



Province of
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Environmental Appeal Board

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APPEAL NO. 2000-PES-016(b)

In the matter of an appeal under section 15 of the *Pesticide Control Act*, R.S.B.C. 1996, c. 360.

BETWEEN: Squamish-Lillooet Regional District **APPELLANT**

AND: Deputy Administrator, Pesticide Control Act **RESPONDENT**

AND: BC Rail Ltd. **PERMIT HOLDER**

BEFORE: A Panel of the Environmental Appeal Board
Alan Andison, Chair

DATE OF HEARING: Conducted by written submissions
concluding on September 8, 2000

APPEARING: For the Appellant: Susan Gimse
For the Respondent: Dennis Doyle, Counsel
For the Permit Holder: Clifford G. Proudfoot, Counsel

STAY DECISION

APPLICATION

On June 22, 2000, S.M. Craig, Deputy Administrator, Pesticide Control Act issued Pesticide Use Permit No. 134-084-00/02 to BC Rail Ltd. authorizing the application of specified pesticides to its railway lines between mile 100 (5 miles north of Pemberton) and mile 131 (8 miles north of D'Arcy), for the purposes of ballast vegetation management.

On July 17, 2000, the Squamish – Lillooet Regional District (the "SLRD") appealed the issuance of the permit. SLRD also requested a stay of the permit, pending the Board's decision on the merits of the appeal.

On August 23, 2000, the Board issued an interim stay of the permit, valid until midnight on September 5, 2000. On August 31, 2000, the Board issued an amendment to the interim stay, extending the interim stay until the issuance of the Board's decision on the merits of the stay application. The following decision deals with the merits of the stay application.

BACKGROUND

The permit authorizes the application of Telar (active ingredient: chlorsulfuron), Karmex (diuron), and Roundup (glyphosate) to the "Ballast sections on mainline and sidings between Mile 100 (5 miles north of Pemberton) and mile 131 (8 miles north of D'Arcy)" of BC Rail's railway lines. The total treatment area comprises 35 hectares. Under the permit, the target species are "all vegetation", and the authorized application methods are truck mounted spray boom and back-pack sprayer. The permit authorizes spraying between the periods June 21, 2000 to October 31, 2002.

The permit puts several conditions on BC Rail's use of the authorized pesticides. Conditions A through C of the permit relate to public notification of the pesticide use. Within seven days of the permit issuance, BC Rail must post a copy of the permit with relevant maps at its station in Pemberton. This must remain in place until one week after all pesticide use under the permit has ceased. Within 15 days of issuance of the permit, BC Rail must publish a notice in the Pemberton Valley News. Among other things, that notice must describe the pesticides and application methods to be used, treatment sites, date of project commencement and completion, and where copies of the permit and maps may be examined. Signs advertising the pesticide use must be posted at all "well-defined pedestrian crossings" and at all road crossings prior to any "local" pesticide use. These signs must be maintained for at least one week following local treatment, and must be of sufficient size and clarity to be easily read.

Conditions H and I require that contractors conducting the project possess a current B.C. Pest Control Service Licence, and that all pesticide use be carried out by or under the direct supervision of a person with a valid B.C. Pesticide Applicator Certificate in the Noxious Weed and Industrial Vegetation category.

Other relevant conditions found in the permit are set out below:

- K. A 10 metre pesticide-free zone, measured from the high water mark, shall be maintained along all waterbodies, wet streams, surface water seepage areas and dry streams that may be seasonally fish bearing for the use of Telar and Karmex.
- L. A 5 metre pesticide-free zone, measured from the high water mark, shall be maintained along all waterbodies, wet streams, surface water seepage areas and dry streams that may be seasonally fish bearing when applying Roundup by truck mounted spray boom or back-pack sprayer.
- M. A 30 meter pesticide-free zone shall be maintained around surface water intakes or wells used for domestic or irrigation purposes.
- N. Adequate buffers shall be provided to ensure that all pesticide-free zones are maintained. The boundaries of all pesticide-free zones shall be clearly marked before any pesticide use.

