

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeals of

A-1 SPRAY SERVICES, INC. AND
JEROME G. SANFORD AND WILLIAM J. REX

FILE NOS. W-80-008
W-80-009

from an environmental determination
by the Department of Community
Development

Introduction

The appellants, A-1 Spray Services, Inc., Jerome G. Sanford and William J. Rex, appeal declarations of significance issued by the Department of Community Development for proposed treatment of certain waters with an herbicide (Endothall) for the control of Eurasian watermilfoil.

The appellants exercised their right to appeal pursuant to Section 20 of the SEPA Ordinance (105735, as amended).

Parties were represented at hearing as follows: A-1 Spray Services, Inc., and Jerome G. Sanford by Gary East, attorney at law; William J. Rex by James Leach, attorney at law; Department of Community Development by Darcy C. Goodman, Assistant City Attorney.

This matter was heard before the Hearing Examiner on June 2, 1980.

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Appellants Jerome G. Sanford and William J. Rex have filed applications for Shorelines substantial development permits to permit herbicidal treatment to control watermilfoil in the waters over their property. A-1 Spray Services, Inc. is the licensed herbicide applicator which would carry out the treatment.

2. A-1 Spray Services, Inc., prepared an environmental checklist (checklist) to be used for the threshold determination for each permit applied for by their clients, the individual applicants.

3. At the time of the threshold determination, April 25, 1980, three applications for permits had been filed. The Department of Community Development (DCD) was aware that A-1 Spray Services had requested 400 application forms.

4. The three applications proposed treatment in Salmon Bay, Union Bay and Lake Washington, each site involving one acre or less, according to the checklist. The checklist states that treatment areas will be increased.

5. The herbicide to be used is Aquathal K (dispotassium salt of endothall) by injection into the water column at a concentration of 2.5 parts per million (ppm).

6. The environmental checklist referred to had as attachments the following: Shearer and Halter, Literature Reviews, Metro (1980); Department of Ecology (DOE), Final

Environmental Impact Statement, Control of Watermilfoil in Areas of Lake Washington (May 1979); Department of Ecology, Draft Environmental Impact Statement, Aquatic Plant Management (February, 1980); label for Aquathal "K". Also available and used by DCD was the Army Corps of Engineers, final environmental impact statement, Aquatic Plant Management Program (October, 1979).

7. After reviewing the application and checklist with attachments, Jim Barnes, the environmental specialist for DCD, met with and requested additional information from A-1 Spray Services. Additional information was provided.

8. A declaration of significance (DS) was issued and filed April 25, 1980. The concerns leading to the conclusion that "the total proposal may have a significant adverse impact" were: that all potential areas of treatment need to be identified since conditions vary considerably; that there has not been sufficient research on endothall under local conditions and on its chronic toxicity to algae, aquatic invertebrates and fish that and verification of the patterns of persistence of endothall within habitat types in which use is proposed is lacking; and that results of a study on carcinogenic effects are necessary to reach a conclusion about the safety of its use.

9. DCD assumed, according to Barnes, for the purpose of the threshold determination, that all of the infested shoreline could be potentially treated. There is a high probability that more than three applications would be filed.

10. A-1 Spray Services treated three areas on the east side of Lake Washington in 1979. Decisions to allow treatment have not been made by eastside communities for this year.

11. Lake Washington contains over 22,000 acres of surface.

12. DOE had received requests for water quality modifications to allow control of aquatic plants and prepared the 1980 EIS to discuss aquatic herbicides and impacts in general. The EIS contemplates a checklist and aquatic plant management assessment for each request and then a determination as to whether the general EIS is adequate for each specific proposal or whether a supplemental EIS would be required.

13. In 1979, the DOE prepared an EIS concerning proposed herbicidal treatment in Lake Washington. DOE permitted a short term modification to water quality standards. Treatment occurred.

14. An EIS was prepared by the Corps of Engineers for milfoil management in waters within the state.

15. Eurasian water-milfoil is a non-native plant that occurs in Washington lakes. It can provide habitat for waterfowl, fish and vertebrates, increase or decrease oxygen levels, reduce effects of waves and velocity of current, be a hazard to swimmers, hamper navigation and recreation such as fishing, boating, waterskiing, destroy or improve fish and wildlife habitat, interfere with fish migration, and have other positive and negative effects dependent upon its density.

