Province of British Columbia

Environmental Appeal Board

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DECISION NO. 2005-EMA-006(a)

In the matter of an appeal under section 100 of the *Environmental Management Act*, S.B.C. 2003, c. 53.

BETWEEN:	Western Canoeing & Kayaking Inc.	**APPELLANT**
AND:	Director, Environmental Management Act	**RESPONDENT**
BEFORE:	A Panel of the Environmental Appeal Board David H. Searle, Q.C., Panel Chair Sean Brophy, Member Dr. Robert Cameron, Member	
DATE:	October 27, 2005	
PLACE:	Abbotsford, BC	
APPEARING:	For the Appellant: Mary Bayes For the Respondent: Dennis Doyle, Counsel	

APPEAL

On April 18, 2005, Western Canoeing & Kayaking Inc. appealed certain requirements contained in air contaminant discharge Permit PA-13264 (the "Permit"), granted to it under the provisions of the *Environmental Management Act* (the "*Act*"), on April 22, 2005 by R.H. Robb, for Director (the "Director"), *Environmental Management Act*, Lower Mainland Region, Ministry of Water, Land and Air Protection (now the Ministry of Environment) (the "Ministry").

The Permit gives the Appellant the authority to discharge air contaminants into the environment. Specifically, sections 1.1.3 and 1.2.3 of the Permit provide that:

> The characteristics of the discharge shall not exceed:
>
> | | |
> |---|---|
> | Styrene | 100 milligrams per cubic metre |
> | Particulate Matter | 100 milligrams per cubic metre |

Sections 1.1.4 and 1.2.4 provide that:

> The authorized works are a fan, filter, stack, and related appurtenances approximately located as shown on Site Plan A.

It is the requirement under the Permit to install emission stacks as provided in these sections of the Permit that is the subject of this appeal.

The Environmental Appeal Board (the "Board") has the authority to hear this appeal under section 100(1) of the *Act,* which provides that a person aggrieved by a decision of a director or a district director may appeal the decision to the Board.

Section 103 of the *Act* gives the Board the power to confirm, reverse or vary the decision being appealed, send the matter back to the person who made the decision, or make any decision the person whose decision is appealed could have made, and that the Board considers appropriate in the circumstances.

The Appellant asks the Board to:

1. Change the name of the Permittee in the Permit to Western Canoeing Manufacturing Inc.
2. Delete the Permit requirements for stacks.

BACKGROUND

The business of the Appellant and its associated companies is the manufacture and retail sale of canoes, kayaks and rescue sleds (the latter for ski hills). Relatively few kayaks and rescue sleds are produced. Approximately 850 (11½-foot to 41½-foot) canoes are built each year. Western Canoeing is located directly adjacent to several businesses in the King Park Industrial Complex. In addition, there are private residences and condominium developments within about 160 m of Western's facility. This business has existed for 29 years and has been located at its present address since May 1989. The companies are:

> Western Canoeing Inc., which owns the real estate and is owned by Mr. Marlin D. Bayes,
>
> Western Canoeing and Kayaking Inc., which is the retail store and is owned by Mrs. Mary Bayes, and
>
> Western Canoeing Manufacturing Inc., which manufactures the products and is owned by Mr. Bayes,
>
> collectively referred to hereinafter as "the Appellant."

It is the latter company that the Appellant requests be named on the Permit.

In November 1994, the Ministry received correspondence from the King Strata chairman, who appeared to be employed by one of the businesses in the King Strata complex, regarding emission of particulate matter coating vehicles parked at a nearby strata complex.

In May 2001, a four-page petition of complaints was sent to the Ministry containing 44 names from King Park Industrial Complex occupants who work close to the Appellant's business. The complaints include a "strong unpleasant smell" that "causes head aches/dizziness", or "stinks", or "smells really bad." The petition also included complaints of automobile damage and adverse health effects such as "eyes burn and sneezing."

At one time, the Director visited the site and observed that one of the Appellant's neighbours had installed a hose up to its building roof to draw or pump fresh air

into its building. On one occasion, technicians were also sent out from the Ministry to collect samples of the air from the Appellant's building exhaust vents. The test results were positive for styrene.

There was no disagreement that particulate matter and styrene had been emitted from the facility.

The Appellant applied for a Permit on July 23, 1994. R.H. Robb signed the Permit for the Director on April 22, 2005.

