no Manitoba citizen should have her or his inherent right to clean air compromised for jobs and corporate profitability. In Canada, controlling pollution should be a cost of doing business. Evidence from people who have been interviewed demonstrates that, with the RTOs in place, air quality has already compromised quality of life for at least some living in the vicinity of the mill (see Expert Report of Dr. Charles Simon (September 9, 2009). Air quality would be expected to become significantly worse in the absence of BACT. The precautionary principle is indicated given scientific uncertainty respecting the dispersion of the pollutants, ground-level concentrations, toxicity, etc.
- **If feasible, LP Swan Valley should be required to install a modern bioreactor. Louisiana Pacific should be required to obtain quotes with respect to modern bioreactors, and the government should be integrally involved in the process.** The modern bioreactor would appear to well address the

³ Expert report of Mr. David Chadder (September 9, 2009).

⁴ Please refer to the brief prepared by the Public Interest Law Centre (September 9, 2009).

economic, social and environmental dimensions of this issue, and could therefore constitute the balance known as sustainable development.

- **Any decision made by Manitoba Conservation should ensure that LP Swan Valley employs technology to reduce NOx. This may involve low NOx burners or a modern bioreactor may address this issue.**

Other Recommendations with Respect to LP Swan Valley

We would like to provide additional recommendations with respect to LP Swan Valley's licence and operations. We recognize that some of these issues might not be directly addressed in Manitoba Conservation's decision. However, we have identified these issues as important and suggest they need to be considered by the CEC and Manitoba Conservation.

- **Interim suspension of use of the RTOs should be revoked.** LP Swan Valley submitted a proposal recognized as deficient by Manitoba Conservation (e.g., the bulk of the dispersion modelling was not provided to the public until near the dates of the public meeting). LP Swan Valley's submissions are now demonstrated to contain material deficiencies and to not conform to best practices per the Expert Reports cited in this document. People living in the vicinity of the mill should not be required to bear the consequences of an inadequate submission.
- **LP Swan Valley should adopt best available technology to minimize the exposure of mill workers to toxins.**
- **Consideration of binding agents that do not use formaldehyde or are low in formaldehyde must be closely examined.**
- **During good economic times, Louisiana Pacific should set aside cash reserves to run pollution abatement equipment during periods of economic downturn. Poor economic times should never be used as justification for cutting costs at the expense of the environment.**
- **An epidemiological study must be commissioned. The study should focus on those living in close proximity to the plant, and the health of workers from the plant and their families. Concerned Citizens of the Valley and Boreal Forest Network and/or its representatives wish to be integrally involved in the process, including the selection of consultants. The high observed ALS mortality rate in the vicinity of the mill dictates the need for an epidemiological study.**
- **Government must conduct an assessment of how residents who live in the vicinity of the LP Swan Valley mill have been impacted by emissions since the mill began to operate. Concerned Citizens of the Valley, Boreal Forest**

Network and/or its representatives wish to be integrally involved in the process.

- **In light of strong evidence to suggest that the air quality monitoring at LP Swan Valley was inadequate, a comprehensive, independent review of the ambient air quality monitoring program must be conducted and a new program implemented. Concerned Citizens of the Valley, Boreal Forest Network and/or its representatives wish to be integrally involved in the process, including the selection of consultants. Note that ambient air quality monitoring is not to be considered a solution or replacement for BACT.**
- **A 1-800 phone number should be available for LP Swan Valley employees, Valley residents, and others to report infractions (including workplace safety issues) and express concerns.**
- **There should be better communication between LP Swan Valley and community members. A clear process for communicating to community members must be developed and provided to community members.** Residents closest to the mill were unaware that LP Swan Valley had been granted a Licence to temporarily shut down RTOs in January of 2009. A process should be in place so that either Louisiana Pacific or Manitoba Conservation communicates with local residents (via email, radio, access channel, newspaper, mailer, etc.)
- **Louisiana Pacific should provide adequate information about total Greenhouse Gas (GhG) emissions from the mill. Louisiana Pacific should work to reduce these emissions and offset where they cannot be lowered. The mill should adopt the progressive policy to be carbon neutral.**
- **Should LP Swan Valley be allowed to decommission the RTOs and not be required to replace them with BACT, a long-term health study must be conducted. Concerned Citizens of the Valley, Boreal Forest Network and/or its representatives wish to be integrally involved in the process, including the selection of consultants.** Should pollution abatement equipment be materially altered, the 2002 health study would be irrelevant given altered licensed emission levels.