16. Endothall is a chemical which acts as a contact herbicide. It is registered by EPA and WSDA. While it is nonselective, at the level of concentration proposed it is effective largely on watermilfoil. Some similar plants

may be destroyed, however. The breakdown products of endothall are nontoxic carbohydrates and carbon dioxide. (Exhibit 3, page 22.)

17. Endothall does not accumulate in aquatic food chains. (Exhibit 5, page 186; Exhibit 3, page 22.)

18. After treatment, water should not be used for swimming for 24 hours (Exhibit 3, pages 10 and 22). Fish from treated waters should not be eaten for three days. (Exhibit 3, page 10).

19. Endothall can persist at low levels in the water for 20-50 days, in the hydrosol for 30-60 days, in fish for 1-2 weeks. Risks associated with these low levels are not known. (Exhibit 5, page 186).

20. Shearer concludes that while "research to date (January 1980) has given negative indications of developmental toxicity, effects on reproduction and fertility, and mutagenic effects in rats, results of an incomplete test for carcinogenic effects must be obtained before a conclusion can be made about the possible toxic effects on human. (Exhibit 5, page 4.) She also sites that is has not passed the currently accepted tests for determining safety of low-level exposure to humans. (Exhibit 5, Page 5.)

21. In the final EIS prepared by DOE, Aquatic Plant Management through Herbicide Use, May, 1980, which was published after the threshold determination, Dr. Karl Hellstrom, a professor of pathology at the University of Washington is quoted as stating "endothall does not induce mutations in a so-called Ames test, a widely accepted test for screening substance for carcinogenesis." (Exhibit 2, #63.)

22. Halter concludes, based largely on a lack of information, that there is a moderate risk that endothall could directly harm fish populations in the northwest and there is a moderate risk that direct harm could be caused to the aquatic food webs. A high risk exists, depending on the area of treatment, of altering the species composition of fish populations and aquatic food webs from indirect effects of plant control. (Exhibit 5, Pages 185 and 186.)

23. Halter concludes that while endothall is the best choice for further development for use in this area, it has not received sufficient research under local conditions to justify using it extensively. (Exhibit 5, page 187.)

24. Application of endothall in Lake Washington in 1979 was monitored by DOE. No measurable adverse effects were indicated for the parameters tested. (Exhibit 3, page 7.)

25. Research of endothall's effects on Chinook salmon has been conducted at Oregon State University. Douglas Dorling, staff biologist for A-1 Spray Services, testified that the LC50 was 155 ppm.

26. Appellant Rex' permit application is to treat approximately .1 acre of private land which was heavily infested last year. The infestation prevented recreational use of the property and created a health hazard by trapping wastes from watercraft passing through the cut.

Conclusions

1. The threshold determination appealed from must be accorded substantial weight. Section 20, Ordinance 105735, as amended.

2. The lead agency is to consider the total proposal during the threshold determination. WAC 197-10-060. The total proposal is undetermined in this case since it includes the three site specific permit applications and an unspecified increase in treatment areas, according to the checklist.

3. Appellant A-1 Spray Services did not offer any evidence rebutting DCD's assumption that all infested shorelines potentially could be treated.

4. DCD properly requested the applicants to furnish more information. The additional information was not sufficient to define the total project with precision nor were research results available to assess all potential adverse environmental impacts. In such case, WAC 197-10-330, and 360 require a DS.

5. The lead agency may withdraw a DS if information is supplied which would eliminate the probable adverse impacts. WAC 197-10-370.

6. Balancing of the beneficial aspects of a proposal against the adverse impacts may not be undertaken at the threshold determination stage. WAC 197-10-360(3). Even though the potential for benefit limited treatment is great, that cannot be considered in the threshold determination.

7. Appellants have not overcome the substantial weight to be given DCD's decision. DCD's reliance on the conclusions drawn by the reviewing experts, Shearer and Halter, was not shown to be clear error.

8. WAC 197-10-180, which exempts actions which must be undertaken within a time too short to allow full compliance in order to avoid an imminent threat to public health or safety or damage to public or private property was not raised at hearing but may provide relief in cases of extreme hardship.

Decision

The appeals are DENIED and the Determination of the Department of Community Development is AFFIRMED.

Entered this 13th day of June 1980.

M. Margaret Klockars
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Deputy Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any appeal to Superior Court should be filed within 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).