



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

Bill C-53 - Briefing Note -

(April 5, 2002)

On March 21, 2002, Minister of Health, Anne McLellan, P.C., M.P., introduced Bill C-53, An Act to protect human health and safety and the environment by regulating products used for the control of pests.

The Bill is a major improvement from its predecessor of the same short title, the *Pest Control Products Act*, which was passed in 1969 and has not been overhauled since.

World Wildlife Fund (WWF) and the Canadian Environmental Law Association (CELA) will continue to be involved in the Parliamentary process respecting Bill C-53. Key improvements will need to include:

- entrenchment of the Precautionary Principle as both a guiding principle and operational force
- an evolution away from the registration of “product” and toward reduced reliance on pesticides
- specific items to ensure that farmers can gain expedited access to lower risk alternatives
- stronger public participation and transparency elements

The Good News

Human health and the environment are leading principles

The primary objective is “...to prevent unacceptable risks to people and the environment from the use of pest control products.”

This Act is a substantial improvement on the 1969 *Pest Control Products Act*. The mandate of C-53 is essential to ensuring that the pesticide management system is operated with the health of people and the environment as the principle aim.

Pesticides are “guilty before proven innocent”

Bill C-53 clearly places the burden of proof on the person who is trying to register the pesticide. The applicant must demonstrate to the Minister that the health and environmental risks and the value of the pesticide are acceptable.

Good start on accounting for risks to children

Components of C-53 have been inspired by the six-year old U.S. *Food Quality Protection Act*. For example, Canada’s new law will consider the special sensitivity of children. Although implementation of the US reforms has been slow and controversial, adoption of these same measures is a step forward. All decisions regarding the registration, amendment of registration, special reviews

and re-evaluations include the ability to consider “identifiable subgroups” or vulnerable populations. Further, these decisions will eventually include consideration of cumulative effects and aggregate exposures, once the methods for doing so are confirmed. The Act also enables the application of a 10-fold safety margin on pesticide standards to add extra protection for children. Implementation of these measures, especially child-protective safety factors, will need careful scrutiny, as these measures are not automatic but subject to the judgment of government reviewers. The Bill will need to further consider all vulnerable groups, including Aboriginal people and include appropriate safety margins to ensure their protection.

Re-evaluations are required and special reviews are made possible

Most of the pesticides currently in use in Canada were registered long ago. The Act requires the government to initiate re-evaluations of registered products at least every 15 years. Further, if a member country of the Organization for Economic Co-operation and Development (OECD) bans all uses of an active ingredient then the Minister must conduct a special review.

Room to Improve

Reduction should be the goal

The federal role in pest control, through law, regulation, policy and programming, should be judged by how effectively it reduces the use of, reliance on and risks posed by pesticides. The government’s focus should be less on what and when to register substances and more on how to promote and protect human health and the environment while helping farmers, landscapers and homeowners adopt practices that reduce use of pesticides. The Bill pays homage to this notion but fails to provide effective means for implementing it.

Precautionary Principle: take it or leave it

Bill C-53 fails to entrench the Precautionary Principle as a guiding principle or to effectively operationalize it. The Bill will need to be amended to include this internationally accepted principle in the Preamble and the Purpose. At an operational level, the Precautionary Principle must be used in all decisions respecting pest control products. Other jurisdictions have made the precautionary principle operation in ways that balance numerous interests and Canada can as well. The Bill currently makes the Precautionary Principle available to the Minister only in the circumstances of cancellation or amendment of registration, rather than having it a fundamental concept underlying all aspects of the legislation. Lastly, the definition offered for the Precautionary Principle is below an international standard and below what was recommended by the Standing Committee.

Let’s take a preventive approach

The Act fails to take a pollution prevention approach to problems with pesticides. There are circumstances where pollution prevention plans – thinking ahead – will avoid major problems. The Act will need to be amended to allow the Minister of Health to order pollution prevention plans - this addition is consistent with the ability of the Minister of the Environment to order plans for chemicals that are not pesticides. Similarly, the Act is very weak on wildlife toxicology assessment and must incorporate a more preventive approach.

“What now?” No follow-up, monitoring or reporting once registered

Once a product has been registered, there is no requirement for follow-up, monitoring or adverse effects reporting until it is re-evaluated. The Act needs to include a requirement to report health and environmental adverse effects.

Take a stand!

