



Appeal No. 83/10 PES

D E C I S I O N

Appeal of the Lillooet Tribal Council
against the issuance of Pesticide Use
Permits 124-8-83/84 and 124-10-83/84,
issued to Canadian Forest Products Ltd.

The Panel of the Environmental Appeal Board has considered all of the evidence submitted to it in the appeal hearing on Pesticide Use Permit Numbers 124-8-83/84 and 124-10-83/84, and has decided to add or amend the following conditions to both permits:

1. The permit holder shall notify the Lillooet Tribal Council of the intended dates of the herbicide application.
2. The application shall be limited to times when the wind speed is less than 8 km/hr.

The Panel has also decided that with the above-noted additional conditions, the implementation of the program will not cause an unreasonable adverse affect to man and/or the environment, and on this basis, the appeals are hereby dismissed.

A. J. Lynch
Panel Chairman

February 15, 1984



APPEAL NO. 83/10 PES

J U D G E M E N T

PERMITS NOS. 124-8-83/84 issued to Canadian Forest Products Ltd. for an application of not more than 3.0 kg. of a.i. per hectare of Esteron 600 containing 2,4-D Ester (179 hectares), and 124-10-83/84 issued to Canadian Forest Products Ltd. for an application of not more than 4.0 kg. of a.i. per hectare of Guardsman 2,4-D containing 2,4-D Amine (46 hectares). Permit 124-8-83/84 is for deciduous brush control for conifer release purposes in the Pemberton, Lillooet Lake area, and Permit 124-10-83/84 is for desiccation of deciduous brush in preparation for burning.

APPEAL:

The appeals were taken against the application of Esteron 600 (2,4-D Ester) and Guardsman 2,4-D (2,4-D Amine) by aerial (helicopter) application because of the appellant's expressed concerns of adverse consequences to fish, game and food gathering, and the possibility that the application will cause an unreasonable adverse effect which will result in damage to man and/or the environment.

HEARING INFORMATION:

The hearing was held on September 13, 1983, in the Mission Recreation Centre, Mission, B. C. before a Panel of the Environmental Appeal Board.

The members of the Panel in attendance were:

Mr. A.J. Lynch, M.P.H.	Panel Chairman
Dr. N. Schmitt, M. D.	Member
Dr. A.J. Renney, Ph.D.	Member

Miss Shirley Mitchell, Executive Secretary to the Board, acted as the Official Recorder.

REGISTERED APPELLANT:

The registered appellant was the Lillooet Tribal Council represented by:

Legal Counsel:

Ms. Charlene Ostrove
Ms. Louise Mandell

Witness:

Bridge River Band
Chief Saul Terry

Samahquam Band
Mr. Henry Peters
Mr. Gerald Peters
Mr. Harold Peters
Ms. Margaret Peters
Ms. Gwen Therrien

Mount Currie Band
Ms. Shirley Wallace
Ms. Priscilla Ritchie

Douglas Band
Chief George Gabriel

LIST OF EXHIBITS:

1. Submission by J. Z. Bako, Canadian Forest Products Ltd., entitled "Pesticide Use Permit No. 124-8-83/84 Brushing and Weeding for Conifer Release, Spring Creek Camp.
2. Map submitted by Canadian Forest Products Ltd. showing proposed spray areas.

SUMMARY OF THE APPELLANT'S PRESENTATION (in part)

1. The Lillooet Tribe consists of eleven bands, comprising a population of approximately 3,000 persons, and occupies land in the Lillooet and Harrison Lakes areas, adjacent to the proposed spray areas.

2. The concerns with the spray program are based on the traditional life-styles of the people, its effect on their ability to hunt, fish, and gather food and herbs in the areas.
3. Two areas that are of particular concern to the appellant are the area west of Lillooet Lake and the area around Sloquet Creek. The land lying below the 124-8-83/84 project area consists of a narrow fertile valley. A creek flows through the project area, which is used for irrigation and drinking. The creek flows into a lake used for fishing. The land included in permit 124-10-83/84 is adjacent to Sloquet Creek.
4. The loss of traditional fishing grounds should not be viewed in economic terms or related to cost/benefit analysis of the spray program. The value to the Lillooet Tribal Council exceeds the economic value.
5. Consideration should be given to manual brushing techniques, and the appellant would be agreeable to working with the permit holder on this.
6. In response to cross-examination by the Panel, the appellant's witnesses described the characteristics and uses of the individual spray areas. Some of the comments were:
 - a) C.P. 6:
 - approximately 12 miles from Mt. Currie reserve.
 - no one permanently residing near the area.
 - summer use, picking berries, wild cherry bark and camping.
 - b) C.P. 7 and 8:
 - areas used for hunting
 - harvesting mushrooms and wild fruit.

d) C.P. 4:

- Tuwasus Creek flows through the spray area. A much used herb grows on the creek banks.

c) C.P. 5:

- closest to the Smith Farm, which is periodically inhabited and contains arable land for farming.
- a creek running through the spray area is used for irrigation.