2. The Process

On March 26, 2009, Minister Struthers issued a letter to the CEC, asking for a review of the request for permanent alterations to LP Swan Valley. Section 1 of the Terms of Reference asked the CEC to:

conduct an investigation and provide advice and recommendations to the Minister regarding the potential health and environmental effects of the increased emission limits and subsequent decommissioning of the

Regenerative Thermal Oxidizer technology which is contained in the Louisiana Pacific's requested license change.

Rather than request a full public hearing, the Minister requested an investigation. We have repeatedly voiced our concern with this process.⁵ In our view, the process which has been set by the Minister will not allow for a thorough examination of the issues that impact on the community and environment.

Given the potentially significant impacts of the decision, the appropriate regulatory process would allow for a fully informed hearing, with rigorous scrutiny of Louisiana Pacific's proposal. The Minister's denial of a full public hearing with cross-examination means that Louisiana Pacific's evidence has gone untested. Without a formal interrogatory process, there has been no process to compel Louisiana Pacific to provide responses to our questions or provide us with a site tour.⁶

While we recognize and appreciate the panel members' involvement in this process, our concern is that the process does not allow for full and meaningful input prior to the CEC's recommendations to the Minister.

Recommendations with Respect to the Process

- **A public hearing should be held.**
- **The process should allow for an interrogatory process whereby Louisiana Pacific must fully disclose all relevant information, and allow for interested parties to tour the site.**
- **The process should allow for participant funding, so that interested parties can have the opportunity to participate in the process on equal footing with Louisiana Pacific.**
- **The CEC should require that material information be provided to the public and other interested parties well in advance of any public hearing or meeting (e.g., 30 days) so that the public is apprised of the issues in advance of the hearing or meeting.**

3. Environmental Regulation in Manitoba

The *Environment Act* governs the way that companies may apply for new licences and alterations to current licences. Air quality standards in Manitoba are based on ambient air concentrations. These criteria (guidelines, objectives or Canada-wide standards) are used only as a guide. Emission levels are determined on a plant to plant basis: the

⁵ See Ms. Margaret Romak's letter to Minister Struthers [May 19, 2009; Public Interest Law Centre letter to Minister Struthers (July 8, 2009); Public Interest Law Centre letter to Minister Struthers (July 26, 2009)].

⁶ After our initial request for a site tour for our experts made on July 27, 2009 for an August 13, 2009 tour was denied, Louisiana Pacific finally agreed to grant us a tour on August 19, 2009 after a letter from the CEC sent August 12, 2009 suggested that our request was not an unreasonable one.

Department will evaluate the proponent's air dispersion modelling data and will set stack limits in the operating licence of the plant. In this way, emission limits are set on a plant-to-plant basis.

In our view, this plant-to-plant method of regulating industries that pollute is not the most effective way to ensure the health and safety of communities and the environment. As environmental concerns become more and more important for citizens, Manitoba and Canada must reevaluate environmental standards, look to other jurisdictions, and explore ways to ensure that best practices are adopted. In order to ensure that the public interest is served, there needs to be transparency and accountability in the way that Manitoba Conservation deals with proposals from industries.

