

1994 ABEAB 9

Appeal No. 94-006

November 10, 1994

IN THE MATTER OF Sections 84, 86, 87, 91 and 92 of the *Environmental Protection and Enhancement Act*, (S.A. 1992, ch. E-13.3 as amended);

-and-

IN THE MATTER OF appeals filed by six individuals in the City of Calgary with respect to the approval issued by or on behalf of the Director, Chemicals Assessment and Management Division, Alberta Environmental Protection to the City of Calgary Parks and Recreation Department to apply pesticides within 30 horizontal metres of an "open body of water".

Report and Recommendations

Cite as: Six citizens of the City of Calgary v. Director, Chemicals Assessment and Management Division, Alberta Environmental Protection.

PRE-HEARING MEETING BEFORE: Max A. McCann, Member

APPEARANCES:

Appellants - Maria Azpiazu, Claudia Bosch, Fay Katay, Lynn Keating and Raphael Thierrin

Intervenors - Gary Leadbetter, James Ozon, David Swann and Susan Watson *et al.*

City of Calgary, represented by Timothy Haufe, Esq.

Director, Chemicals Assessment and Management Division, represented by William McDonald, Esq.

I. FACTUAL BACKGROUND

On July 7, 1994, Mr. W. Jared Brookes filed a notice of objection with the Board regarding the decision of the Director of the Chemicals Assessment and Management Division, Alberta Environmental Protection (the Director) to issue Approval No. 94-SU-093 (the Approval) to the City of Calgary (the City) in response to Application No. RS008236. This Approval authorized the City to apply pesticides within 30 horizontal metres of open bodies of water, as defined in the Approval, under specified conditions. The Director issued the Approval to the City on June 21, 1994, and notice of his decision was advertised on June 30, 1994 in a local newspaper.

From July 14 to July 30, 1994, the Board received six further appeals from: Ms. Fay Katay, Mr. Jack Locke, Ms. Claudia Bosch, Mr. Raphael Thierrin, Ms. Lynn Keating and Ms. Maria Azpiazu, all of the City of Calgary. The seven appellants objected to the risks to the health of humans and wildlife, the lack of consideration of alternatives to chemical pesticides, the inadequacy of warning signs when chemicals are applied, and the perceived lack of opportunity for public input into the City's pest control program.

The Board notified the Director and the City that the appeals were filed, and it wrote to all parties asking several questions including: (1) how the appellants were directly affected by the issuance of the Approval, and (2) whether they were aware of any studies, scientific or otherwise, that link or otherwise discuss the application of pesticides with short and long-term effects on human health. All parties were requested to provide their responses to the Board by August 10, 1994. Only one, Mr. Jack Locke, failed to respond and his appeal was dismissed.

The Board reviewed the replies received from the other parties and on September 21, 1994 determined to proceed with an oral hearing. The hearing date was set for November 14, 1994, and notice of the hearing was published in a local newspaper on September 23, 1994.

Notice of the scheduled hearing stated that interested persons could submit applications to the Board to make representations at the oral hearing. The Board received four written requests to make such representations from the following: Mr. Gary Leadbetter, Mr. James Ozon, Dr. David Swann and Ms. Susan Watson *et al.* These requests were accepted by the Board and the four were added as parties to the appeal.

The Board scheduled a pre-hearing for October 27, 1994 and all parties were advised in writing of the date, time, and location of the meeting.

II. THE PRE-HEARING MEETING

The pre-hearing meeting, which was held on October 27, 1994 in Calgary, was called by the Board for the purpose of attempting to facilitate the resolution of this appeal or, failing that, to make arrangements for the oral hearing by determining all matters set out in s. 13 of the Environmental Appeal Board Regulation. The Board invited two representatives from each party to participate in this pre-hearing meeting, and the attendance at this meeting was as follows:

- Ms. Maria Azpiazu;
- Ms. Claudia Bosch;
- Ms. Fay Katay;
- Ms. Lynn Keating;
- Mr. Raphael Thierrin;
- Mr. Gary Leadbetter,
accompanied by Mr. Don Munroe;
- Mr. James Ozon;
- Dr. David Swann,
accompanied by Ms. Marion Wooden;
- Mr. Cal Clark and Mr. Michael Vander Meulen,
representing Ms. Susan Watson *et al.*;
- Mr. Jock McIntosh and Mr. William McDonald;
representing the Director, Chemicals Assessment and Management Division,
Alberta Environmental Protection; and
- Mr. Todd Reichardt and Mr. Timothy Haufe,
representing the City of Calgary.

Following a brief introduction and a description of procedural matters, all parties present were asked to make presentations.

The appellants were concerned that the City of Calgary did not appear to consider alternative pest control techniques and that it lacks an integrated pesticide management plan. They pointed out that several Canadian cities, including Waterloo, Vancouver and Port Coquitlam, have implemented plans to reduce the use of pesticides and they felt that Calgary should join this trend.

