



APPEAL NO. 82-13 PES

J U D G E M E N T

PERMIT NO. - 110-114-82/84
Pesticide Control Act - Public Land. Pesticide
Use Permit issued to MacMillan Bloedel Limited
(Franklin River Division) for Use of
Forestamine (2,4-D Amine)(P.C.P. Act Reg. No.
16995) for Control of Red Alder for Conifer
Release Purposes by Individual Tree Injection
Techniques. Port Alberni area TFL 21, Blocks
III and IV (less than 770 hectares).

and

PERMIT NO. - 110-118-82/84
Pesticide Control Act - Public Land. Pesticide
Use Permit issued to MacMillan Bloedel Limited
(Cameron Division) for Use of 2,4-D Amine
(P.C.P. Act Reg. No. 16995) for Control of Red
Alder for Conifer Release Purposes by
Individual Tree Injection Techniques. Port
Alberni area (100 hectares).

APPEAL

The grounds of appeal filed and the allegations
advanced at the hearing by the appellants included the
following:

1. There is no economic justification to support the
selection of chemical vegetation management
techniques over manual/mechanical methods.
2. The removal of the alder will cause environmental
damage by reducing the numbers of nitrogen fixing
plants.
3. The use of 2,4-D (Amine) by hack and squirt methods
in the forest poses a high exposure risk to a
dangerous chemical for applicators and other
workers.

MacMillan Bloedel Limited (Cont.)

4. The use of pesticides in the vicinity of Indian communities creates a serious threat to the usefulness and availability of plant and animal food sources in and near treatment areas.
5. Manual/mechanical methods of alder removal should be given precedence over chemical control methods especially in these times of high unemployment of forest workers.
6. There is inadequate monitoring of the effects of pesticide applications on workers, fish and wildlife, and in evaluating the successfulness or failure of the project objectives.
7. The periods for which pesticide use permits are approved is too long.
8. Permittees are less than cooperative in providing information and meaningful responses when details relative to pesticide use permit matters are requested by persons concerned over a possible threat to environmental quality.
9. Notices of approved pesticide use permits which are advertised in local newspapers do not contain sufficient detail for a concerned citizen to determine whether any significant human or environmental threat is likely to be involved.

HEARING DETAILS

The hearing was held by a Panel of the Board on July 20, 1982 at the Hospitality Inn in Port Alberni, B.C.

The Panel of the Board in attendance were:

J.O. Moore, B.S.A.	- Panel Chairman
Dr. R.F. Patterson, Ph.D.	- Member
Dr. N. Schmitt, M.D.	- Member

Miss Shirley R. Mitchell - Executive Secretary

The hearing commenced at 9:00 a.m. and adjourned at 4:00 p.m.

MacMillan Bloedel Limited (Cont.)

REGISTERED APPELLANTS

1. Alberni Environmental Coalition represented by:

- a) Ms. Judith Hutchison - Spokesman
Mr. Gary Swann - Witness

b) Appeal confined to Permit No. 110-118-82/84 only.

2. The International Woodworkers of America, Local 1-85 C.L.C. - C.I.O. - A.F.L. represented by:

- a) Mr. Henry Nedergard - Spokesman
Safety Director

b) Appeal covered both Permit Nos. 110-114-82/84 and 110-118-82/84.

3. The Nuu-chah-nulth Tribal Council represented by:

- a) Mr. Paul George B.Sc. (Zoology) - Spokesman
Tribal Researcher
Mr. Martin Edgar - Witness
Tribal Elder
Mr. Ernie Chester - Witness
Indian Wood Carver and Artist

b) Appeal covered both Permit Nos. 110-114-82/84 and 110-118-82/84.

REPRESENTATIVES OF PERMIT HOLDER

MacMillan Bloedel Limited

Mr. W. Gilmour Spokesman - Permit 110-114-82/84
Divisional Forester
Franklin River Division

Mr. J.D. Dryburgh Spokesman - Permit 110-118-82/84
Divisional Forester
Cameron Division

MacMillan Bloedel Limited (Cont.)

REPRESENTATIVES OF THE ADMINISTRATOR OF THE
PESTICIDE CONTROL ACT

None appeared.