- O. Pesticide use shall be conducted during daylight hours.
- P. Pesticide use shall be restricted to a maximum spray width of 2.45 metres from track centre.
- Q. Prior to commencement of the project, BC Rail shall provide their contractors with detailed maps indicating locations of all creeks, streams, bridges, and wetland areas that intersect, originate from or directly abut against the railway right-of-way. The maps shall also include the locations of all wells that are within 30 metres of where pesticide use may occur. Anyone using pesticides shall have the maps in their possession during the application.
- ...
- S. The spray vehicle shall be equipped with a shroud or similar device to prevent drift and spray droplet size shall be controlled.
- T. All pesticide use shall be carried out using low nozzle pressure (less than 275 kPa) application equipment.
- U. A railroad employee familiar with the treatment area shall be in continuous attendance during the treatment and shall ride ahead and maintain radio contact with the spray vehicle.
- V. Prior to pesticide use, all personnel involved with the project shall be provided with and have a clear understanding of the terms and conditions of the permit, any amendments and detailed maps of the of [sic] areas to be treated.

Finally, condition X includes a requirement to provide follow-up reports to the appropriate Ministry of Environment, Lands and Parks ("MELP") regional office at the end of each year that the permit is in effect. These reports must include the quantities of pesticide used (kg), the area treated (ha), and maps of the actual treatment sites.

SLRD appealed the issuance of the permit on three grounds. SLRD takes the position that the issuance of the permit conflicts with the spirit and intent of the Environmental Appeal Board decision in *BC Rail v. Deputy Administrator, Pesticide Control Act* (Appeal No. 96/26, May 30, 1997) (unreported) relating to the application of herbicides along the same section of railway. SLRD states that that decision upheld "significantly greater protective measures than contained in Permit No. 134-084-00/02, including the banning of herbicide use in an area where a number of households draw their water from surface sources and there is a concentration of population and small scale agricultural activities." SLRD also submits that the risk of surface and ground water contamination associated with the authorized pesticide spraying, and the possible health, property, and environmental risks associated with such contamination, is unreasonable, and due consideration has not been given to these potential adverse effects. Finally, SLRD

argues that effective alternative vegetation control methods that do not involve pesticide use are available for this section of railway line.

SLRD requests a stay of the permit pending a decision on the merits of the appeal.

The Deputy Administrator takes no position with respect to the stay.

BC Rail opposes the stay application.

ISSUE

The sole issue before the Panel on this preliminary application is whether a stay should be issued.

Section 15(8) of the *Pesticide Control Act* grants the Board the authority to order a stay. Section 15(8) states:

An appeal does not act as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

In *North Fraser Harbour Commission et al. v. Deputy Director of Waste Management* (Environmental Appeal Board, Appeal No. 97-WAS-05(a), June 5, 1997) (unreported), the Board concluded that the test set out in *RJR-Macdonald Inc. v. Canada (Attorney General)* (1994), 111 D.L.R. (4th) 385 (S.C.C.) applies to applications for stays before the Board. That test requires an applicant to demonstrate the following:

1. There is a serious issue to be tried;
2. Irreparable harm will result if the stay is not granted; and
3. The balance of convenience favours granting the stay.

DISCUSSION AND ANALYSIS

Serious Issue

This branch of the test has the lowest threshold. As stated in *RJR Macdonald* at pages 402-3, unless the case is frivolous or vexatious or is a pure question of law, as a general rule, the inquiry should proceed onto the next stage of the test.

SLRD submits that there is a serious issue to be tried. SLRD raises a number of concerns regarding the potential adverse effects of the permitted pesticide uses on human health and the environment, especially concerning the potential for harm to human health arising from contamination of drinking water sources. SLRD argues that BC Rail does not employ a precautionary approach, and submits that there is no indication that BC Rail's inventories of domestic water sources are complete or accurate. SLRD raises concerns about the risk of contamination of the Pemberton, Birken, and D'Arcy Acquifers if spraying occurs in advance of the appeal being

heard. SLRD also raises concerns about the possibility of harm to the environment, including fisheries in the Birkenhead River, if spraying occurs.

SLRD submits that its concerns about these possible effects are neither frivolous nor vexatious.

BC Rail submits that there is no evidence that the permitted pesticide use poses a risk to the health or safety of the public or the environment. BC Rail submits, therefore, that there is no serious issue to be tried.

The question for the Panel at this stage is whether SLRD's concerns, on their face, raise a serious issue to be heard when the Board assesses the merits of the parties' respective cases at the appeal hearing. The Panel finds that SLRD has raised issues concerning the potential adverse effects of the authorized pesticide use on human health and the environment. The Panel finds that these issues are neither frivolous nor vexatious, and are serious issues to be heard.