SUMMARY OF THE PERMIT HOLDER'S PRESENTATION (in part):

The following persons appeared as representatives of the permit holder, Canadian Forest Products Ltd.

Mr. J. Z. Bako, R.P.F.	-	Spokesman
Mr. M. Buchanan	-	Witness
Mr. O. Thomas	-	Witness

1. The permit holder will not be proceeding with herbicide application on Permit #124-10-83/84.
2. Fixed wing spraying of herbicide, hack and squirt application, or no treatment, are considered to be unreasonable treatment alternatives. Hack and squirt is considered impractical due to the large number of small stems.
3. The reasonable alternatives considered were manual brushing, ground spray and helicopter spray of herbicide. For the subject areas, the helicopter spray is the most cost-effective. In many areas, manual brushing is not practical due to terrain, and the potential damage to conifers.
4. The creek that runs through the Smith farm is at the north end of C.P. 5, and would be protected by the buffer strip.
5. Road access to C.P. 6 and 7 is now blocked by a stream washout. The permit holder agreed to not spray below the road in C.P. 7.

6. The only creek in C.P. 8 is dry in the summer period.
7. The spray program will be performed in the late summer, when there is the least probability of rainfall, the lowest flow period, and the protection of a 10-meter pesticide free zone and a 100-meter buffer zone.

DECISION:

The Panel of the Environmental Appeal Board has considered all of the evidence submitted to it in the appeal hearing on Pesticide Use Permit Nos. 124-8-83/84 and 124-10-83/84, and has decided to add, or amend the following conditions to both permits:

1. The permit holder shall notify the Lillooet Tribal Council of the intended dates of the herbicide application.
2. The application shall be limited to times when the wind speed is less than 8 km/hr.

The Panel has also decided that with the above-noted additional conditions, the implementation of the program will not cause an unreasonable adverse effect to man and/or the environment, and on this basis, the appeals are hereby dismissed.

In coming to this decision, the Panel takes note of the following:

The permit holder will voluntarily withdraw Permit No. 124-10-83/84, and has stated that herbicide will not be applied pursuant to that permit.

The Panel appreciate the concern of the members of the Lillooet Tribal Council with regard to their traditional activities, and also appreciate the need of Canadian Forest Products Ltd. to carry out their forest management responsibilities in an efficient manner. The Panel accept the evidence that 2,4-D, like most other chemicals, is potentially

a toxic substance, and when misused, may have acute and chronic adverse effects. Human exposure to the chemical, therefore, should be minimized and every effort should be made to apply it as sparingly and discriminately as possible.

With the restrictions and stipulations in the permit, especially the buffer zones for the protection of water bodies, the possibility of significant contamination of water bodies and, hence, fish stock, would appear to be virtually non-existent.

In considering the possible contamination of food sources, the Panel notes that 2,4-D breaks down rapidly in soil. Although the Panel does not expect any contamination of berries or other wild plants, it notes that 2,4-D is used in the cultivation of food crops, and, in fact, the Federal Food and Drug Directorate permits a maximum residue limit for citrus fruit and asparagus of 2 and 5 parts per million, respectively. With regard to the concern of wildlife, it is true that 2,4-D does not accumulate in the mammalian body, and any traces of 2,4-D that may be ingested are rapidly excreted.

The Panel regrets that more communication between the permit holder and the Lillooet Tribal Council did not exist prior to application for the permits. In regard to the additional permit conditions for notification, the Panel wishes to point out that this should not be interpreted as meaning that the Panel considers it to be a hazard for persons to be present in the sprayed area; rather, it permits members of the public to make an informed decision as to whether they wish to enter the area.



A. J. Lynch
Panel Chairman
Environmental Appeal Board

February 15, 1984