LIST OF EXHIBITS

- A - Statement by Sterling, Stoffman and Nedergard on behalf of I.W.A. Local 1-85 (Blue Binder Backing - nine pages plus bibliography and list of articles).
 - B - Workers Compensation Board Inspection Report. Tahsis Company Ltd. Zeballos Division. Item 8 - Ringing alder trees near highway resultant traffic hazard.
 - C - Northwest Coalition for Alternatives to Pesticides. "WARNING" I.B.T. - Tests for safety may not be valid. Lists 2,4-D as one of chemical suspect.
 - D - Black & white photographs presented by Nuu-chah-nulth Tribal Council (Nos. 1 to 11) showing flora within treatment area.
 - E - MacMillan Bloedel Limited response to appeals by Alberni Environmental Coalition, International Woodworkers of America (Local 1-85), Nuu-chah-nulth Tribal Council (Cover & three pages).
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SUMMARY OF PRINCIPAL POINTS MADE IN EACH OF THE
APPELLANTS' PRESENTATIONS

Alberni Environmental Coalition (1st Appellant)

Ms. Judith Hutchison - Coalition Representative

At the outset of the presentation on behalf of the Coalition, disappointment was expressed over the fact that no decision had been received from the Board relative to their earlier appeal against Pesticide Use Permits 104-288-82/84 and

MacMillan Bloedel Limited (Cont.)

104-289-82/84 which had been heard in Port Alberni over two months earlier. (May 18 & 19, 1982). It was felt that receipt of the decision may have assisted them in the presentation of evidence in their appeal against Permit 110-118-82/84.

The opening statement contained an expression of dissatisfaction with the administrative process followed in approving application for pesticide use permits which precluded public participation until after the permit had actually been issued. Input during the approval process was suggested over a confrontation in a forum after the Permit had, in fact, been granted.

The Coalition representatives also expressed a preliminary objection stating that the brief was being presented under protest in that they were being denied their full democratic right to be heard on three other pesticide use permits which had been issued in the Port Alberni area because they did not have sufficient additional funds to do so. It was stated that the existence of the \$25 fee required to accompany each notice of appeal taken to the Environmental Appeal Board had, in fact, denied them their right to be heard. In contrast, it was pointed out that a huge company such as the Permittee, who was in a much better position to make such a payment, is granted a permit free of charge.

The main points which Ms. Hutchison made in her testimony were:

- (1) In terms of economic assessment there is no empirical evidence to support the claim that chemical methods of vegetation management are less expensive than manual/mechanical procedures. Cost figures which do support such a proposition are suspect in that they are based on projections, speculation, faulty comparisons and inappropriate generalizations.
- (2) Serious information gaps exist in the data needed to determine the extent to which herbicides should be used on forest lands. More data is needed to determine the relative total costs and effectiveness of herbicides vs. manual/mechanical methods of vegetation management and to evaluate long-term environmental and silvicultural impacts.

MacMillan Bloedel Limited (Cont.)

- (3) There is no economic justification to use 2,4-D as a vegetation management tool if all direct and hidden costs involved are accurately accounted for.
- (4) The effectiveness of chemical methods of alder control for conifer release purposes over manual/mechanical methods has not been established. Random falling of chemically treated alder poses a threat to growing conifers which would not occur if manual/mechanical methods were used.
- (5) Because of the health hazards and potential cumulative effects on workers of using 2,4-D as a method of vegetation control and because the safety of workers and their families cannot be guaranteed by their employers, manual/mechanical methods of alder control should replace chemical control procedures.
- (6) The full impact of chemical methods of vegetation management is not fully understood. The effect on the environment of using 2,4-D is largely unknown and primarily based on laboratory studies of short duration which are only of limited use because the variables of the natural systems cannot be duplicated readily.
- (7) The cumulative effect of using 2,4-D should be carefully studied and proven safe before the environment is exposed to the possibility of irreversible damage.
- (8) The hack and squirt method of treatment gave no assurance that the chemical being applied would not find its way into domestic water systems through the chemical running down the trunk into the ground and no government monitoring of the contamination which will occur in the Cameron Division is planned.

The Coalition representative recommended that because of the factors contained in its presentation:

- Permit 110-118-82/84 be rescinded.
- the period of time allowed in which to file an appeal be increased to one month.
- the Board request Agriculture Canada to de-register 2,4-D
- the Province, as a condition of permit approval, implement a monitoring program of the chemical use of 2,4-D in hack and squirt treatment applications.

MacMillan Bloedel Limited (Cont.)