In its notice of appeal, the Appellant stated that "styrene has a very detectible (sic) odor" (sic).

The issue of name change for the Permittee was not contested by the Respondent and will, accordingly, not be discussed further in this decision.

Details of the stack requirements that are under appeal are discussed later in this decision.

ISSUE

The issue before the Panel is whether the requirement for stacks in sections 1.1.4 and 1.2.4 of the Permit is justified.

RELEVANT LEGISLATION

The relevant legislation is the *Environmental Management Act* and the *Waste Discharge Regulation* (the "*Regulation*"). Section 6(2) of the *Act* provides that a person must not introduce or cause or allow waste to be introduced into the environment in the course of conducting a prescribed industry, trade or business. Section 6(3) of the *Act* provides that a person must not introduce or cause or allow to be introduced into the environment, waste produced by a prescribed activity or operation. Section 6(4) of the *Act* provides that a person must not introduce waste into the environment in such a manner or quantity as to cause pollution.

Waste is defined in the *Act* to include "air contaminant". An air contaminant is defined as a substance that is introduced into the air and that

> ...
>
> (d) interferes with or is capable of interfering with the normal conduct of business;
>
> (e) causes or is capable of causing material physical discomfort to a person,
>
> ...

Section 1(3) of the *Act* states that

> For the purposes of the definition of "air contaminant" ..., it is not necessary to prove

(a) that the air contaminant…, if diluted at or subsequent to the point of introduction, continues to be capable of harming, injuring or damaging a person, life form, property or the environment, or

(b) the actual presence of a person who, or a life form that, is capable of being harmed or injured by the introduction of the air contaminant…

"Pollution" is defined in the *Act* as meaning the presence in the environment of substances or contaminants that substantially alter or impair the usefulness of the environment.

Section 2(1) of the *Regulation* designates the "plastic and synthetic resin manufacturing industry" as a prescribed industry, trade or business for the purposes of section 6(2) of the *Act*. Schedule 1 of the *Regulation* defines the "plastic and synthetic resin manufacturing industry" to mean, "establishments engaged in manufacturing plastics, synthetic resins or moulding compounds;"

Section 2(2) of the *Regulation* designates the "plastic and composite products industry" as a prescribed class of activity or operation for the purposes of section 6(3) of the *Act*. Schedule 2 of the *Regulation* defines the "plastic and composite products industry" to mean "establishments engaged in using synthetic resins to fabricate shapes or forms of plastic;"

Section 6(5)(a)(i) of the *Act* provides that "nothing in this section or in a regulation made under subsection (2) of (3) prohibits any of the following:

(a) the disposition of waste in compliance with this Act and with all of the following that are required in respect of the disposition:

...

(i) a valid and subsisting permit;

...

Section 14(1)(a) of the *Act* states that " A director may issue a permit authorizing the introduction of waste into the environment subject to requirements for the protection of the environment that the director considers advisable and, without limiting that power, may do one of more of the following in the permit:

(a) require the permittee to repair, alter, remove, improve or add works or to construct new works and to submit plans and specifications for works specified in the permit;"

...

DISCUSSION AND ANALYSIS

Marlin Bayes appeared as the only witness for the Appellant. Mr. Bayes provided a description of the operation as well as the steps that the Appellant had taken to reduce styrene emissions and particulates.

Mr. Bayes described the use of three spray booths within the manufacturing plant where styrene and other materials are sprayed into or onto moulds. Workers employed in the booths wear protective clothing and use respirators. Protective clothing and respirators are not worn elsewhere in the shop. A photograph was submitted to the Panel showing a worker clad from the top of his head to the top of his boots in a white Tyvek protective suit. He is wearing a respirator in a spray booth and is using an older spray applicator. To the rear of the photo, is a blue filter curtain with clear signs of yellowish applicator material on the outside of the filter. Behind the filter is an exhaust fan that pulls the styrene through the filter and discharges the air emissions through louvers to the outside of the building. Mr. Bayes stated that the filter is made of a coarse material and is primarily used to capture particulate matter.

