

3-3001-8428-2  
D-5756(A)/R-4326

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA TRANSPORTATION REGULATION BOARD

In the Matter of the Application by  
Potlatch Corporation, Northwest Paper  
Division, P.O. Box 503, 2201 Avenue B,  
Cloquet, Minnesota 55720, for a  
Variance to the Horizontal and  
Vertical Clearance Requirements of  
Minn. Stat. §§ 219.45 to 219.53

FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION

The above-entitled matter came on before Administrative Law Judge Allen Giles on January 14, 1994, at 9:30 a.m. at the Minnesota Administrative Truck Center, Second Floor Hearing Room, Livestock Exchange Building, 100 Stockyard Road, South St. Paul, Minnesota.

Appearing for the Applicant, Potlatch Corporation, Northwest Paper Division, was Mr. Floyd Rudy, Attorney at Law, 123 Avenue C, Cloquet, Minnesota 55720. Appearing in a technical staff capacity for the Minnesota Transportation Regulation Board was Mr. Ronald F. Mattson, Assistant Director, Railroad Administration Section, Minnesota Department of Transportation, 391 John Ireland Boulevard, 925 Kelly Annex, St. Paul, Minnesota 55155.

The record developed for consideration of the Application closed on January 14, 1994, at the close of the hearing.

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Public Utilities Commission, as applicable to the Transportation Regulation Board, and the Rules of the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with the Transportation Regulation Board, Minnesota Administrative Truck Center, 254 Livestock Exchange

Building, 100 Stockyards Road, South St. Paul, Minnesota 55075. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before a majority of the Board may be permitted to all parties adversely affected by the Administrative Law Judge's recommendation request such argument. Such request must accompany the filed exceptions or reply, and an original and five copies of each document must be filed with the Board.

The Minnesota Transportation Regulation Board will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested had in the matter.

Further notice is hereby given that the Board may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Board as final order.

#### STATEMENT OF ISSUE

Has the Applicant, Potlatch Corporation, Northwest Paper Division, demonstrated that the statutory clearance exceptions for which the variances are requested will not create conditions unduly hazardous to its employees or to employees of common carriers using the tracks if the variances are granted?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

#### FINDINGS OF FACT

1. Potlatch Corporation (hereinafter also referred to as the "Applicant") is a major wood and paper products manufacturer, having manufacturing facilities in several locations in Minnesota, including Cloquet, Bemidji, Brainerd, Cook, Grand Rapids and Baxter. This Application relates to Applicant's manufacturing facility in Cloquet, Minnesota. At this location Potlatch Corporation employs approximately 1,000 employees to produce pulp used to make high quality glossy paper used for corporate year-end reports.

2. In a letter dated November 12, 1993, Potlatch Corporation filed an Application with the Minnesota Transportation Regulation Board (Board) requesting variances to both the horizontal and vertical clearance requirements prescribed by Minn. Stat. § 219.46 (1992) regarding a railroad track serving the Cloquet facility.

3. On December 3, 1993, the Board issued a Notice of Public Hearing on the requested variances, and the Notice was published in the Board's Weekly Calendar on December 3, 1993 and weekly thereafter to the date of the hearing. The Notice of Public Hearing was mailed on December 3 to the Applicant, Mr. Veikko E. Taipale, V.P., Duluth & Northeastern Railroad; Mr. Thomas J. Dwyer, T.C.I.U.; Mr. Ronald F. Mattson, Minnesota Department of Transportation; and Mr. George Klegg, Jr., United Transportation Union.

4. The Applicant uses caustic chemicals in the manufacture of the glossy paper. The caustic chemicals are delivered to Potlatch by motor carrier (truck) and railroad carriers. The Applicant takes delivery of three railroads

tank cars filled with caustic chemicals each week. Potlatch Corporation proposes to construct an indoor facility that will be used for unloading caustic chemicals from railcars. The new facility will also be used for loading soap, a bi-product of the chemical bleaching process.

5. The new facility will be built by connecting two existing buildings on opposite sides of a spur track. The structure created will cover and enclose the railroad track. Exs. 2 and 6.

6. The use of the existing buildings place dimensional limitations on the structure that cannot be avoided. The dimensional limitations are the impetus for the variances requested in this application.

7. Exhibit 3 is a cross section of the proposed new caustic unloading facility. Exhibit 3 shows that on the left-hand side of the exhibit the "pipe suction connection" is 7 feet 4-1/2 inches from the center line of the railroad track. In addition, there is a wall on the left side of Exhibit 3 that is 8 feet 4-1/2 inches from the center line of the track. Exhibit 3 also shows that the height of the structure from the top of the rail is 21 feet 5 inches.

8. Exhibits 4 and 5 show the measurement of the doorways into the new caustic unloading facility. Because the caustic unloading facility is being erected between two existing buildings, the doorways were limited by the existing structures. Exhibit 4 shows that the south-side doorway will have a vertical elevation of 20 feet above the top of the rail and a horizontal or side clearance from the center line of the track of 8 feet on both sides. Exhibit 5 shows a vertical clearance of the north doorway to be 18 feet above the top of the rail. It shows a side clearance of 8 feet on both sides of the center line of the track.