The main point made by Mr. Swann in his testimony was:

The manual/mechanical method of alder control varies in effectiveness depending on the time of year in which the trees are cut. Resprouting of alder occurred less frequently when the trees were cut during the August - September period.

The degree of alder control achieved by observing this cutting schedule on his own property was extremely encouraging and he highly recommended it be tried by the Permittee and others as a viable alternative to chemical control methods.

INTERNATIONAL WOODWORKERS OF AMERICA (2nd Appellant)
LOCAL 1-85 - PORT ALBERNI

Mr. Henry Nedergard - I.W.A. Representative

The I.W.A. Representative expressed the same disappointment as that expressed by the first appellant over the fact that the Board's decision on their appeals against Permits 104-288-82/84 and 104-289-82/94 heard on May 18 & 19, 1982 had not been received. It was felt that had the decision been available before the commencement of the appeal against Permits 110-114-82/84 and 110-118-82/84 the brief which he planned to present at this hearing may have contained different or additional details.

Mr. Nedergard advised the Panel of the Board that Theodore D. Sterling, Ph.D., Professor, Simon Fraser University would not be attending the hearing as previously expected and that he would be presenting the brief which Professor Sterling, Mr. Larry Stoffman, and he had jointly prepared. The Panel Chairman questioned the admissibility of the brief on the ground that two of the co-authors would not be available for cross-examination by the Permittee and by the Panel of the Board. The Panel Chairman ruled that to the extent that Mr. Nedergard could answer questions on the brief's contents, it would be accepted in the evidence of the hearing.

MacMillan Bloedel Limited (Cont.)

The main points contained in Mr. Nedergard's testimony were:

1. The chemical approved for use under the Permit, Forestamine - 2,4-D Amime - is unsafe. There is a good deal of scientific evidence to support that tests made on workers who had been exposed to such pesticides, including 2,4-D, showed a higher incidence of cancer formation and ill health effects than those who had not.
2. There is a lack of adequate funding to do proper research on the effects and safety of pesticide use. A need exists to do more extensive studies on the use of pesticides under hack and squirt applications and to evaluate their effect on wildlife and under Canadian climatic conditions.
3. Workers who are required to apply 2,4-D in hack and squirt application operations are much more subject to unavoidable exposure than are prairie farm workers where application of the chemical is by a completely different method.
4. The panel's attention was drawn to the following points made in the 1978 N.R.C. of Canada review "Phenoxy Herbicides. Their Effects and Environmental Quality" relative to the indications supporting the discontinuance of 2,4-D for forestry purposes in Canada:
 - a. The application of Phenoxy herbicide 2,4-D to forest area may produce a shift in vegetation cover that will negatively affect any wildlife using the area for foraging.
 - b. Due to this regressive shift in the forest eco-system, the long-term effects on forest productivity are questionable.
 - c. Leaching of the chemical into soil and water may occur, particularly in forestry wetland areas.
 - d. While the decomposition process of 2,4-D has been studied, it has never been studied in Canadian climates and this is not fully understood.
 - e. Studies indicate that embryo toxicity and teratogenicity could be an inherent property of phenoxy herbicides. Further studies on the chronic toxicity on these herbicides are needed.

MacMillan Bloedel Limited (Cont.)

- f. The information available indicates that particular attention in the assessment of phenoxy herbicides including 2,4-D must be focused on their potential as mutagens and carcinogens and their effects on reproduction.
5. Control of alder by manual/mechanical falling should be adopted in preference to chemical treatment methods. The use of 2,4-D to control alder in many instances leaves many standing trees to die. These trees may eventually become a hazard to workers and have to be felled to meet Workers Compensaton Board, Industrial Health and Safety Regulations 60-54 and 60-232. When these factors are taken into consideration it is contended that conventional methods of falling such trees in the first instance will prove less costly in the long run and the threat of worker injury is avoided.

The I.W.A. representative recommended that:

- Pesticide Use Permits 110-114-82/84 and 110-118-82/84 be cancelled because the Permits could not ensure that the provisons of Section 3 of the basic requirements laid down by the Province would not be violated. Section 3 reads as follows:

"All pesticides must be applied in a manner that will not endanger the applicator, or persons living in or near, or persons passing through the treated area, and will not endanger the environment."
- In the event the appeal is not allowed the Panel of the Board add the following conditions to the terms of the Permits:
 1. Require to be set aside an experimental area to test the effectiveness of manual method of control as opposed to that of the recommended hack and squirt procedure using 2,4-D. If properly conducted, this experiment will determine if costs and benefits due to manual methods of removing undesired species equal costs and benefits of using chemicals.