Mr. Bayes explained how air is exchanged 2-3 times a minute, using two large and one smaller exhaust fans with one fan in each of the three booths. There is also an air intake fan located at the top of the south wall of the building. The flow can be reversed in the intake fan so it can act as an exhaust fan although this is a rare occurrence. The two large exhaust fans move air at a rate of 36,000 to 40,000 cubic feet per minute. The smaller fan moves air at about half this rate. One of the large fans operates about 80% of the working hours, the second large fan about 50% of the working hours, and the smaller fan about 10% of the working hours. According to working hour information provided by Mr. Bayes, the plant currently operates for approximately 1750 hours per year.

The Appellant submitted two other photographs to the Panel. One of the photographs shows the exterior west side of the building. That photograph shows two large louvered vents for the larger exhaust fans. The bottoms of the louvers are about one foot above the ground. A vent for the third, smaller exhaust fan was not shown in the photographs although such a vent is in place.

The second photograph shows the air intake fan located near the top of the south wall inside the building.

Mr. Bayes outlined the steps he had taken to reduce styrene emissions since the time of the first complaints. The number of units produced has been reduced by about 14%. The number of hours worked per week has been reduced. The plant is shut down for one month per year. The quantities of styrene have been reduced from 57,000 kg to 22,000 kg per year, in large part due to the purchase of a new spray unit. A new gel coater has been purchased that reduces odours. The company has also invested in a vacuum system that Mr. Bayes said significantly reduced particulate emissions.

Mr. Bayes stated that approximately 15% of the styrene purchased annually is vented through the exhaust fans. Based on the annual purchase records provided by Mr. Bayes, this resulted in emission quantities of about 8,550 kg per year in

1994 and 1996 being reduced to approximately 3,300 kg per year at present. From the approximate hours of fan operation, the approximate airflow from the fans and the 3,300-kg per year estimate, all provided by Mr. Bayes, the average concentration of styrene at the points of emission would be approximately 22 milligrams per cubic metre (mg/m^3). This is consistent with the approximate concentration the Director stated that he would anticipate. However, neither the Appellant nor the Respondent provided direct measurements of the concentration of styrene in the exhaust fan emissions to support this approximation. The Panel recognizes that there will be variability in the concentration of styrene in the emissions. Some values will be higher and some lower than the average.

When asked by the Panel, the Director agreed that the threshold at which styrene odours would be noticed is approximately 1 mg/m^3. The above approximate average emission concentration is 22 times this value.

The Panel has reviewed the evidence submitted by the Respondent, including a draft document entitled "Reinforced Plastics and Composites Waste Regulation." This was a draft for discussion only, dated December 1996. Section 5(2) of this draft requires the operator of a facility to ensure that the average concentration of styrene at any point of impingement outside of that facility is less than 400 micrograms per cubic metre. This is equal to 0.4 mg/m^3. The Panel considers this value to provide a reasonable safety factor to avoid exceeding the above-mentioned 1 mg/m^3 approximate threshold odour concentration.

In respect to the emission standard of 100 mg/m^3 in the Permit, the Director stated that he had set this level because it could be easily achieved. He was also sure that, at this discharge concentration, the concentration of styrene in the ambient air at the point of impingement would be well below the threshold odour concentration using the proposed stack system.

The Appellant submitted a "summary of a follow-up report to the assessment of styrene" taken from the Environment Canada website. The summary stated:

> Styrene, which appeared on the first **Priority Substances** list was assessed … It was concluded that styrene was not "**toxic**" under paragraphs 11(b) or 11(c) of CEPA [*Canadian Environmental Protection Act*]; however, there was insufficient information to conclude whether it constituted a danger to the environment under paragraph 11(a). Information was lacking about the potential effects of styrene on aquatic organisms, on terrestrial vegetation through atmospheric exposure, and on wildlife through media other than air.
>
> …
>
> Based on the information available, it is concluded that styrene is not entering the environment in a quantity or concentration or under conditions that have or may have an immediate or long-term harmful effect on the environment or its biological diversity. Therefore, it is proposed that styrene not be considered "**toxic**"…. [Emphasis added]

The summary was last updated on September 30, 2002 and the content reviewed on October 24, 2005.

The Appellant also submitted one website page from a Health Canada "**Priority Substances** List Assessment Report for Styrene" that drew the following conclusion [emphasis added]:

> It has been concluded that the available information is insufficient to determine whether styrene is entering the environment in quantities or under conditions that may be harmful to the environment. It has, however, been concluded that styrene is not entering the environment in quantities or under conditions that may constitute a danger to the environment on which human life depends, or to human life or health.

