



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

August 24, 2011

11-16

Private Prosecution of Weyerhaeuser Company Limited

Victoria - The Criminal Justice Branch of the Ministry of Attorney General today announced that it is directing a Stay of Proceedings on an Information alleging an offence of criminal negligence causing death against Weyerhaeuser Company Limited. The charge was sworn on March 25, 2010 by an officer of the United Steelworkers of America in relation to an incident which occurred on November 17, 2004 at a mill operated by Weyerhaeuser in New Westminster.

The Criminal Justice Branch had previously reviewed this matter in 2006 and 2008 and concluded that no criminal charges should be laid in relation to the incident, in which an employee died when engulfed by wood waste inside a piece of mill equipment, known as a hog, while it was being cleaned out.

Following an additional comprehensive review of all of the evidence currently available the Branch has again concluded that the Branch's charge assessment standard has not been met, and that the prosecution should not proceed.

The decision of the Branch is summarized in the [attached Clear Statement](#), which states: "The available evidence does not establish that company management knew that entry into the hogs was occurring and did nothing to address the associated risks, such as preventing entry or ensuring that entry was safe. As a result the available evidence does not provide a substantial likelihood of conviction against the company, and the Criminal Justice Branch is directing a Stay of Proceedings in the case."

Media Contact: Samantha Hulme
Acting Communications Counsel
Criminal Justice Branch
(250) 387-5171

Criminal Justice Branch HQ
Ministry of Attorney General

Mailing Address:
PO Box 9276 Stn Prov Govt
Victoria, BC V8W 9J7

Office Location:
9th Floor, 1001 Douglas Street
Victoria, BC V8W 9J7
Telephone: (250) 387-3840
Fax: (250) 387-0090

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Clear Statement - Weyerhaeuser

On November 17, 2004 a worker at the Weyerhaeuser Mill in New Westminster was asphyxiated while cleaning out the “hog,” a piece of industrial equipment containing a chute which funnels wood waste onto a pulverizing mechanism, producing a wood waste product known as hog fuel. The hog had become plugged with red cedar bark, log ends and sawdust. The deceased and two other workers were clearing material through an access door low down in the hog. The deceased climbed inside the hog on the left side, which was clear, in order to pull at the material that was hung up or “bridged” on the right side. The remaining wood waste dislodged and engulfed the worker, however this was not noted immediately by his co-workers, who were continuing to work outside the hog. After his co-workers realized he was non-responsive it took another 20 minutes to dig him out of the hog.

A Workers' Compensation Board (WorkSafeBC) investigation focussed on the adequacy of lock out procedures and job safety breakdowns for the cleaning of the hog and a history of complaints that cleaning the hog was unsafe. WorkSafeBC turned their investigation over to the New Westminster Police Department for investigation of criminal negligence causing death charges arising from section 217.1 of the *Criminal Code*, which creates a duty on a person authorizing or directing work to take reasonable steps to prevent bodily harm to the worker.

The New Westminster Police Department re-interviewed potential witnesses, trying to identify “people of interest” – representatives of the company who may have shown a level of reckless or wanton disregard for the safety of the workers which might support criminal proceedings.

The New Westminster Police Department forwarded an investigative report to the Criminal Justice Branch on September 1, 2006. Following a careful review by senior prosecutors the Branch concluded in October 2006 that there was no substantial likelihood of conviction and declined to proceed with criminal charges.

Acting pursuant to their jurisdiction, WorkSafeBC subsequently completed their investigation and issued their report in March of 2007. As a result of the WorkSafeBC investigation Weyerhaeuser received administrative penalties totalling just over \$297,000.00

Through legal counsel, the United Steelworkers of America made representations to the Criminal Justice Branch in relation to the decision not to approve criminal charges. In February and March of 2008 the Branch reviewed the file to determine whether there were material differences between the police report and the investigative material available to WorkSafeBC. This review took into account concerns raised by counsel for the union, as well as the WorkSafeBC report. The Branch again concluded that the available evidence did not meet the Branch's charge assessment standard for approval of any criminal charges.