The Bill does not expressly take a stand against certain pesticides. Some pesticides pose an intolerable risk to human health and the environment, while other pesticides are being used in circumstances where any amount of risk is unjustifiable. Pesticides that are “persistent organic pollutants” (POPs) build up in the food chain, travel long distances and do not break down in the environment. Endocrine disrupters (EDCs) are chemicals, including pesticides, which disrupt the hormonal system and lead to serious health and environmental consequences. The legislation needs to stake a stand against POPs and EDCs by name. Further, the “cosmetic use” of pesticides, while representing only a small percentage of pesticides used, is a circumstance of risk to children, pets and wildlife that should not be tolerated.

Formulants: a cake is more than just flour

The Bill currently focuses on the “active ingredient” in respect of decision-making and public participation. The Bill needs to expressly consider the effects and require the public disclosure of other ingredients that can pose a threat to human health and the environment. Certainly, those pesticides that contain ingredients that have been determined as toxic in the *Canadian Environmental Protection Act*, 1999, need to bear a warning on the label.

More Food for Thought

C-53 and the Big Farm Picture: solutions for today and tomorrow

Pest management is integral to Canadian agriculture and the regulation of pesticides will have a big impact on how business is done. Farmers can take comfort in the Minister’s ability to phase out pesticides slowly in the event that there are no alternatives available. Taking away needed pesticides while not having alternatives or supports for transition to Integrated Pest management (IPM) or organic farming systems has been a major concern to farmers.

A major failing of the Act is its lack of consideration of alternatives. The Bill should expedite the registration of new lower-risk products and require the Minister, with the support of the Minister of Agriculture and Agri-food, to encourage use of an agronomically and economically appropriate suite of low risk chemical and non-chemical products and farming methods. Speedy access to lower risk alternatives is a key to promoting competitiveness of Canadian agriculture on the world stage. The Act should provide a mechanism for making available information on lower risk pesticides, non-chemical alternatives, management systems and new practices.

In the days to come, the Ministers of Health and Agriculture and Agri-food will need to make clear how this legislation fits into a larger discussion of supporting and promoting a bright future for Canadian agriculture.

A good start for public participation and involvement

The Act effectively brings the pesticide management process out of the dark and out of the dark ages. The mandate of the Act recognizes the importance of public awareness, access to information and participation in decision-making. The main points of access for public involvement are consultation, review and the Register. The section respecting public consultation makes involvement a condition of registration, amendment of registration, re-evaluation and special review. Members of the public may ask the Minister to strike a review panel to review a decision respecting a pest control product.

Public involvement in the process needs to be facilitated through amendments to the Bill. Greater access to information, publication of databases, and more teeth to the review process will bring the public involvement aspects of the Bill up to the standard of other environmental statutes.

How does C-53 stack up against US law?

Many elements of Bill C-53 have been inspired by the US pesticide law, the Food Quality Protection Act (FQPA), including, the 10-fold safety factor for vulnerable populations, consideration of the special exposure patterns of children, consideration of cumulative effects and aggregate exposures, and mandatory re-evaluations every 15 years. The Act will need to be amended to include other key elements including, mandatory reporting of adverse effects, speedy review of reduced-risk chemicals, definition for the term ‘reduced risk’, and development and implementation of a screening program for endocrine-disrupting chemicals.

Lessons from the FQPA indicate that some of the language in C-53 stemming from this example needs to be modified to ensure we do not suffer the same implementation troubles and controversies over such key issues as safety factors for children.

The OECD ranking of Canada as 27 out of 29 included sharp criticism for not making available basic information about pesticides such as sales data. Bill C-53 will need to be amended to allow for full public disclosure of what pesticides are being sold and how they are used (quantity, in what areas and with what frequency). The US is much further advanced in making data publicly available, and such data are critical to development of pesticide reduction strategies.

What are we talking about?!

Many of the key terms that act as supporting pillars to the purpose of the Bill are left undefined, including scientifically-based approach, acceptable risk, risk, cumulative effect, aggregate exposure, and threshold effect.

Bringing PMRA out of the closet

The Pest Management Regulatory Agency (or PMRA), the branch of Health Canada that carries out the duties of the Minister in respect of pest control, was given life through an Order in Council in 1995. Its mandate, accountability, structure, and functioning need to be modernized through the Bill and made available for public scrutiny. The role of this body is too important to omit from statutory articulation.

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