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MANAGER'S REPORT NO.	39
COUNCIL MEETING	93/06/14

TO: CITY MANAGER DATE: JUNE 10, 1993

FROM: CITY SOLICITOR

RE: FORAY 48B SPRAYING OF AREAS OF BURNABY
BY AGRICULTURE CANADA

PURPOSE: TO ADVISE COUNCIL OF THE LIKELIHOOD OF SUCCESS IN
OBTAINING AN INJUNCTION TO PREVENT AGRICULTURE
CANADA FROM SPRAYING FORAY 48B OVER AREAS OF
BURNABY

RECOMMENDATIONS:

1. THAT this Report be received for the information of Council;
2. THAT copies of this Report be provided to all persons who have sent letters to Council on this subject.

R E P O R T

On January 6, 1993 Agriculture Canada was issued a Pesticide Use Permit under the Pesticide Control Act to spray parts of the lower mainland, including Burnaby, with the pesticide Foray 48B as part of the gypsy moth eradication program.

The issuance of the permit was appealed to the Pesticide Control Appeal Board by 15 appellants, including the City.

The 15 appellants were heard from March 22 through March 26, 1993. The Board upheld the issuance of the Permit with some amendments and issued a 21 page decision (available for review in the City Solicitor's office).

A Court will only grant an injunction at this point if it can be shown that the Pesticide Control Appeal Board's decision should be quashed or, notwithstanding the issuance of the permit, there are other legal grounds making this spraying illegal.

Courts proceed on the basis that administrative boards, such as the Pesticide Control Appeal Board, possess a special expertise in the areas where they have been given quasi-judicial powers by the legislature and that their decisions should not lightly be interfered with by the Courts. Consequently, the Courts will generally only review an

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administrative board's decision where that board made an error of law (as to the board's statutory jurisdiction or powers) or where there has been a denial of natural justice (e.g. where the board refuses to hear a person directly affected by their decision).

We have reviewed the Pesticide Control Appeal Board's decision and see nothing in it which would justify a Court challenge. An injunction application to the Federal Court last year based on the Charter of Rights was unsuccessful, as was a similar injunction application made by the District of North Vancouver to the B.C. Supreme Court. We are not aware of any other legal grounds upon which the City might challenge the legality of the spraying program.

The Medical Health Officer advises us that the Provincial Ministry of Health and the Medical Health Officers of the various municipalities and regional districts throughout the province generally are of the opinion that the use of this pesticide does not pose a human health risk.

In conclusion, it is our opinion that an injunction application by the City to stop the spraying would have very little chance of success.


Patricia W. Fieger
City Solicitor

BRR:bi

cc: Director Administrative & Community Services
Medical Health Officer