Having made this finding, the Panel will consider the next stage of the *RJR Macdonald* test.

Irreparable Harm

At this stage of the *RJR Macdonald* test, the applicant must demonstrate that it will suffer irreparable harm if a stay is not granted. As stated in *RJR Macdonald*, at 405:

At this stage the only issue to be decided is whether a refusal to grant relief could so adversely affect the applicant's own interest that the harm could not be remedied if the eventual decision on the merits does not accord with the result of the interlocutory application.

SLRD submits that the permit conflicts with the "spirit and intent" of the Board's *BC Rail* decision, which dealt with an appeal over herbicide use along the same section of railway that is now in issue. SLRD submits that in that decision, the Board upheld greater protective measures than are contained in the permit, including a ban on herbicide use in an area where a number of households draw their water from surface sources. SLRD submits that irreparable harm could result because the *BC Rail* decision is not reflected in the permit.

Specifically, SLRD says that the *BC Rail* decision included a condition that BC Rail complete an inventory of domestic wells and water sources between Mile 110 and Mile 114 and Mile 117 and Mile 131, prior to any spraying. SLRD states that the maps provided by the Deputy Administrator on August 2, 2000 do not show water licenses issued by MELP; therefore, residents who draw domestic water from surface water sources may not have been taken into consideration.

SLRD also submits that in the *BC Rail* decision, the Board prohibited pesticide spraying within 50 metres of a domestic water source and within 30 metres of an identifiable stream or watercourse, whereas the current permit sets 30 metre and 5

or 10 metre setbacks for wells and watercourses, respectively. In addition, the Board found that, between Mile 114 and 117 in the Birkin area, a number of households draw their water from surface sources and that the use of pesticides in this area, in particular, would result in unreasonable adverse effects. SLRD submits that these conclusions remains valid and should not be "effectively overturned" by the Deputy Administrator. SLRD says that while some important new information has been gathered since May 1997, it may be that not all water sources have been mapped, and thus a cautious approach should be taken.

SLRD also notes that in *BC Rail*, the Board indicated that an independent evaluation should be done by a party chosen by MELP. In a letter dated May 4, 2000, SLRD requested that MELP require BC Rail to identify and quantify all risks to the health and property of SLRD constituents and the environment. SLRD states that MELP responded by stating that technical experts from Environment Canada, Department of Fisheries and Oceans, and Health Units, among others, sit on the Regional Pesticide Review Committee. The SLRD argues that this should not be considered an "independent evaluation".

SLRD argues that two of the three aquifers along the permitted spray route have a "high potential for degradation" according to the Aquifer Assessments and Monitoring Unit [of MELP], but this does not appear to have been a consideration in issuing the permit. SLRD submits that irreparable harm could be done to any or all of these aquifers if spraying occurs before the appeal is decided.

Finally, SLRD states that a letter to the Deputy Administrator dated July 24, 2000, by Lyle Leo of Creekside Resources Inc., identified a number of environmental concerns arising from the proposed spraying, including the effect on fisheries in the Birkenhead River. According to SLRD, Mr. Leo indicated that many members of the Mount Currie Indian Band depend on fish from the Birkenhead River as part of their livelihood, and that 20,000 chinook salmon fry were released this year from a fish hatchery into an area close to the BC Rail line.

BC Rail submits that SLRD has failed to show that irreparable harm will result if a stay is not granted. BC Rail argues that key components of the *BC Rail* decision have been fulfilled or are inapplicable to the present appeal. BC Rail asserts that it has inventoried and mapped wells and water intakes (licenced or not) in close proximity to the right-of-way. This inventory involved polling all residents suspected of using private water systems near the right-of-way and asking them to reveal any water sources. If residents could not be contacted, a notice was left at their residence asking them to identify their water sources for BC Rail. A similar notice was provided to residents in 1996 at a meeting in D'Arcy with respect to another permit application.

Moreover, a copy of the completed map of wells and intakes was sent by the Deputy Administrator to Ms. Gimse of SLRD on September 29, 1999, for circulation in the community to identify any errors. BC Rail provided a copy of a letter dated August 14, 2000 from the Deputy Administrator to BC Rail, which confirms that, to

that date, there had been no communication from Ms. Gimse regarding errors in the map.