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MacMillan Bloedel Limited (Cont.)

2. Require the employer to institute a health quality control program of workers. This program needs to be based on the recognition that the best measure of exposure of workers is the worker himself. It should be required of the employer to collect and test urine samples daily (or nearly so) and blood samples weekly for detectable residues of 2,4-D, its impurities, and its derivatives. Such a quality control and testing program has proven highly successful in other industries and helped them to avoid cases of clinical intoxication and subsequent disease. This has been especially true in tetra ethyl lead refineries. Following the model of other industries, especially of tetra ethyl lead producers, workers who show a residue in their urine of 2,4-D and related products could be removed from the work site. Those workers so removed should be covered by the Worker's Compensation Board and compensated for wages lost while their bodies have a chance to clear and eliminate toxic materials.
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Nuu-chah-nulth Tribal Council (3rd Appellant)

Mr. Paul George - Representative

The Tribal Council Representative commenced his presentation by briefly reviewing the recommendations which the Council had made to the Board in a recent past hearing where the chemical used and method of application were similar to the ones approved in the permit now under appeal. The main points included in the review and in his evidence were:

- Tribal Council is now informed each time when a permit has been issued in their area. Recommended that the same procedure apply throughout the Province.
- Public notices of permits having been issued need to contain more detail and explicit information. The treatment area and amount of chemical should be better described.
- Periods for which permits are issued should be limited to a single year.

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MacMillan Bloedel Limited (Cont.)

- Advertising of permits should occur much earlier so as to provide an adequate opportunity for any appeals to be heard prior to commencement of the spray season.
 - Posting of warning signs should be a condition imposed on all permittees as a standard clause in the permit.
 - The Environmental Appeal Board has the power to rule that any substance is toxic or dangerous notwithstanding its status insofar as registration with Agriculture Canada is concerned.
 - The Environmental Appeal Board accepts Agriculture Canada registration of a chemical as sufficient evidence of its acceptability for forestry use in spite of the evidence presented by the appellants pointing out its dangers and harmful effects.
 - It is incumbent upon the permittee to keep informed as to the most recent evidence of any chemicals' harmful effects instead of relying entirely on the registration status afforded by Agriculture Canada.
 - The Panel of the Board was referred to the submission of the I.W.A. representative for the most up to date information on the dangerous and harmful effects of the approved pesticides.
 - The training afforded pesticide applicators is not considered adequate.
 - The use of pesticides in the areas adjacent to the reserves reduces the food supply sources traditionally available to the native people of the area.
 - The use of manual/mechanical methods of alder control was clearly indicated in the area covered by the Permit particularly because of the presence of large trees and patches of small alder bushes. Under such conditions hack and squirt method of treatment would be extremely slow and much less cost efficient than manual/mechanical procedures.
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The main points contained in the evidence which Mr. Martin Edgar presented on behalf of the Tribal Council were:

1. Many trees and plants used by the native people of the area for medicinal purposes would be destroyed or rendered unusable by the chemical treatment approved under the Permit.

MacMillan Bloedel Limited (Cont.)

2. Traditional plant and animal food sources of the native people of the area will be eliminated or become sufficiently suspect to be rejected because of the grave exposure dangers associated with the application of 2,4-D in the treatment area.
 3. Native people are often unaware that they are gathering food and plant needs in areas which have previously been chemically treated. This situation creates unwanted hazards for the native people and could be eliminated if proper notice was given by the permittee.
 4. Officials responsible for the issuance of pesticide use permits should be aware of the plants and the types of uses made of them by native people before approving applications.
 5. The principal concern of the native people is the loss in food gathering sources and fear of chemical contamination.
 6. The plants used by the native people for medicinal purposes are a very real and important part of their culture and it is their desire that the areas from which the plants are harvested be kept pure and free of all contamination.
 7. The use of pesticides may have some adverse effect on the salmon caught in the Nitinat area near the treatment location. All of Nitinat River up to the falls may be exposed.
 8. The Permits under appeal represent the first time hack and squirt method of pesticide application is to be used in the hitherto uncontaminated Nitinat area near the Indian Reserves.
 9. The Permittee did not give the Board prior notice of plans to apply for a permit to spray 2,4-D in their historic food gathering areas.
 10. The cumulative effect of present and anticipated future pesticide applications in the Nitinat area poses a serious threat to and significant erosion of traditional Band food gathering areas.
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The following points were made by Mr. Ernie Chester in his testimony:

1. As an Indian artist he uses many parts of trees and plants for native carving and painting purposes. Others in the

MacMillan Bloedel Limited (Cont.)