No date of publication appeared on the above page.

Mr. Bayes submitted that there are neither Environment Canada nor Health Canada regulations regarding these emissions. However, when questioned, Mr. Bayes admitted that he did not know what a "Priority Substance" is.

The Director stated that the concern was not one of *toxicity* but simply one of odour. He also testified that, when technicians from the Ministry had gone out to test for styrene emissions, one of the technicians experienced considerable discomfort from breathing styrene fumes.

Counsel for the Director pointed out that air emissions do not have to be considered a Priority Substance in order for the discharge to require a permit, and that the applicable requirements are covered in the *Act* and the *Regulation*. The Panel agrees with these comments.

The Appellant submitted three series of documents in support of its position regarding the effect of odours from, and the health effects of, styrene on those in and close to the plant.

The first set of documents contained 18 nearly identical comments from 18 different employees of Western Canoeing & Kayaking Inc. and Western Canoeing Manufacturing Inc. Each comment stated that the person had worked for the Appellant for various periods of time (from 6 months to 28 years) and that the individual had no health concerns relating to styrene vapours. These comments were dated October 25 and 26, 2005.

The second document, dated October 25, 2005, was three paragraphs addressed "To whom it may concern" from James van Nostrand, a former employee and Shop Manager for the Appellant. He discussed a 2001-shop tour that he conducted for people from King Park as well as a representative from the Ministry. He stated that a group of these people went back to one of the shops in the Industrial Park where they noticed "a definite chemical smell" in the workplace that "was different from the smell of styrene."

The third set of documents consisted of 10 letters dated October 24, 2005, all in nearly identical terms, from businesses close to the Appellant in King Park Industrial Park. The letters were addressed to the Ministry. From the evidence, these letters were prepared by Mrs. Bayes, who then photocopied the respective business cards onto the letter before or after she obtained signatures from the business representative. The body of each letter states that "This letter is to acknowledge that we do not have a problem with the small amount of styrene

odour they emit." They all conclude with the comment that "We do not see a need for Western Canoeing Manufacturing to put up exhaust stacks."

Counsel for the Director observed that employees of the Appellant would likely have a high level of tolerance for the discharge and that all three sets of the documents should be given little weight. The Appellant did not call, and the Respondent was, therefore, unable to ask questions of, any witnesses to support or verify these documents. The Panel therefore gives these three sets of documents little weight.

Mr. Bayes addressed the air emissions, specifically styrene and particulate. He emphasized that there are no Worker's Compensation Board issues with the level of styrene in the workplace and that, based upon his experience, there is no worker reaction to styrene in the workplace. Neither plant workers nor Worker's Compensation Board representatives were called to support these comments.

Mr. Bayes expressed concerns regarding the installation of stacks. One concern is that by sending styrene up into the air through stacks, the people living in the condominiums located to the north and south of the business might detect the odours and file complaints. This would occur because styrene is heavier than air and he felt that it would, therefore, settle in the vicinity of the condominiums. Further, the presence of stacks could indicate to the public that the business produces pollution. That is not the image that he wants to convey. He stated that the odours complained of are really produced by the other businesses in the industrial park. The Appellant called no witnesses and presented no facts to the Panel to support this last comment.

The Director is confident that the use of stacks would result in sufficiently low styrene concentrations so that no odour would be observed by nearby business operators and nearby residents.

Cindy Walsh, an Air Quality Meteorologist with the Ministry, who has a Master's Degree in meteorology, gave evidence on behalf of the Director. Ms. Walsh provided the Panel with a drawing entitled "Wake Effects", that showed how exhaust gases, on a day with wind, would tend to remain, and possibly concentrate, close to and on the leeward side of the building. This would occur due to a "wake effect" where air passing over the building would tend to circle down and back toward the building. She advised that with emission stacks of an appropriate height, the gases would be mixed and diluted and pass over the building without being recirculated back. When asked about the effect of the stacks with velocity cones, she stated that the proposed stacks would disperse the air emissions in a way that would not result in detectable odours either within the vicinity of the industrial park or north or south near the condominiums. Ms. Walsh further testified that the density of styrene, at the molecular level, would not cause it to come down to ground level. The high velocity of discharge due to the velocity cones and rapid dilution in the atmosphere would prevent this from happening. She supported the Director's comment that discharge through stacks was an appropriate and viable solution to the odour issue.

