



Environmental Appeal Board

APPEAL NO. 95/04(a) - PESTICIDE

In the matter of an appeal to the Environmental Appeal Board under section 15 of the *Pesticide Control Act*

Pesticide Use Permit No.
312-021-95/97
(Slocan Forest Products Ltd.)

BETWEEN:	Robson Alternatives to Pesticides	APPELLANT
AND:	Deputy Administrator Pesticide Control Act	RESPONDENT
AND:	Slocan Forest Products Ltd.	PERMIT HOLDER

STAY ORDER

This is an interim decision regarding an application for a Stay of permit of the Deputy Administrator of Pesticide Management dated July 6, 1995.

BACKGROUND

On July 6, 1995, the Respondent issued a multi-year permit to Slocan Forest Products Ltd. (Slocan) to apply the Herbicide "Vision" in the Valemont area of British Columbia for the years 1995, 1996, and 1997. The permit was issued for the purpose of forestry brushing and weeding and was to be directed at the following plant species: false azalea, fireweed, alder, thimbleberry, grass, and devil's club. The method of application was described as aerial helicopter-conventional or drift control boom or backpack sprayer.

On August 3, 1995, the Appellant filed an appeal against the above noted permit. As part of the notice of appeal the Appellant requested that a stay be placed against the permit pending the hearing of the appeal. On August 11, 1995, the parties were notified that a request for stay had been received by the Board and that the Board would accept comments on the stay request until August 25, 1995.

The authority of the Board to grant a stay in a Pesticide appeal is derived from section 15 (5) of the *Pesticide Control Act*, which provides:

(5) An appeal does not act as a stay unless the board directs otherwise.

REVIEW OF SUBMISSIONS

Appellant

The Appellant has applied for a stay as part of their appeal application, but gives no grounds beyond those given for the appeal. These include:

- 1) The Ministry ignored its own scientific study;
- 2) The public is not adequately protected by posted notices;
- 3) The permit does not provide sufficient information on the extent to which the pesticides will impact upon the environment;
- 4) The application did not include all active chemicals in the pesticides and consequently the permit couldn't have been properly evaluated; and
- 5) The guidelines for pesticide free zones (PFZ) are too vague and should be wider because of the steep mountain topography. It causes airflow requiring a larger PFZ to prevent intrusion of pesticides.

Slocan

Slocan opposes the application for a stay. Specifically, it is concerned that delays in current spraying (due to weather and other unfavourable conditions) might prevent it from completing its spray programme for this year before the stay is granted. If this were the case it would result in "substantial crop tree damage due to snow/vegetation press", and increased tree mortality. In addition, it would result in increased treatment costs next year. Finally, the company noted that it had met all of its obligations in the public consultation process and other requirements, and felt that it would be unfair for a stay to be imposed. However, if a stay is granted, Slocan requests that it not take effect until after September 8, 1995 - after which time it expects the competing vegetation will no longer be treatable.

Respondent

The Pesticide Management Branch notes that Slocan intended to commence treatments within a few days of August 18, and concluded that a stay granted after the end of August would probably not significantly impact the forest company. Accordingly, the Branch supports the granting of a stay, effective after that time.

DISCUSSION

In deciding whether a stay application should be approved the usual common law principles apply. Balance of convenience and irreparable harm to the parties are weighed. (*Administrative Law in Canada*, p. 140, 1991 Butterworths)

After reviewing the submissions it is apparent that Slocan may suffer particular harm if they are not allowed to proceed with their operations under the permit. In particular there could be substantial harm to the company's silviculture operation.

In addition it appears that Slocan may suffer substantial economic loss should the stay be granted prior to September 8, 1995.

The general comments from the Appellant do not provide the Board with any evidence of irreparable harm should a stay not be granted. However, the stay is supported by the Respondent and it is evident that Slocan would not be negatively impacted by a stay after September 8, 1995.

Given the above it is the opinion of the Board that the balance of convenience favours the application for a stay effective September 9, 1995.

DECISION

The Board hereby issues a stay against the above noted permit effective September 9, 1995, pending the appeal hearing into this matter.

Judith Lee, Vice-Chair
Environmental Appeal Board

August 30, 1995