- Tribe use grasses for weaving of baskets. The materials used for these purposes are carefully selected and essential to the process of creating authentic Indian art.
2. Experiences with other Indian Bands have confirmed his belief that the use of chemical sprays is dangerous to the health and well being of the native people and a threat to their desire to pursue a nature oriented life style.
 3. The culture of both the native people and those of the white man should be able to continue side by side without one causing damage to or questioning the others choice of life style.
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SUMMARY OF PRINCIPAL POINTS MADE BY THE PERMIT HOLDERS' REPRESENTATIVES.

The main points contained in the testimony of the representatives of MacMillan Bloedel Limited are as follows:

1. The Permittee in selecting the chemical 2,4-D Amine for use in the treatment of alder for conifer release purposes accepted the findings of Dr. Riedel of the Health Protection Branch of Health and Welfare Canada that the use of 2,4-D amine in the manner proposed by the Company in its application for a pesticide use permit would not pose a threat to the health of the general population or to the applicators.
2. The Permittee accepts that the decision to license 2,4-D in Canada has been made by officials fully qualified to do so.
3. The decision to control alder for conifer release purposes has been made in furtherance of previously established and approved management objectives.
4. The method of application under the Permit is highly selective and site specific. The hack and squirt method of treatment is the most certain and safest method of controlling alder known to Permittee.
5. In the experience of the Permittee the coppicing of the alder after the use of manual/mechanical control procedures has rendered impractical the continued use of this method.
6. The obstacles precluding wider use of manual/mechanical methods of vegetation management include high costs, worker hazards, conifer damage, and rapid resprouting.

MacMillan Bloedel Limited (Cont.)

7. The Permittee has attempted to minimize the possibility of workers being exposed to the pesticide through permeability tests on work gloves and improved applicator equipment techniques.
8. The Permittee conducts a training program which emphasizes safety factors, both human and environmental.
9. The risk to workers and chance of exposure to chemical contamination are negligible for trained, conscientious employees.
10. There is no evidence that 2,4-D can travel from alder to other plants in detectable amounts.
11. The treatment approved in the permit will cause no measureable reduction in the overall supply of berries available in the area.
12. There is no evidence that the use of hack and squirt applications to alder can harm either fish or wildlife.
13. In tests conducted for the Permittee no 2,4-D was detected in soil, twigs or litter the summer following application of the chemical.
14. The Permittee plans to post the areas treated with appropriate signing immediately following application of the chemical.
15. The applications for pesticide use permits 110-114-82/84 and 110-118-82/84 were not rushed in at the last minute. Application was made to the Administrator, Pesticide Control Act, in December of 1981 for the Franklin River Division and in January 1982 for the Cameron Division. Practice is to submit them as early as possible to ensure that all concerned have an adequate opportunity to study each request fully and to render a timely decision.
16. Careful planning and evaluation by MacMillan Bloedel Limited precedes the submission of each application for a pesticide use permit.
17. The Permittee is willing and does, in fact, supply information relative to applications made for pesticide use permits upon request. The information supplied is the most current available. Data is updated periodically.
18. The Permittee is respectful of and serious in its concerns for the food sources of and medicinal uses of plants and trees by the native people. Concerns of the Tribal Council are and will be taken into consideration as part of their regular planning processes. The effectiveness of this

MacMillan Bloedel Limited (Cont.)

objective could be enhanced through improved communication and more regular meetings to discuss specific needs and concerns.