On March 25, 2010 counsel for the United Steelworkers attended the New Westminster Court Registry with an executive member of the union who swore an information charging Weyerhaeuser with criminal negligence in the death of the employee in question.

The private information was referred to a provincial court judge pursuant to s.517.1 of the Criminal Code to determine whether process should issue against Weyerhaeuser compelling the company to appear in court in response to the charge. A judge was assigned and the

hearing continued over several days in the following months. On March 2, 2011 the judge presiding over the hearing ruled that process should issue.

The test for issuing process is whether a prima facie case exists. A judge sitting on a process hearing does not weigh the evidence, assess witness credibility or assess the merits of the case. The court does not apply the charge assessment standard of the Criminal Justice Branch, nor assess whether the criminal standard of proof beyond a reasonable doubt has been met.

Pursuant to the authority granted by the Crown Counsel Act, and in accordance with Branch policy, the Criminal Justice Branch took conduct of the prosecution, and undertook a further assessment to determine whether the currently available evidence met the Branch's charge assessment for approval of a criminal charge and continuation of the prosecution. This assessment included a review of the originally available material, as well as new material, including evidence called during the course of the process hearing, additional information from WorkSafeBC and a statement from an individual identified by counsel for the union as possibly being able to provide relevant evidence.

In order to prove an offence of criminal negligence in the death of the worker the Crown would have to prove that reasonable steps were not taken pursuant to s.217.1 of the Criminal Code, to prevent bodily harm to the worker and that wanton or reckless disregard was shown for his life or safety. In this case in particular if it could be shown that the persons directing the worker to unplug the hog ought to have known that he would enter the hog to unplug it then they would be in breach of this duty if they did not take reasonable steps to protect him.

The consensus among management and workers was that the worker's entry into the hog was extremely dangerous, however there is no evidence that management at Weyerhaeuser was aware that workers were entering the hog in these circumstances. Entering the hog to clean it out appears to have been a practice under the previous ownership of MacMillan Bloedel, but it became rare by the time Weyerhaeuser took over the mill. If it was still occurring in 2004 the evidence does not establish that management at Weyerhaeuser was aware of that.

Weyerhaeuser owned the mill for approximately 5 years before the incident. The evidence supports the conclusion that when it took over there was a significant improvement in the approach to safety. Weyerhaeuser maintained a safety committee comprised of union and management employees, had a system in place to correct unsafe practices when they were observed, performed critical task analyses, conducted safety tours and had a number of employees in safety related positions.

Management at the mill recognized that unplugging the hog was difficult and strenuous and exposed workers to risk. Its main concern was injury that might result from objects such as log ends falling from the chute. In fact, in 2003 there was an incident in which a log end bounced out of the hog across the arms of a worker.

To reduce this risk three safety measures were considered: the installation of doors higher up on the hog; the development of written procedures to make unplugging the hog safer; and the utilization of a mirror on a pole to view blockages from underneath. The doors were not installed despite repeated requests, based on a rationale that the integrity of the hog's steel walls would be compromised and jeopardize worker safety.

Procedures were drafted that specifically cautioned workers not to expose arms or heads inside the hog but did not specifically spell out that they not place their entire bodies inside it. The mirror device was in place approximately two weeks before the incident and had been used by the worker who died, prior to his entering the hog, according to one of the workers who was assisting him to unplug the hog.

The Criminal Justice Branch concluded that deficiencies in addressing the risk of falling objects such as the failure to create more explicit procedures, or the failure to obtain an engineering report to determine the viability of installing alternate doors may have demonstrated negligence on the part of management but not of a degree to support a charge of criminal negligence.

The available evidence does not establish that company management knew that entry into the hogs was occurring and did nothing to address the associated risks, such as preventing entry or ensuring that entry was safe. As a result the available evidence does not provide a substantial likelihood of conviction against the company, and the Criminal Justice Branch is directing a Stay of Proceedings in the case.