9. Any remodeled or newly constructed structure over a railroad track must be built with an overhead clearance of not less than 22 feet from the top of the rail, and must have a side clearance of 8-1/2 feet from the center line of the track. Minn. Stat. § 219.46 (1992).

10. The Applicant's newly constructed caustic unloading facility will require variances to the clearance requirements identified above. With respect to the doorways into the new facility, clearances will be required for both sides of the track for both doors on Exhibits 4 and 5. Because both doors have a vertical clearance less than 22 feet from the top of the rail both will require a vertical variance. The inside of the new facility will require three variances. Two of the variances are for side clearances: Both the "pipe suction connection" and the west wall are less than 8-1/2 feet from the center line of the track. In addition, although not requested by the Applicant, a vertical clearance will be required because the ceiling of the structure is less than 22 feet from the top of the rail.

11. Directly north of the proposed new caustic unloading facility is an existing facility used for unloading chemicals. Exhibit 1 consists of three photographs of the doorway on the south side of this building. The doorway was measured in connection with this application. It was determined that the height of the doorway is less than 22 feet from the top of the rail. The Applicant has posted both "NO CLEARANCE" signs for overhead and side clearances. The Applicant could find no record of previously granted variances for this doorway. The doorway will require a variance to the statutory height requirement.

12. Caustic chemicals are delivered by Duluth and Northeastern Railroad in tank cars to the Cloquet plant at the rate of three cars per week. Once tank cars arrive on the railroad switching yard of Potlatch, employees of the Duluth and Northeastern Railroad have no further involvement. Employees of Applicant move all railroad cars on Applicant's property. The Applicant owns a small locomotive and employs an engineer, conductor and a brakeman on its switching crew. These employees are permanently assigned to this function. Work rules require that these employees get off the railcar when there is a close clearance and enter a facility by walking through a side door. All the doorways for which a close clearance or variance has been

requested in this case have side doors. Employees must enter a structure by walking through the side door.

13. The Applicant proposes to mount a "NO CLEARANCE" sign at each of the locations where variances have been requested. The no clearance signage will comply with Minn. Rules Pt. 8830.9930. Ex. 7. The no clearance signage will be lighted and the lights will either be on at all times or will be activated by a light sensor device.

14. The new facility will have a number of safety features. It will have a floor slab with trenched drains for containment of spills. The new building will be lighted, heated and designed to accomplish the safe transfer of chemical from railcars to on-site receptacles.

15. The proposed construction has been reviewed by Applicant's Safety Department and by potentially affected employees who believe that the new structure will create a safer work environment.

16. The Department of Transportation has reviewed the proposed construction project and has concluded that the project will not result in an unduly hazardous work environment for employees, but as an added safety factor no-clearance signage, as identified in Exhibit 7 should be installed and maintained as proposed by Applicant in Finding of Fact No. 13.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

#### CONCLUSIONS

1. The Minnesota Transportation Regulation Board has jurisdiction over the subject matter of the hearing.

2. Proper notice of the hearing was timely given and relevant, substantive and procedural requirements of law or rule have been fulfilled and therefore, the matter is properly before the Minnesota Transportation Regulation Board.

3. Potlatch Corporation is subject to the clearance requirements prescribed in Minn. Stat. § 219.46 (1992) in connection with the siting of railroad cars at its unload facility.

4. Persons subject to the clearance requirements prescribed in Minn. Stat. § 219.46 may apply to the Minnesota Transportation Regulation Board for a variance pursuant to the provisions of Minn. Stat. §§ 219.47, subd. 1 and Minn. Stat. § 219.48.

Rules Pt. 8830.3000. Pursuant to these provisions the Board may grant a request for a variance if the overhead or side obstruction at less than the required clearance "will not create a condition unduly hazardous to employees working in the area.

5. The clearance encroachments set forth in Findings of Fact Nos. 7, and 11, supra, will not create a condition unduly hazardous to the Applicant's employees or to employees of the common carrier using the railroad tracks, and the clearance variances requested by the Applicant meet the standards set forth in Minn. Stat. § 219.47, subd. 1 and Minn. Rules Pt. 8830.3000; so long as signs are posted as prescribed in Finding of Fact No. 13, supra.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE TRANSPORTATION REGULATION BOARD WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATION.

It is the Recommendation of the Administrative Law Judge to the Board that it issue the following:

ORDER

That variances for the clearance encroachments set forth in Findings of Fact Nos. 7, 8 and 11, supra, be granted; that the Applicant shall install and provide illumination when necessary, and maintain the signs described in Finding of Fact No. 13, supra; and that upon completion of the construction and installation of the required signage, the Applicant shall notify Mr. Ronald Mattson of the Minnesota Department of Transportation who will perform an inspection of the installation.

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Board is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Dated this 28th day of January, 1994.

s/Allen E. Giles

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ALLEN E. GILES

Administrative Law Judge

