

SUMMARY OF THE INVESTIGATION OF THE HERBICIDE APPLICATION ON JUNE 12, 2013

An investigation was conducted into the herbicide spraying incident which occurred at the Yellow Springs swimming pool on June 12, 2013.

As part of the investigation, relevant documentation was reviewed, the Village Ordinances were researched and witnesses interviewed. The purpose of this report is to determine how often the Village applied herbicide, how long the practice was in place, and the circumstances that led to the over application of herbicide at the pool.

SUMMARY

As set out in detail below, it is undisputed that Village workers have sprayed herbicides without having the required State license to do so on at least a few occasions over the years. The practice can be traced back to as early as 2007. The Superintendent of the employee who ordered that the pool area be sprayed erroneously believed (based on verbal guidance from a former Village Manager years ago) that no Ohio Department of Agriculture (“ODA”) license was needed.¹ Spraying without a license is a violation of state law and a Village ordinance which incorporated state law into the codified ordinances.

The June 12th incident resulted from the application of several undiluted gallons of the herbicide Escalade 2. The product should have been heavily diluted with water. The Superintendent did not ensure that the workers understood the proper procedure and the workers did not read the application instructions.

The Village Manager learned of the over application on Friday, June 14th, in conjunction with the acting Village Solicitor, coupled with input from Council President and Council member Rick Walkey, the pool was closed that morning. In addition, soil and water samples were immediately taken. The ODA, Ohio Department of Health (“ODH”) and Greene County Combined Health District were also contacted to assist the Village in determining if public health and safety were threatened. Efforts were made to notify all pool users who may have been exposed to the herbicide and notices were posted at the pool with an information hotline through the Village Manager’s Office.

The question of whether the pool should have been closed earlier is a judgment call as is the precise method by which the Village Manager informed the Village Council and the public of the incident. This Report will not address these issues other than to state that members of the public informed Council notice procedures were inadequate.

UNDISPUTED FACTS

On June 12, 2013, two Village employees sprayed the grassy area inside the fence at the swimming pool with approximately four (4) gallons of Escalade 2, a commonly used herbicide

¹ Jason Hamby is now licensed on behalf of the Village.

used throughout the United States. The spraying occurred at the order of Jason Hamby, the Superintendent of the Streets, Wastewater and Parks and Recreation.

The area was sprayed in an effort to kill the clover thereby reducing the number of bees which had been bothering patrons at the swimming pool.

The Escalade 2 should have been diluted with water. Instead, the workers, who had not read the application instructions, believed the Escalade was a "ready to use" product. It was sprayed, in an undiluted form, directly on the grass.

The workers asked the pool attendants keep people off the grass until the material was dry.

There is no evidence that anyone came in direct contact with the grass until after the Escalade 2 had dried.

The Village Manager was informed by a concerned citizen of the spraying on the morning of June 12th. She immediately went to the pool area and examined the premises with Mr. Hamby. The grass was dry by this time. She was advised by Mr. Hamby that the product was safe after it dried and that it typically it took two (2) hours for the material to dry. Due to the strong chemical odor, the scheduled swim team practice was cancelled. Neither of them were aware of the over application until two days later.

A number of complaints were received over the next forty-eight (48) hours expressing concern over the smell of the chemicals and the chemical taste of the pool water.

Based upon continuing concerns expressed by pool patrons and after learning of the over application on the morning of Friday, June 14th, the pool was closed and the ODA, ODH and Greene County Combined Health District were contacted the same day. Efforts were made to notify all pool users who may have been exposed to the herbicide and notices were posted at the pool with an information hotline through the Village Manager's Office. Soil and water samples were collected and sent to a lab for analysis.

The testing on the soil and water samples indicated that there was no danger to public health as a result of the over application.

STATUTORY FRAMEWORK

There is no general prohibition against using herbicides and pesticides on the part of the Village and Ohio law permits the application of such chemicals. However, Ordinance Number 92 – 11 does provide that the Village incorporates all of the state requirements relating to the use of pesticides. Pursuant to ORC. 921.06:

"No individual shall do any of the following without having a commercial applicator license issued by the director of agriculture;

* * *

B) apply pesticides as part of the individual's duties while acting as an employee of the United States government, a state, county, township, or municipal corporation, or a park district, port authority, or sanitary district... respectively.

It is undisputed that no one at the Village held a commercial applicator license at the time of the over application.