When asked by the Panel about what might happen under adverse weather conditions, Ms. Walsh stated that there could be some concern under stable conditions such as a temperature inversion or at night.

The Panel is satisfied with the evidence of the Director and Ms. Walsh that stacks with velocity cones would result in a very low possibility of noticeable odours being detected by neighbours of the Appellant's plant. In the absence of any compelling evidence to the contrary, the Panel also agrees that stacks in this case, are a reasonable requirement.

The Appellant gave the Panel a drawing prepared on January 23, 2005, showing an exhaust stack with a velocity cone. This drawing was submitted to the Ministry pursuant to clause 2.6 of the Permit that reads as follows:

> 2.6 The Permit authorizes the continued use of the existing treatment and disposal works until June 30, 2005. The stack extensions shall be completed in accordance with the plans, prepared by a qualified professional and received by the Ministry on February 10, 2005.

Mr. Robb advised the Panel that he had seen this drawing and was satisfied with what is proposed in that drawing, specifically the stack heights (approximately 3 m (10 feet) above the roof line) and the velocity cones.

The drawing provides for two stacks which is consistent with the Permit requirements. The Panel notes that the drawing does not include any indication of how the three existing exhaust ports will be combined into the two stacks. The drawing indicates that it was prepared by a "professional mechanical engineering company" named Jade West Engineering Co. Ltd., but there is no professional seal and signature. The Panel notes that the drawing is referred to as "Building Permit" and was checked by a person with the initials JM in January 2005. Part of the evidence provided by the Respondent included four pages entitled Schedule B-1 and Schedule B-2. Schedule B-1 is an "Assurance of Professional Design and Commitment for Field Review" and Schedule B-2 is a "Summary of Design and Field Review Requirements". Both of these Schedules form part of section 2.6 of the British Columbia Building Code. J. A. Makepeace, a Professional Engineer and a "Registered Professional" in the Province of British Columbia, signed all four pages. The Ministry received these documents on February 10, 2005.

The Appellant does not agree that styrene falls under the definition of "air contaminant" in the *Act*. It is clear from the evidence and the comments in the May 2001 petition that a number of people, including a Ministry technician, suffered material physical discomfort from styrene emissions. As "material physical discomfort" falls within the definition of an "air contaminant" in the *Act*, the Panel disagrees with the Appellant. The Panel finds that styrene is an "air contaminant" as defined in the *Act*.

The Appellant does not consider that there is any legal authority for either a permit or stacks, even though a permit was applied for and issued, and a stack design was provided to the Ministry. Mr. Bayes also argued that there are no Ministry regulations in respect of these emissions.

Counsel for the Respondent argued that under current legislation, a permit is required for any discharge from a "prescribed industry, trade or business". He referred to the *Regulation*, which designates the plastic and synthetic resin manufacturing industry as a prescribed industry, trade or business, and stated that

the fibre glass boat manufacturing business falls within that prescribed category. In Schedule 1 of the *Regulation*, the plastic and synthetic resin manufacturing industry means, "establishments engaged in manufacturing plastics, synthetic resins or moulding compounds." From the evidence, it is not clear to the Panel that the Appellant is "manufacturing" plastics, synthetic resins or moulding compounds. Rather, it appears to be "using" such materials.

The Panel notes that another section of the *Regulation* refers to the activities and operations and classes of activities and operations of the "plastics and composite products industry." This is also prescribed under the *Act*. In Schedule 2 of the *Regulation*, the "plastic and composite products industry" means "establishments engaged in using synthetic resins to fabricate shapes or forms of plastic." The Panel finds that the Appellant is using synthetic resins to fabricate shapes or forms but it is not clear to the Panel that the Appellant is fabricating shapes or forms of plastic. While no evidence was presented in this regard, the Panel believes that a canoe made out of plastic is quite different from a canoe made with fibreglass, resins and styrene.

The Panel has reviewed the evidence submitted by the Respondent, entitled "Reinforced Plastics and Composites Regulation". This was a draft, for discussion only, prepared in December 1996. This contains a section that reads:

> "reinforced plastics or composites" means products manufactured from polyester or similar resins, with or without fibre reinforcement or fillers, including but not limited to boats, showers, tubs, surfboards, architectural moldings, helmets, piping, tanks, recreational vehicles and truck parts;

This meaning is quite clear and unequivocal and would capture the Appellant's activities. The Panel believes that this is not the case with the definition "…fabricating shapes or forms of plastic" as it appears in Schedule 2 of the *Regulation*.