BC Rail submits that the pesticide-free zones applied in *BC Rail* do not apply to the present permit. BC Rail points out that that decision pertained to a brush control permit, which involves different procedures than vegetation control on ballast. Buffer zones along the sides of the right-of-way are considerably larger (40 feet from the edge of the right-of-way) for ballast treatments than for a brush treatment (15 to 20 feet). Also, the earlier decision involved different herbicides than the present permit, with the exception of Roundup.

Furthermore, BC Rail asserts that it has done detailed testing for migration of the proposed pesticides, which reveals that they are undetectable in the groundwater of monitoring wells located in pervious soils as close as 5 and 10 metres from the track. In support, BC Rail submitted a chart showing the dates, locations, and results for these monitoring wells.

BC Rail argues that there has been adequate independent evaluation of the permit for any health and property risks. BC Rail states that it retained a consultant, Technology Resource Inc., to assess the soil conditions between Miles 113.85 and 123.65 (near D'Arcy) for pesticide mobility. In the resulting report, dated February 15, 2000, the consultant concludes that "[s]oil conditions are favourable for the adsorption of herbicide applied to the ROW [right-of-way]."

BC Rail also notes that the permit was reviewed by the Chief Environmental Health Officer of the South Central Health Unit. The Officer did not object to the permit as long as its pesticide-free zones were maintained. Furthermore, BC Rail submits that the review conducted by the Regional Pesticide Review Committee, which includes experts from various federal and provincial agencies, would identify any potential health or environmental effects associated with the permit.

Additionally, BC Rail provided a report by Dr. Frank Dost, a toxicologist with knowledge of pesticides. BC Rail emphasizes Dr. Dost's conclusions that the probability of an adverse effect on public health from the application of Roundup to the railway right-of-way is "virtually zero". He further concludes that the use of Karmex on the railway ballast "does not represent a discernable carcinogenic risk to the public, and the use of Telar as specified "poses no risk to the public." He also states that the use of Roundup and Karmex, as permitted, will cause "no direct effect" on any forms of wildlife, while Telar will have "no effect" on "lower organisms". Regarding the possible effects of the pesticides on wells, water intakes, and recharge areas within 30 metres of the railway corridor, he states as follows:

The permit specifies that a pesticide-free zone will be maintained within 30 metres of surface water intakes or wells. Once applied, Roundup will not migrate significantly in soil and is highly unlikely to reach, let alone affect domestic supplies...

Once applied, Karmex will not migrate significantly in soil and is highly unlikely to reach, let alone affect domestic supplies...

The 30 metre restriction is more than adequate protection for water supplies [with regard to Telar].

Dr. Dost concludes by stating that use of the pesticides according to the terms of the permit will have no effect on aquifers.

Given the evidence above, BC Rail submits that there has been sufficient independent review of any health or environmental risks associated with the permit.

Regarding the lack of seasonal restrictions on spraying, BC Rail submits that "generally" Roundup "would only be applied when conditions are dry." BC Rail maintains that Karmex and Telar require water to be activated and "can safely be applied in all conditions but heavy rain."

BC Rail submits that SLRD has provided no evidence that there may be irreparable harm to aquifers as a result of the permitted pesticide use. BC Rail notes that the Board previously rejected the proposition that herbicides applied to railway ballast would contaminate aquifers, in *City of Parksville et al. v. Deputy Administrator, Pesticide Control Act* (Appeal No. 98-PES-07(c), April 8, 1999) (unreported). BC Rail argues that the Board is now faced with the same situation, and that the present evidence shows that there will be no effect on aquifers.

Regarding concerns about the effect of the permitted pesticide use on fisheries in the Birkenhead River, BC Rail asserts that it has treated vegetation near this river six times since 1976, and there has never been a spill, accidental over-spray, or any other incident that has put watercourses at risk. During this period, neither the Mount Currie Indian Band nor SLRD has notified BC Rail of any concerns respecting the Birkenhead fishery. Thus, BC Rail submits, there is no evidence to substantiate concerns over the fishery.

In reply, SLRD submits that BC Rail has not indicated the response rate to its polling in compiling the inventory of wells and intakes, and as such, there is no assurance that all domestic water sources have been mapped. SLRD states that it provided no feedback to the maps provided to Ms. Gimse because she was not told who the maps should be provided to for review or when the deadline was for providing comments.

