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APPEAL NO. 85/04 PES.

JUDGEMENT

In the appeal of Mr. Mel Gauthier against the Pesticide Control Act - Pesticide Use Permit 102-386-85, issued to the Minister of Transportation and Highways for an application of Primatol Liquid and Atrazine 500 (active ingredient for both herbicides is atrazine) for vegetation control on roadside shoulders and around signs and guardrails. The herbicide application is proposed to be made to 59.5 ha. on -

Route No. 1 - Perry River Bridge to the  
Glacier Park west gate;

Route No. 23 - Revelstoke to the Mica  
Dam

Route No. 31 - Galena Bay to Trout Lake

The herbicide application is proposed to be made by truck mounted spray boom and/or power hose and nozzle at 23 kg./ha. The total quantity of active ingredient would be 1368.5 kgs.

The target species would be all forms of vegetation.

APPELLANT:

Mr. Mel Gauthier, Revelstoke, B. C.

DECISION:

The Environmental Appeal Board, authorized under the Pesticide Control Act and the Environment Management Act to hear the appeal of Mr. Mel Gauthier against Pesticide Use Permit 102-386-85, issued to the Minister of Transportation and Highways for vegetation control on roadside shoulders and around signs and guardrails, has considered all of the evidence submitted to it at the hearing on June 12th, 1985, and has decided that the implementation of the program will not cause an unreasonable adverse effect to mankind and/or the environment.

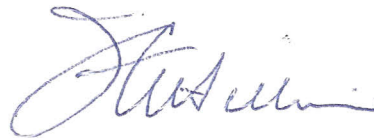
The appeal, therefore, is dismissed.

COMMENTS OF THE BOARD:

- 1) The Federal Government of Canada has the jurisdiction to register pesticides for use in Canada. It has granted the citizens of Canada, corporate or private, and provincial, city and municipal governments the right to use registered pesticides in Canada, or any part of Canada, provided they do so safely and in accordance with the pesticide label.
- 2) The Provincial Government's jurisdiction, therefore, is restricted to ensuring that when pesticides are used in British Columbia, they are used safely and in accordance with the provincial rules for their application, etc. A pesticide use permit is site specific in the conditions and terms allowed within the permit. A person appealing a permit must, therefore, prove to the Board that the permit holder will not apply, or is not capable of applying the pesticide safely and in accordance with the permit, or that the site involved will not lend itself to a safe application of the pesticide.
- 3) The substance of Mr. Gauthier's appeal was against the use of herbicides in the Revelstoke area, which, of course, is within the Federal jurisdiction. He was not interested in the terms and conditions contained within

the permit. The Environmental Appeal Board, therefore, did not hear evidence from Mr. Gauthier of a site-specific nature and, therefore, has no authority to grant his appeal.

- 4) All of the "Grounds for the Appeal" were either irrelevant or not proven.
- 5) Mr. Gauthier, in his closing argument, stated that he personally didn't give a damn about weeds growing, or about chemicals and herbicides. He said he really only cared about finding jobs for young people and the unemployed in his area. His testimony bore out this theme. This, of course, while commendable, is outside the Board's jurisdiction, and the Board has no authority to take action in this regard.



F. A. Hillier, P. Eng.,  
Chairman,  
Environmental Appeal Board

Victoria, B. C.  
June 26th, 1985

SUMMARY:

The following pages of the Judgement contain a summary of the hearing details and the principal points advanced in the testimony of all parties to the appeal.

A handwritten signature in blue ink, appearing to read 'F.A. Hillier', is written above the printed name.

F.A. Hillier, P. Eng.,  
Chairman.  
Environmental Appeal Board

June 26th, 1985

HEARING INFORMATION:

The hearing was held on June 12th, 1985, at 9:00 a.m. at the Community Centre, in the City of Revelstoke.