However, the Panel finds that the waste being discharged from the plant did cause "pollution". The evidence shows that its air contaminants did "substantially alter or impair the usefulness of the environment." While oral evidence was submitted that the amount of styrene being emitted has been reduced, no test results were submitted to show that the quantities being emitted are not causing "pollution" as defined in the *Act*. The Panel further notes that the meaning of section 14(1)(a) of the *Act* clearly provides for the issuance of permits, as well as authority to "require the permittee… to add works or to construct new works." The Panel accepts that there is legal authority for both the Permit and the requirement for stacks.

In addition, according to a Technical Report (Major) prepared by the Ministry in January 2000, alternatives for controlling odour were discussed with the Appellant. In his evidence, Mr. Bayes confirmed that this was the case. No evidence was presented to show that the Appellant gave serious consideration to these alternatives or further discussed the possibility of different alternatives with the Ministry during the next five years until the Permit was issued. No evidence was presented to show that the Appellant undertook any studies to determine alternative or economical means of controlling its styrene emissions to the

appropriate level in the five-year period. The Panel agrees with the Director that something had to be done.

The Panel is satisfied that section 6 of the *Act* requires a prescribed industry, trade or business to have a permit if it introduces, causes or allows waste to be introduced into the environment. The same section requires a person, who introduces waste into the environment in such a manner or quantity as to cause pollution, to have a permit.

In 2001, when the original complaints were made in the petition, the comments clearly indicate that material physical discomfort was experienced by many of the complainants. The Panel is satisfied that these handwritten comments are credible and also accepts the statement that a Ministry technician suffered discomfort when carrying out sampling activities at the plant. With no direct evidence to the contrary, the Panel is satisfied, on a balance of probabilities, that the material discomfort felt was due to styrene in the air. Styrene, therefore, falls under the definition of an air contaminant under the *Act*. This contaminant had substantially impaired the usefulness of the environment in that a number of people suffered material physical discomfort.

The Panel accepts that the Appellant has taken steps to reduce the amount of styrene being emitted. However, the Appellant has clearly stated that about 3,300 kg of styrene per year is still being discharged into the air near ground level from the facility. From the evidence provided, the average concentration of styrene in the emission exceeds, by a factor of approximately 22, the concentration at which the odour of styrene would be noticed. The Panel is satisfied that this is an air contaminant and, on a balance of probabilities, would be sufficient to create material discomfort and impair the usefulness of the environment. The Panel further notes that, in accordance with section 1(3) of the *Act*, it is not necessary to prove that, if the air contaminant is diluted at the point of introduction, it continues to be capable of harming, injuring or damaging a person, life form, property or the environment.

Styrene is being discharged into the environment by the Appellant as a “waste”, the definition of which includes air contaminants. It may not only be waste from a prescribed industry or activity, but is also a contaminant being introduced into the environment and causing pollution. The legislation is clear that a waste cannot be introduced into the environment without a permit. It is also clear that a Director may require the permittee to construct new works and to submit plans and specifications for such works.

Counsel for the Respondent advised that the Director has no objection to the name of the Permittee being changed as requested by the Appellant, or for the date of compliance being extended.

DECISION

The Panel has considered all the submissions and arguments made whether or not they have been specifically referenced herein.

The decision of the Respondent, as expressed by the terms and conditions contained in the Permit is hereby confirmed, subject to the following variances:

1. The name of the Permit holder shall be changed to: Western Canoeing Manufacturing Inc.;
2. The Permit Holder, for its own benefit, and to be consistent with the *Act* and the permit, should ensure that any stack plan is prepared and signed by a qualified professional;
3. The stack plan is to ensure collection and discharge through the stack(s) of all styrene emissions from all of the exhaust fans;
4. The final stack plan is to be submitted to the Ministry for approval within 30 days of the date of this decision;
5. The stack extensions shall be completed in accordance with such plans within 90 days from the date of this decision; and
6. The Appellant is authorized to continue use of the existing air emission system for 90 days from the date of this decision.

Accordingly, the appeal is dismissed.

"David H. Searle"

David H. Searle, Q.C., Panel Chair
Environmental Appeal Board

December 19, 2005