SLRD also submits that there is scientific debate about the impacts of herbicides, and argues that BC Rail has provided no conclusive evidence that the pesticides will be used safely. In response to Dr. Dost's report, SLRD cites the Board's findings in the *BC Rail* decision as well as the Board's stay decision in *City of Parksville et al. v. Deputy Administrator, Pesticide Control Act* (Appeal No. 98-PES-07(a), October 5, 1998) (unreported). SLRD submits that in the *City of Parksville* decision, the Board granted a stay of a pesticide use permit despite testimony from Dr. Dost as to the safety of Roundup for use on the track ballast. SLRD asserts that the

environmental concerns in this appeal are similar to those considered in that stay decision. SLRD maintains that since the communities in the area to be sprayed do not have water treatment facilities and rely on ground water sources for their water, irreparable harm will arise if herbicides contaminate their water supply.

SLRD submits that the results of BC Rail's ground water monitoring study are not conclusive of the conditions in the spray area, as the tests were conducted in the Cheakamus River valley over 80 kilometres away from the spray area. In addition, SLRD maintains that most of the samples were taken 41 to 314 days after pesticide treatment. Furthermore, the results of the soil study conducted by Technology Resources Inc. are inconclusive, according to SLRD, because the soil's adsorptive capacity is highly variable throughout the spray area. SLRD notes that the report by Technology Resources Inc. indicates that soil stratigraphy in the test pits is highly variable, and acknowledges that sand and gravel are less likely to adsorb herbicides than silt and clay. SLRD submits that the report's conclusions are based on the soil type only, and points out that adsorptive capacity also depends on soil depth, temperature, hydraulic conductivity, and microbial activity.

In sur-reply, BC Rail submits that although a stay was granted in the *City of Parksville* appeal, the permit was ultimately upheld subject to some "minor" amendments which were unique to the facts of that case (Appeal No. 98-PES-07(c), April 8, 1999) (unreported). Moreover, BC Rail maintains that the conditions in the Cheakamus area are far less favourable for pesticide use than the area covered by the permit. BC Rail submits that the results of the Cheakamus study represent a "worst case" scenario. BC Rail also disputes SLRD's assertion that the soil study by Technology Resources Inc. is "inconclusive". BC Rail points out that the study does discuss microbial decomposition of herbicides as well as soil depth.

BC Rail submits that the permitted pesticides have been registered by Health Canada and proven safe when applied in accordance with their labels. BC Rail notes that the permit does not amend any of the labelled instructions for these pesticides, and argues that SLRD has submitted no technical or scientific evidence in support of its concerns.

BC Rail submits that SLRD's failure to provide comments on the accuracy of the maps that it was provided with should not be grounds for issuing a stay, as SLRD has had ample time to respond. Finally, BC Rail states that all households participated in the polling, either personally or by sending in forms as requested.

The question for the Panel at this stage is whether the applicant has shown that its interests in protecting ground water supplies and the natural environment in the area to be sprayed would be irreparably harmed if a stay is not granted.

With regard to the applicant's concern that the permit conflicts with the spirit and intent of the 1997 *BC Rail*, the Panel notes that it is not bound by the Board's previous findings. Each case must be considered on its own merits, based on the relevant facts and circumstances. The Panel has considered that the 1997 decision pertained to vegetation control along the railway right-of-way, whereas this permit

is limited to vegetation control on the track ballast and spraying is restricted to a maximum width of 2.45 metres from the track centre under permit condition P. That decision also dealt with different pesticides than the present appeal, with the exception of Roundup, and addressed some sections of rail line which are not in issue in this appeal.

In addition, the Panel accepts, for the purposes of this application, that BC Rail has completed an inventory of domestic water sources in the area of the permit, and has submitted the permit to independent review. BC Rail's evidence is that, in preparing its inventory, it received responses from all households polled in the permit area. Although SLRD asserts that there is no guarantee that BC Rail has complete data, SLRD has provided no clear evidence that the data is incomplete. As for independent reviews, the evidence shows that the Chief Environmental Health Officer of the South Central Health Unit did not object to the permit as long as its pesticide-free zones were maintained. The permit was also reviewed by the Regional Pesticide Review Committee, which includes representatives from federal as well as provincial agencies, for any potential adverse health or environmental effects. Without prejudice to the merits of the appeal, the present evidence shows that the permit has been reviewed by at least two independent bodies. As a result, new information has become available since that decision, and was available prior to the issuance of this permit. Therefore, the Panel finds that the 1997 *BC Rail* decision is not directly applicable in considering the present stay application.