Recommendations with Respect to Environmental Regulation

- **Manitoba Conservation should not allow plants like LP Swan Valley to stop using pollution abatement equipment on an interim basis except under conditions of absolute necessity. Manitoba Conservation should not accept poor economic conditions as a valid basis for interim suspension of pollution abatement equipment.**
- **Where it is necessary, Manitoba Conservation must fully disclose to the public when it is preparing to allow plants like LP Swan Valley to shut down pollution abatement equipment on a temporary basis.** Specific to the LP Swan Valley development, Manitoba Conservation did not act to make citizens aware of its decision to allow LP Swan Valley to stop using the RTOs on an interim basis.
- **Manitoba Conservation must ensure that all relevant information is easily accessible in the public registry. Manitoba Conservation should allocate greater resources so that the public registry can operate in a way that best serves both industry and Manitoba citizens.**
 - **All information germane to a development must be accessible to the public.** Specific to the LP Swan Valley development, the September 13, 2007 correspondence from Environmental Assessment and Licensing Director Ms. Tracey Braun to LP's Mr. Allan Hambley addressed a proposal by LP Swan Valley to install Regenerative Catalytic Oxidizers at the mill. The correspondence contained important information respecting Manitoba Conservation's policy on benzene (i.e., at least at the time of the communication). Concerned Citizens of the Valley were subsequently informed that this important correspondence was never placed in the Public Registry.
 - **The public should be informed when development proposals are materially deficient, and the nature of the deficiencies should be provided.** Specific to the LP Swan Valley proposal to amend its

Environmental License, the need for the examination of additional pollutants and further dispersion modelling was not noted in the online public registry.

- **All information germane to a development must be provided to rural public registries.** Specific to the LP Swan Valley proposal to amend its Environmental License, materials initially provided to the public registry in Swan River were incomplete.
- **Manitoba must adopt best management practices when it comes to air emissions and environmental management, where the precautionary principle prevails.**
- **More resources should be allocated to allow Manitoba Conservation to operate in a way that best serves both industry and Manitoba citizens.**
- **Manitoba should adequately fund the office of an Environmental Auditor/Ombudsman. Such an office could, among other matters, be able to conduct independent examination of ongoing developments, and be able to respond to citizens when government departments or agencies are not responsive.** Soon after LP Swan Valley was licensed, Concerned Citizens of the Valley informed Manitoba Environment (now Manitoba Conservation) and LP Swan Valley that the ambient air quality monitoring stations were improperly located. That conclusion, now well supported by the earlier cited Expert Reports and other evidence, was ignored by Manitoba Environment. The availability of an independent Environmental Auditor/Ombudsman at the time might have allowed for the problems with the monitoring program to have been addressed more than a decade ago.
- **Manitoba Conservation should develop transparent protocol to address concerns respecting the independence of consultants and to ensure environmental assessment of the highest quality.** For example, assessment conducted by consultants should be reported on under the authorship of the business name of the consultant and the individual(s) responsible for the report. Such a practice would be contrary to reporting consultant assessment under the authorship of the proponent, as occurred with LP Swan Valley's first group of dispersion modelling.
- **Manitoba Conservation should develop policy to ensure that experts who are not in the employ of the proponent have reasonable access for the purpose of examination of a development.** Greater transparency and increased examination of a development by expert parties can only enhance the strength and credibility of environmental assessment.
- **The bulk of compliance monitoring of plant operations by regulators must be on an "unannounced" basis. This should extend to stack testing if feasible. Self-monitoring is no replacement for monitoring by regulators.**

- **There is greater need for accountability of regulators, proponents, and consultants.** For example, Manitoba Conservation should reject environmental assessments that are substandard. Failure to reject such work rewards the consultant submitting the substandard assessment and the proponent on whose behalf the work is submitted.

- **National air quality legislation is required. Rather than each province having its own set out guidelines, it is important for the federal government to establish federal regulations so that industries and residents can expect the same level of environmental control across the country. Air quality standards must be legally enforceable.**

We appreciate panel members' involvement in this process. Should you have any questions or concerns, please do not hesitate to contact us.

Respectfully submitted,

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On behalf of Concerned Citizens of the Valley