The City was questioned regarding the opportunity for public input and the monitoring of pesticides to determine their effectiveness on the target species and their impact on other species. It was recommended that the City develop a holistic approach to its policies regarding pesticide use. An underlying concern was the effects of chemical pesticides on the health of humans and animals.

A number of specific issues were raised, including: the form and timing of signage in advance of spraying; the classification of certain weeds as "noxious"; the toxicity of the chemical "diazinon"; the use of fungicides on golf courses; and the need to exterminate Richardson ground squirrels.

The City of Calgary Parks and Recreation Department responded by informing the appellants that the City has a Natural Areas Management Plan and that there is an Environmental Advisory Committee which makes recommendations to City Council on environmental matters.

The representative of the Director of Chemicals Assessment and Management explained the province's role in regulating the use of pesticides and how it relates to the federal government's responsibility for the safety of those chemicals, including testing, licensing and labelling.

After all parties had made their presentations and answered questions, which proved to be informative and constructive, they agreed to enter into mediation in an attempt to resolve the concerns in the notices of objection. The discussion that followed resulted in the resolution of this appeal as set out in section III of this document.

Mr. W. Jared Brookes, the original appellant in this matter, was not present at the pre-hearing meeting and his appeal has since been dismissed by the Board.

**III. RESOLUTION OF APPEAL NO. 94-006
REGARDING APPROVAL NO. 94-SU-093**

All parties to the appeal have agreed as follows:

1. THAT the representatives of the City of Calgary agree to recommend to their Board of Commissioners to direct that the Parks and Recreation Department include in its pest control program review an examination of:

- (a) the development of a comprehensive, written pest management plan including specification of target species and particular control techniques governing conditions and ongoing program evaluation;
- (b) the goal of progressive reduction in pesticide use;
- (c) alternative control techniques;
- (d) use of fungicides on City golf courses;
- (e) improved public notification, including general public notice, better signage, adequate posting before and after pesticide application, larger signs and more information on health effects, pest management strategy and the specific chemicals to be used;
- (f) including in approval applications information on target species and particular chemicals to be used to control each species, and information on alternative control techniques strategy; and
- (g) a formal public consultation process regarding pesticide use.

2. THAT the Department of Alberta Environmental Protection agrees to review the acceptability of the continued use of the chemical "diazinon".

3. THAT the Department of Alberta Environmental Protection agrees to review the appropriateness of approving use of pesticides for which no federal drinking water or surface water quality guidelines exist.

4. THAT the appellants hereby agree to withdraw their Notices of Objection.

RESOLUTION AGREED TO BY:

“original signed by”

City of Calgary
represented by Mr. Timothy Haufe

Date: October 27, 1994

“original signed by”

Director of Chemicals Assessment and Management
represented by Mr. Jock McIntosh

Date: October 27, 1994

“original signed by”

Calgary Parks and Recreation
represented by Mr. Todd Reichardt

Date: October 27, 1994

“original signed by”

Ms. Susan Watson et al.
represented by Cal Clark

Date: October 27, 1994

“original signed by”

Ms. Maria Azpiazu

Date: October 27, 1994

“original signed by”

Ms. Claudia Bosch

Date: October 27, 1994

“original signed by”

Ms. Fay Katay

Date: October 27, 1994

“original signed by”

Ms. Lynn Keating

Date: October 27, 1994

“original signed by”

Mr. Gary Leadbetter

Date: October 27, 1994

“original signed by”

Mr. James D. Ozon

Date: October 27, 1994

“original signed by”

Dr. David Swann

Date: October 27, 1994

“original signed by”

Mr. Raphael Thierrin

Date: October 27, 1994

IV. RECOMMENDATIONS

The Board recommends that the Minister of Environmental Protection confirm the decision of the Director of Chemicals Assessment and Management in Approval No. 94-SU-093, subject to the Resolution contained herein.

Further, with respect to section 92(2) of the Act, the Board recommends that copies of this Report and Recommendations and of any decision by the Minister be sent to the following parties:

Ms. Maria Azpiazu;

Ms. Claudia Bosch;

Mr. W. Jared Brookes;

Ms. Fay Katay;

Ms. Lynn Keating;

Mr. Raphael Thierrin;

Mr. Gary Leadbetter;

Mr. James Ozon;

Dr. David Swann;

Ms. Susan Watson *et al.*;

the Director, Chemicals Assessment and Management Division,
Alberta Environmental Protection; and

the City of Calgary.

Dated November 10, 1994, at Edmonton, Alberta.

“original signed by”

Max A. McCann, Member

ORDER

I, Ty Lund, Minister of Environmental Protection, make the following Order:

I confirm the decision of the Director of Chemicals Assessment and Management, subject to the Resolutions listed above and the Report and Recommendations of the Environmental Appeal Board. If any further order is needed, it is either set out below or attached.

I reverse the decision of the Director of Chemicals Assessment and Management and make a further order as set out below or attached.

I vary the decision of the Director of Chemicals Assessment and Management and make a further order as set out below or attached.

Dated at Edmonton this 16 day of November 1994.

“original signed by”

Honourable Ty Lund
Minister of Environmental Protection

Attachments

No attachments