

COMMENTS ON BRITISH COLUMBIA PULP MILL AND PULP AND PAPER MILL LIQUID EFFLUENT CONTROL REGULATIONS, DRAFT 10

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WEST COAST ENVIRONMENTAL LAW ASSOCIATION

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I. INTRODUCTION

These comments on Draft 10 of the Pulp Mill and Pulp and Paper Mill Liquid Effluent Control Regulations are submitted on behalf of the attached list of 54 organizations and individuals concerned about pollution from pulp and paper mills.

These comments follow our comments on Draft 5 in a letter dated January 5, 1990, to the Honourable John Reynolds from Ann Hillyer.

II. Comments on Draft AOX Regulation

Section 1. Interpretation

The definition of CBPROD is missing certain words to indicate that it is production which is being measured.

Section 2. Prohibitions

In our January 5, 1990, comments on Draft 5 of the pulp mill effluent regulations we supported the use in that draft of **maximum** levels rather than **average** levels of AOX discharge for determining whether a mill complies with the regulation. We noted that averaging would be very difficult to enforce because legal samples would have to be taken continuously over the entire period for which the samples were to be averaged. We also noted that averaging would also allow for a larger volume of total AOX discharge.

Unfortunately, Draft 10 weakens Draft 5 on precisely this point. Draft 10 adds an **average** AOX limit to the **maximum** AOX limit. To this we have no objection. However, Draft 10 substantially weakens the standards set out in Draft 5 by raising the limits for maximum AOX from 2.5 to 3.8 and from 1.5 to 2.3 kg/ADt. This is quite unacceptable.

The B.C. government committed itself in May, 1989, to impose limits of 2.5 and 1.5 kg AOX/ADt by 1991 and 1994, respectively. This commitment was assumed to refer to **maximum** levels, and this interpretation was reflected in Draft 5 of the regulation. There is no scientific basis for relaxing the proposed standards so drastically. While PAPRICAN has predicted that a level of 1.5 kg AOX/ADt will be harmless, this prediction is not expressly based on an averaging approach, it is not empirically verified, and it does not consider the recent U.S. studies⁴ indicating toxic effects from the high molecular weight fraction of the organochlorines. We strongly recommend that the maximum AOX levels of 2.5 and 1.5 be reinstated. If **average** limits are to be added, then these should be adjusted to reflect **maximum** levels of 2.5 and 1.5 kg AOX/ADt.

Moreover, as we stated in our January 5, 1990, comments on Draft 5, we recommend that the regulation set a target date for **elimination** of organochlorines from pulp mills above background levels, according to an urgent and realistic schedule. This would give the industry the motivation and the lead time to develop appropriate non-polluting technology.

We note that Draft 10 does not incorporate our recommendations regarding Draft 5 that **dioxins and furans** from pulp mills -- in addition to organochlorines -- be regulated. Federal regulations under the *Canadian Environmental Protection Act* are supposed to regulate dioxins and furans from pulp mills, but these have not yet been adopted. The province should adopt its own regulation of dioxins and furans from pulp mills, but this should not delay adoption of the Regulation.

Regarding a different aspect of this section, it could be argued that a regulation is a superior instrument to a permit and, thus, a violation of this Regulation would not be excused by compliance with a waste discharge permit. However, out of an abundance of caution, we would suggest making this point explicitly in the Regulation. In addition, it should be clarified in the Regulation as to the situations in which compliance with the Regulation excuses non-compliance with a permit.

Section 3. Sampling Methods for Compliance Determination

The Regulation requires **monthly** monitoring for toxicity compliance. The Regulation should be amended to require **weekly** toxicity monitoring after a failed toxicity test, to continue until there are four consecutive passes.

We note that the Regulation does not use the daphnia test for acute toxicity. We suggest that the Regulation, like the draft federal pulp effluent regulations, include a daphnia toxicity test. We recommend that compliance with the daphnia test be mandatory. In the alternative, failure to meet the daphnia test should trigger a requirement to do an immediate rainbow trout toxicity test.

Section 6. Exemption

Subsection 6(1) states that all three criteria, paragraphs (a), (b) and (c) must be met before the exemption exists. On the other hand, subsection 6(2) implies that each of paragraphs 6(1)(a), (b) and (c) are separate exemptions. This inconsistency must be clarified.