The Board members in attendance were:

Mr. Frank Hillier, P.Eng.	-	Chairman
Mr. James Warr, P.Eng.	-	Member
Mr. Peter Meyers, LL.B.	-	Member

Miss Shirley Mitchell, Executive Secretary to the Board, acted as recorder for the proceedings.

GROUND FOR THE APPEAL:

The grounds for the appeal are as follows:

- 1) The highways have always been maintained in past years with graders, keeping the shoulders flat and clean. These graders, paid for by the taxpayers, should be used for this job during the summer months.
- 2) The manual method of clearing grass or weeds around signs or guardrails could be done quite easily with manpower or grass cutters of various types, ranging from hand trimmers to power weed trimmers. Gravel or woodchip bedding could be used around signs instead of dirt bedding.
- 3) The small amount of vegetation growing along roadways poses no threat, or, at least, not as great a threat as the use of chemicals in tremendous dosages to kill the weeds and grass. There is a danger of these chemicals running off into waterways during rainstorms, and there is a threat to animals, fowl (birds), vegetation, and hundreds of species of insects.



- 4) The Provincial Government is allowing a tremendous dosage of chemicals into the Province through the B. C. Forest Service. No doubt, others will also be allowed to spray chemicals in increasing quantities in our local cities. Would it not be much wiser to use organic ideas, in place of chemicals?
- 5) Chemicals and herbicides are extremely high priced, so the argument of cutting costs is not true.
- 6) Many people are out of work in the Revelstoke area. Wouldn't it be better to put these people back to work, using safe organic ideas, rather than using expensive chemicals and equipment?
- 7) The B. C. Forest Service used helicopters to do its chemical spraying last year. What is the cost of a machine like this? Worst of all, are the expensive barrels of chemicals, plus the danger of killing countless vegetation, insects, wildlife, fowl (birds) needlessly, or poisoning waterways (lakes or streams).
- 8) When considering how much chemical is being used already, it could cause permanent damage very easily. We must stop it now.

**REGISTERED APPELLANT:**

The registered appellant was Mr. Mel Gauthier of Revelstoke, B. C. He appeared before the Board without legal counsel or witnesses. He made his own presentation.

RESPONDENT:

The respondent was the Ministry of Transportation and Highways, whose representatives were as follows:

Mr. Logan Stewart, LL.B. - Legal Counsel  
Barrister & Solicitor  
Ministry of the Attorney-General

Mr. A.J. Bodnarchuck -                      Witness  
Landscape Supervisor  
Region 3, Nelson  
Ministry of Transportation & Highways

Mrs. Kathy Whitmore -                      Witness  
Herbicide Program Co-ordinator  
Region 3, Nelson  
Ministry of Transportation & Highways

EXHIBITS:

- "A" The application for the permit of the Ministry of Transportation and Highways, including the two maps of the herbicide areas and the permit itself.
- "B" The Presentation of Mr. Mel Gauthier.

SUMMATION OF THE APPELLANT'S PRESENTATION:

Mr. Gauthier's evidence was as follows:

- 1) His first comments were to tell the Ministry of Highways that they were doing a wonderful job in the Revelstoke area.
- 2) He then commented, as a nature lover, on the great beauty of the vegetation and flowers growing alongside the highways. He said that this view was shared by many visitors to the Province, and he gave the comments of four people from Europe on the beauty of the highway vegetation.