DETAILS OF INVESTIGATION

The following individuals were interviewed during the investigation.

Kelley Fox

Kelley Fox is the Supervisor of the Electric and Water Distribution Group at the City. He has been the Supervisor since approximately 2005. He has three (3) individuals who are directly reporting to him.

He has a total of twenty-nine and a half (29½) years service with Yellow Springs.

He acknowledged that he does not have a license to spray herbicides and is not aware of any manager or individual at the Village who has such a license.

He also acknowledged that neither he nor, to his knowledge, any other employee has ever received any training in terms of how to spray herbicides.

He said that the Village does use herbicides (usually Roundup) to spray for weeds at the Electric Substation and at Public Works.

He believes that his team sprays for weeds one or two times a year based on need. The techniques used when they spray are that the material is mixed properly and is then used. He believes that employees typically do use a mask when they spray Roundup, but they do not wear any other protective clothing to his knowledge.

He believes that there are state standards requiring weeds to be controlled near Electric Substations.

Joe Bates

Joe Bates is the Superintendent of the Water and Waste Water Treatment plant. He has worked for the Village for approximately seven and a half (7½) years. Prior to that, he worked for Green County for approximately nine (9) years.

He acknowledged that from time-to-time, his team does use herbicides (usually Weed & Feed or Barrier) at the waste water treatment plant. That area is not accessible to the public and in his view, does not create any sort of public hazard.

He recalls that typically they spray in the springtime. There is an area of gravel around the waste water treatment plant. For safety reasons, the weeds need to be sprayed there to keep them from coming up through the gravel and “breaking the barrier”.

He said that to his knowledge, the pesticides in his department are never used in public areas. However, he has never been advised that there is any sort of prohibition on the use of herbicides by the Village

Mr. Bates oversees the Village water testing program for both the Water Treatment Plant and at the Water Tower. Mr. Bates obtained the pool soil and water samples submitted for analysis by Belmont Lab the same lab that tests the Village water supply.

Jason Hamby

Mr. Hamby is the Superintendent of the Streets, Waste Water, and Parks and Recreation areas. He has worked for the Village for approximately eight (8) years – he has been Superintendent for approximately three (3) years.

He has three (3) individuals reporting to him plus one (1) seasonal and two (2) building monitors. Prior to the pool staff being outsourced, the pool staff reported to him as well.

He also acknowledged that he did not have a license to spray chemicals and was not aware of anyone at the Village who did at the time of the incident.

He recalls the former Village Manager, Eric Swanson, telling him many years ago that were that pesticides purchased over the counter do not require a license. This, in fact, is an erroneous statement of the law.² The Ohio Department of Agriculture agent correctly informed the Village after the June 12th incident that the Village is required to have a licensed operator on the staff in order to properly spray chemicals in public areas.

Mr. Hamby believes that the pool was sprayed in 2011 and 2012 to get rid of the clover. He is not aware of any general prohibition or policy against the use of spraying herbicides in the Village.³

On approximately June 10th, Jeff Bloom, who works at the pool as part of the outsourced staff, called Mr. Hamby and asked if the Village was going to do anything to get rid of the bees which were around the clover in the pool area. There was a stated concern that a person allergic to bee stings, if stung, could cause a life threatening incident.

In response to Mr. Bloom’s call, Mr. Hamby contacted the Green Velvet Company to ask the best way to get rid of the clover at the pool. The individual who spoke to him at Green Velvet recommended Escalade 2. Mr. Hamby then instructed his employee, Tanner Bussey to purchase the Escalade 2 and to spray the material at the pool.

² The evidence supports the conclusion that the use of herbicides dates back to the tenure of Mr. Swanson.

³ In the early 1990’s, the then Village Council discussed the possibility of a ban on the use of herbicides by the Village. The ban would not have been applicable to private citizens and the Village contemplated asking for voluntary compliance.

On the morning of Wednesday, June 12th at approximately 9:30 a.m., Mr. Hamby received a call from the Village Manager asking him to meet her at the pool. Mr. Hamby and the Village Manager observed the situation, walked on the grass, noticed that it was dry and also noticed the very strong chemical smell. The Village Manager asked Mr. Hamby when the product would be safe and he said as soon as it was dried in approximately two (2) hours.

Mr. Hamby remembers that the smell was stronger than he expected. There was no more spraying after this incident. The next issue which Mr. Hamby recalls relating to the pool was on Friday, June 14th. He again met the Village Manager and assisted in the obtaining of soil and water samples.