In deciding this preliminary matter, the Panel is not in a position to judge the merits of the parties' technical or expert submissions regarding the possible adverse effects of the permitted pesticides on human health or the environment. That is better decided after the Board has the benefit of the evidence presented during the hearing of the merits of the appeal.

With respect to this application, the Panel finds that the labels of these pesticides clearly warn against applying them to water bodies, suggesting that they may adversely affect water quality and aquatic life. However, the permit clearly does not allow for such an application. Although the adequacy of the permit conditions respecting applications near surface water bodies and aquifers is in issue, SLRD has provided no evidence to substantiate concerns over the Birkenhead fishery, nor has it provided evidence of risk to any identifiable water body or water source. Thus, the applicant has not satisfied the Panel that it will suffer irreparable harm if these pesticides are applied according to the terms of the permit before a decision on the merits of the appeal is issued.

Based on the above findings, the Panel concludes that SLRD has provided insufficient evidence that use of the pesticides according to the conditions in the permit, before the merits of the appeal are decided, will cause irreparable harm to the interests of SLRD.

Having made this finding, the Panel finds that it is not necessary to consider the balance of convenience with respect to SLRD. However, the Panel will proceed to do so for greater certainty.

Balance of Convenience

At this stage of the *RJR Macdonald* test, the Panel must determine which of the parties will suffer greater harm from the granting or refusal of the stay application. The potential for irreparable harm to the SLRD, as outlined above, must be balanced against the harm that could be suffered by BC Rail if the stay is granted.

SLRD submits that it will suffer greater harm if a stay refused than BC Rail would suffer if a stay is granted. SLRD refers to the *BC Rail* decision, where it states that:

(a) It is not essential that the Appellant [BC Rail] use pesticides to rid the right of way of unwelcome vegetation. The Appellant can use a mechanical method as it has done for the previous many years it has been operating this railway.

SLRD submits that the potential harm to the water quality of unmapped surface sources of domestic water and three aquifers and the resulting risks to human health and the environment, as outlined above, "clearly outweigh" the benefit to BC Rail of commencing spraying before the appeal is heard.

BC Rail maintains that, for the reasons it provided above, there will be no negative effects on human health or the environment from the permitted pesticide use. In fact, BC Rail submits that it and the public will suffer irreparable harm if spraying does not commence immediately. BC Rail submits that the danger to public safety arising from uncontrolled vegetation outweighs any potential risk to human health or the environment associated with the permitted pesticide use. BC Rail asserts that vegetation in the ballast degrades the integrity of the track bed and increases the potential for derailment. It also hinders safety inspections of the track, restricts movement of switches, presents a tripping hazard to employees, and increases the risk of fire along tracks.

BC Rail asserts that there is no alternative to the use of pesticides to control vegetation in the ballast area, and it knows of no other railway that has successfully used alternative methods to do so.

The Panel finds that determining the balance of convenience in this matter requires weighing the potential harm to SLRD if spraying were to take place, versus the potential harm to BC Rail if spraying is stayed pending a decision on the merits of the appeal.

As noted above, the Panel has found that SLRD will not suffer irreparable harm if BC Rail is permitted to spray the pesticides according to the permit before the appeal is decided. At this stage the Panel is not prepared to accept BC Rail's evidence as conclusive that there will be no negative effects whatsoever on human health or the environment from the permitted pesticide use. As noted above, the Panel is not presently in a position to assess the credibility of BC Rail's expert and technical evidence.

However, the Panel accepts the evidence of BC Rail that vegetation in the ballast degrades the integrity of the track bed, increases the potential for derailment, hinders safety inspections of the track, restricts movement of switches, and presents a tripping hazard to employees. The permit was issued to avoid such consequences.

In conclusion, the Panel finds that SLRD has not demonstrated that the potential for harm to the environment or human health if a stay is not granted outweighs the potential for derailment or injury arising from an inability to apply pesticides, if a stay is granted.

DECISION

The Panel has carefully considered all of the evidence before it, whether or not specifically reiterated here. The application for a stay of the permit is denied.

Alan Andison, Chair
Environmental Appeal Board

September 14, 2000