We note four substantive problems with this section. First, as we stated in our January 5 comments, we strongly disapprove of any permitted relaxation of these regulations, given the length of time that the pulp mill industry has known that it will have to meet these requirements. For example, compliance with the requirement of discharging no greater than 1.5 kilograms AOX per tonne of pulp produced is not required

until January 1, 1995. At that time, the pulp mills will have had almost **six years** to make the necessary changes from the time the regulations were first announced. Moreover, the pulp mills have all had the opportunity to negotiate extensions that are reflected in Schedule 3. Compliance by pulp mills with existing regulations has been generally poor in the past. Therefore, the provisions of these new regulations must indicate clearly that compliance is mandatory.

Second, in the alternative, if discretion to grant an exception is to be provided, we strongly recommend that this provision be subject to public notice, and an opportunity for comment and an appeal to the Environmental Appeal Board.

In the alternative that the exemption is retained, we recommend that the following new subsections be added to section 6:

"6(3) Before an exemption is granted under this section, there shall be:

(i) reasonable public notice of the possibility of an exemption; and

(ii) at least 60 days for comment.

6(4) A decision to allow an exemption under this section may be appealed by any person to the Environmental Appeal Board, which may affirm, vary or revoke the decision."

Third, we recommend that the qualifying phrase in Draft 5 "for reasons beyond the control of the person" be reinserted in the Regulation. This is an essential aspect of letting industry know that compliance is mandatory and that the era of 'negotiated (non-)compliance' is over.

Fourth, the deletion of subsection 2(5) of Draft 5 providing for the imposition of stricter standards where necessary to prevent environmental degradation is totally unacceptable. What could possibly be the rationale for this retrograde step? The provision should be reinstated.

Section 7. Waiver

Section 7 constitutes an extraordinary exemption from current legal requirements. Presumably, this is based on the mills' commitments and new legal requirements to undertake major capital investments to improve their pollution levels. This approach is justifiable only if the time frames for these improvements are absolutely rigid.

Moreover, we note that the deadlines for secondary treatment for MacMillian Bloedel's Harmac and Powell River pulp mills are exceedingly generous and should be shortened.

Second, the proposed suspended solids standard for the Port Alberni Pulpmill is approximately twice as high as the proposed federal standard. We recommend that the federal approach be adopted, so that there will be more chance that the Inlet will recover from the negative effects of past pollution.

Penalty

The maximum fine of \$200,00 is far too low in relation to the maximum penalty for violation of a permit. The *Waste Management Act* and the Regulation should be amended to correct this discrepancy.

Schedule 2

Schedule 2 appears to weaken the Level A standards for suspended solids. Harmonization with proposed federal standards should not be used to weaken existing B.C. standards.

Financial security

As noted above, the majority of pulp mills in B.C. have not complied consistently with all of their pollution control standards. Therefore, a key area of concern is how to ensure compliance with this new regulation. We suggest that the regulation be amended to require each pulp and paper mill to post financial security which would be forfeited by a mill if it were out of compliance. This would create an added economic incentive for each mill subject to this regulation to meet the regulated standards. The regulation could also specify that any money forfeited under this provision be used for environmental projects that are not otherwise required by law.

Disposal of sludge

We suggest a provision be included requiring each pulp mill to disclose its proposed plans for dealing with organochlorine contaminated sludge from its primary and secondary treatment facilities.

Progress reports

We suggest a provision be added to the Regulation requiring each of the pulp and paper mills to submit a progress report semi-annually to the manager on the design and scheduling of the improvements necessary to meet the provisions of this regulation. The first progress report should be due no later than three months after the date on which the regulation becomes effective.

Endnote

1. Memo dated July 19, 1990, from Tim Hall to Operating Committee, National Council of the Paper Industry for Air and Stream Improvement, Inc. Mr. Hall states, "at the present time ENCASI investigations of the marine chronic tests have indicated that at least two of the tests, those with echinoderms and bivalves, are yielding effluent toxicity responses at far lower concentrations than would have been expected. Further, these responses appear to be related to high molecular weight substance." (pages 6-7).