Cross examination of the appellants' and the permit holders' spokesman and witnesses brought forth the following information:

1. The manual/mechanical method of alder control practised on the Swann farm during the August-September period had proven 100% effective. Mr. Swann had not conducted or participated in any other studies in which his methods had been tested for effectiveness in different locations.
2. The Swedish studies of the effects of pesticides on workers were not limited to 2,4-D but included a group of chemicals. The studies made no reference to the hack and squirt method of application nor to the type or degree of supervision and training given the applicators.
3. The cost effectiveness of the manual/mechanical vs the chemical methods of alder control cannot be properly evaluated at the present time due to the lack of reliable comparative cost data to use as a basis.
4. The domestic water source for the Nitinaht Reserve will not be contaminated or exposed by the treatment approved under the Permit.
5. It was not established that the use of 2,4-D by way of a highly specific hack and squirt method of application would contaminate berries harvested from the treatment area.
6. Spillage of pesticides when filling applicator's squirt bottles is practically eliminated through the use of a specially designed transfer pump.
7. All materials used or consumed in the pesticide cleaning process are kept separate by the Permittee and disposed of in an approved manner.
8. The Permittee maintains a current contingency plan for immediate implementation in the event of accident involving any exposure or spill of pesticide.
9. The effectiveness of alder control by manual/mechanical means at different seasons of the year varies unpredictably and inconsistently from year to year. Erratic coppicing patterns emerge in studies made.
10. The Permittee maintains a well prepared worker training program in pesticide handling and use.

MacMillan Bloedel Limited (Cont.)

11. Special protective clothing is not considered necessary by the Permittee for applications of 2,4-D by hack and squirt methods provided safe work procedures are followed and the proper applicator bottle is used. Protective disposable coveralls are made available for use by applicators
 12. Monitoring of sites previously treated with pesticides is not required or generally practiced by the Permittee.
 13. Workers engaged in the actual application of pesticides for the Permittee are fully informed of the type and hazards of the chemical to be used and are given prior safety training and treatment technique instruction.
 14. Containers used to transport pesticides are disposed of when empty by crushing and burial in accordance with standard instructions and regulations dealing therewith.
 15. Operational records are not kept on the health of workers who apply the pesticides as a possible means of monitoring possible long term effects.
 16. A one year prohibition on berry picking in an area treated with 2,4-D would appear to provide an adequate safeguard against possible contamination or threat to human health.
 17. No observed changes in wildlife patterns were apparent after a 2,4-D application by hack and squirt method.
 18. The Permittee does not compel its employees to engage in a pesticide application if they are adverse to doing so.
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MacMillan Bloedel Limited (Cont.)

DECISION:

The Panel of the Environmental Appeal Board has considered all of the evidence submitted to it in the hearing of the appeals against Pesticide Use Permits 110-114-82/84 and 110-118-82/84 issued to MacMillan Bloedel Limited by the Administrator, Pesticide Control Act on April 19, 1982 for the use of Forestamine - 2,4-D (P.C.P. Act Reg. No. 16995) for control of red alder for conifer release purposes by individual tree injection techniques - Port Alberni area and has concluded that the use of the chemical 2,4-D amine, when applied according to terms and conditions set out in the permit, will not cause an unreasonable adverse effect to man and/or the environment.

The Panel of the Board accepts the evidence of the Permittee that the method of application approved under Permits 110-114-82/84 and 110-118-82/84 is highly selective and site specific. In the opinion of the Panel the minute amount of the pesticide which may ooze down the stump or base of a treated alder will not pose any meaningful threat either to berries or other plants in the area or to any domestic water supply.

The Panel also concluded from the evidence that the pesticide treatment approved under the Permits would not pose any significant threat either to workers or to fish and wildlife in the area when applied by workers trained to handle the chemical in a safe and conscientious manner and who are supervised by a full time qualified applicator holding a valid pesticiied license.

The Panel accepts the evidence of the appellants that a potential risk of exposure to chemical contamination exists and that every reasonable precaution must be taken to minimize such exposure. The chemical 2,4-D, if misused, has the potential to cause adverse effects on man and the environment. The Panel was not persuaded, however, that 2,4-D when applied in the manner specified in the Permits and described by the Permittee will cause an unreasonable adverse effect on man or the environment.

The appeal is therefore dismissed.

MacMillan Bloedel Limited (Cont.)

The following recommendations of the Panel of the Board are made to the Administrator, Pesticide Control Branch and to the Permittee:

In those cases where food gathering sources of the native people may be affected by a treatment authorized under a pesticide use permit special care should be taken to ensure that they are formally made aware of the plan. The notice should include a copy of the permit and a map or plan of the areas to be treated.

The Permittee post in conspicuous places in the treatment area warning signs appropriately worded to inform anyone entering the area of the date and kind of pesticide application. The signs are to remain posted for a period of six months.



J.O. Moore
Panel Chairman
Environmental Appeal Board

August, ~~31~~²⁷, 1982