Mr. Hamby recalls that he did not give any specific instructions to the workers on how to spray the Escalade 2. He understood that Mr. Bussey had prior experience spraying at his prior job and assumed that he would read the instructions and follow the instructions appropriately.

Tanner Bussey

Mr. Bussey is a utility service worker at Yellow Springs. He has been employed by the Village since May 29, 2012. He worked for the Village of Enon for approximately fourteen (14) months before that.

He confirmed that he was asked by his manager, Mr. Hamby, to pick up Escalade 2 and to spray it on the clover inside the fence at the pool.

Mr. Bussey acknowledges that he did not read the instructions on the Escalade 2 other than to see whether any protective clothing was needed for the spraying. He indicated that the rest of the material was extensive and in fine print and he simply did not take the time read it.

He recalls that June 12, 2013 was a very hot morning. He did wear long pants, gloves and sunglasses while he was performing the spraying.

He believed the Escalade 2 was similar to Roundup in that it was a ready to use product and did not need to be diluted or mixed with water. He acknowledges that he and his colleague sprayed the entire clover area inside the pool fence and used most of the Escalade 2 that was in the container.

He recalls the work took approximately 45 minutes.

He recalls talking to one of the women who worked at the pool and told her that she should keep everyone off of the grass for two (2) hours before the product was dry and that thereafter it would be safe to be walked on.

He acknowledged that he has not received any training on how to spray pesticides. He said he never had any knowledge as to whether a license was required or whether anyone at Yellow Springs had the license to spray.

Troy Harding

Mr. Harding is a seasonal worker at the Village. He has worked for approximately six (6) years. He was assisting Mr. Bussey on June 12th.

He recalls that he used Roundup several years ago but that at some point, he was told that Roundup should not be used going forward. He confirmed the undisputed sequence of events in that when he reported to work on Wednesday, June 12th, he was instructed to assist in the spraying of the Escalade 2 in the grassy areas at the pool. He did not read the instructions. He simply followed the orders of Mr. Bussey. He recalls that the Escalade 2 came out as a mist over the grass.

He does not recall whether he wore any protective clothing at the time.

He does not recall Mr. Bussey asking Mr. Hamby any questions as to the proper dilution ratio.

He stated that he wondered at the time whether it was okay to do the spraying but he “just did what he was told to do”.

Laura Curliss

Ms. Curliss indicated that she was not aware that the Village was using herbicides or pesticides. She was aware that a license was needed before spraying was allowed.

She confirmed that the lawn was dry when she and Mr. Hamby walked on it the morning of June 12 and that she had been advised that the product was safe once dried.

She also confirmed that she did not know the material had been over applied until Friday, June 14th. Following discussions with the acting Village Solicitor and Mr. Walkey, it was decided to close the pool until the Village was able to determine whether the over application posed any kind of health risk.

The Manager contacted the ODA, ODH and Greene County Combined Health District on behalf of the Village. She oversaw the posting of notices at the pool and undertook efforts to notify anyone who had been at the pool between June 12th and 14th.

Once the Village Manager learned of the over application and following discussion with the acting Village Solicitor and Mr. Walkey she took pro active steps to protect the public. The pool was closed on Friday, June 14, 2013, a notification was posted, the Green County and State health officials were contacted and soil and water samples were taken. The results of the tests have previously been made to the public.

MEMO NOVEMBER 4, 2013 COUNCIL MEETING

From Judith Hempfling

Regarding Three Items Below

1. ANNOUNCEMENTS

Guardian Campaign Presentation; Wright State University Students

Wright State Students have asked to present a proposal regarding animal rights. They are doing this as a project for a class at WSU on animal rights and will fulfill their class requirement while also have an opportunity to learn about participation in local government. They will have 5-7 minutes to present this proposal during announcements and Council can decide if it would like to take up this issue.

2. Appointment of Acting Mayor to Serve During Mayor's Absence.

The Mayor will be out of town for the meeting of November 18, and will not be here to swear in the new council mayors. Per John Chambers, our Charter requires that Village Council appoint an Acting Mayor to serve during the Mayor's absence. I will be recommending that we appoint the Council Vice President, Lori Askeland as the acting mayor for this duty and until his return.

3. Draft Village Council Orientation Schedule

Council: Please review this Agenda. Judy Kintner, Kent Bristol and Chris Conard will no doubt add items to their sections of the orientation.