- 3) He then made a correction to his first letter to the Board concerning the fact that the Pesticide Control Branch had issued the permit and not the Board.
- 4) He said that 228,000 people out of a working population of 1,400,000 in the Province are out of work (Ref - R.B. Allen - B.C. Credit Union). He further said that there were 15 percent unemployed in Revelstoke (Ref - local U.I.C. office).
- 5) He said that since none of the chemicals or herbicides are produced in Revelstoke, why should the people of Revelstoke allow other people (presumably other British Columbians and Canadians) to come into the Revelstoke area to impose their ideas on them, and put them out of work. He said we can govern our own affairs, we can do the required work, using organic methods which are much safer, and put our people back to work.
- 6) He indicated that young people in the Revelstoke area were getting discouraged with the lack of available work and with the poor wage levels in the area. He wanted to know why the Ministry of Highways could not give employment to all of these people, and give them money to fulfill their lives with all their expectations and dreams, instead of using chemicals.
- 7) He said that the present Minister of the Environment, the Honourable Austin Pelton, had authorized the dumping of 990 US gals of chemicals into Cherry Lake, near Cranbrook, in order to kill shiners and bottom fish. This was to make way for restocking of the lake with trout. He wondered why the Government couldn't hire fishermen to fish all these undesirable fish out of the lake and utilize them for fertilizers.
- 8) He said the same thing had happened at Champion Lake near Trail, B.C. Some 1,145 US gals of chemicals had been dumped into that lake for the same purpose. Again, he wondered why fishermen could not be used and fertilizer made of the fish.



- 9) He said that 4.1 lbs of cyanide had been used in the Province for the killing of wolves. He asked why the Minister didn't hire trappers and hunters to shoot the wolves. This would be very acceptable to the public and would cause no damage to other species of wildlife from eating the poisoned carcasses.
- 10) He said that there was a big chemical plant being built at Kitimat, but suspected it was probably only a warehouse.
- 11) He indicated that the U.S.A. is sending chemicals into British Columbia to poison the Province.
- 12) He said that the present government is waging a chemical war in the Province and he said that we don't want this to happen. He said that we, the people, can achieve the same results organically and safely, and, thus, put our people back to work, rather than spending tax dollars on expensive chemicals, which we don't even produce ourselves.
- 13) He concluded his evidence-in-chief by saying, there is a better way, use the organic way over chemicals and poison.

Comments Made During Cross-Examination of the Appellant:

- 1) Mr. Gauthier said that he lived on Bourcher Road, within the City limits of Revelstoke. Mrs. Whitmore said that this was not within the spray area.
- 2) Mr. Gauthier indicated that the reason for the low abundance of vegetation on highway shoulders at the present time may be the result of former applications of herbicides. He, however, felt that the main control of vegetation had come from the gravel buildup of the shoulders, which the Ministry of Highways seemed to do on various occasions.
- 3) Mr. Gauthier claimed he had obtained his costs for herbicides from local stores. He, however, could not quote any prices.

- 4) Mr. Gauthier said that he did not object to the use of pesticides and herbicides in extreme cases, such as an infestation of locust or grasshoppers, etc., particularly where there was no alternative. He only objected to the use of pesticides and herbicides, when a safer method of pest control existed.
- 5) Mr. Gauthier said that he was opposed to any use of herbicides on the highways in the Revelstoke area. On this basis, he would, therefore, not comment or show any interest in relationship to the conditions contained within the permit.
- 6) Mr. Gauthier defined the term "organic" as meaning any other method, other than chemical.

SUMMATION OF THE RESPONDENT'S PRESENTATION:

Mr. Bodnarchuck's testimony was as follows:

- 1) He said the goal of the Ministry of Highways in maintaining weed-free highway shoulders was to create quick-draining gravel shoulders which would allow good drainage of pavement surface water into the ditches; otherwise, water from the shoulders would infiltrate beneath the roadbed and cause a weakness in the ballast and surface, which would then be subject to frost damage.
- 2) He said that vegetation on the shoulders increased the organic material in the gravel which, in turn, caused water retention in the shoulders, creating soft shoulders, which were hazardous to traffic.
- 3) He said that high vegetation on the highway shoulders caused traffic to hug the road centrelines. It also hid debris, broken glass, rocks, guardrails, delineator posts and signs.
- 4) He said that when weeds accumulate on the highways, they act as a two-way conveyor belt for weed distribution into farmers' fields and back onto the highways.

- 5) He then showed the Board a series of slides to illustrate some of the problems faced by Highways in their weed control programs (i.e. broken pavement, weeds growing through the pavement, obscured stop signs, obscured guardrails, etc.) He then showed the Board some of the problems involved in using graders for weed control on the shoulders. His testimony indicated that the use of graders for this type of work was quite inadequate.
- 6) He said that machine-cutting of the weeds would have to be done at least twice during the growing period of the weeds, and, possibly, three times. He further indicated that with the miles of guardrails involved, machine-cutting of weeds was quite impractical. He indicated that Route 23 alone had about 200 shoulder kilometers, of which about one-quarter would have guardrails.
- 7) He said the shoulders of the highways are only treated with herbicides up to the break in the embankment on each side of the road.
- 8) He said that the gravel in the highway shoulders and sometimes the roadbed itself is treated with a herbicide before the pavement is laid. This is called soil sterilization.
- 9) The highway shoulders of the East Kootenays have been treated since 1979 with herbicides. This treatment is usually done in September when it is still fairly dry, or there is only light rain. This kind of rain takes the herbicide down into the root area of the weeds where it adheres to the soil particles. From experience over the years, it is noted that the herbicide does not leach sideways, and the vegetation growth outside the spray area is not affected.



Mrs. Whitmore's testimony was as follows:

- 1) She said that the highway shoulders are graded once each year. She also said that shoulders are reshaped every third year by the use of graders, making a double pass. The shoulders are rebuilt, and at this time, it is the normal practice to put down the herbicide, which is a soil sterilant. The herbicide application for this purpose, therefore, takes place only once every three years.
- 2) She said that the vehicle used for herbicide applications is a 4-ton truck, equipped with an 800-gallon tank and spray boom and nozzle. The spray pattern is 1 1/2 meters in width. The crew consists of one driver and one spray equipment operator. In addition to the 4-ton truck, there is also a buffer pickup truck which travels behind the spray truck to warn the public and protect the spray truck.
- 3) She said that the complete costs for a herbicide application, based on doing one side of the road every three years, is as follows:

Herbicide application - \$16.11 per shoulder-kilometer per year.

- 4) She said that the complete cost for a similar grading operation, which would be required twice a year to one side of the road, is as follows:

Grader clearing - \$117.88 per shoulder-kilometer per year.

- 5) She said that the complete costs for a machine-cutting operation, which would be required twice a year to one side of the road, is as follows:

Mowing - \$42.48 per shoulder-kilometer per year.

Machine-Brushing - \$42.86 per shoulder-kilometer per year.



Comments Made During Cross-Examination of the Respondent:

- 1) Mr. Bodnarchuck said that the weight of the graders by themselves during grading operation sometimes causes soft shoulders to occur.
- 2) Mr. Bodnarchuck indicated that weeds growing through asphalt paving on the highways of British Columbia were a serious problem, but that this type of problem was not extensive.
- 3) Mr. Bodnarchuck stated that he does not usually apply herbicides in populated areas. In areas of this nature, graders are used, despite their being more expensive and less efficient.
- 4) Mrs. Whitmore said that atrazine is used in agriculture to assist in the growing of corn. She also said that there is no more danger to wild animals eating treated weeds and grass along the roadway than cows eating corn that has been treated with atrazine.
- 5) Mr. Bodnarchuck said that the Ministry of Transportation and Highways had tried other methods of control of weeds on highway shoulders, such as burning, mowing and machine brushing, but none of these methods are as effective as herbicides.
- 6) Mrs. Whitmore said that when it is necessary to treat weeds around signs and behind guardrails, it is usually done with a man on the ground, using a hand-held nozzle.
- 7) Mrs. Whitmore said that to the best of her knowledge, none of her applicators or spray crews had ever been sick from the use of herbicides. She further indicated that their exposure to the chemicals was probably much higher than that of the general public.
- 8) Mrs. Whitmore said that experiments had been conducted at U.B.C. using atrazine on bees. The bees were not attracted to the atrazine-treated foliage.

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