



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

December 22, 2008

Robert Bilyea  
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Integrated Environmental Planning Division  
Strategic Policy Branch  
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Sent by fax: (416) 314-2976  
Original to follow by regular mail

Dear Mr. Bilyea,

**RE: Pesticides Regulation – Ontario Cosmetic Pesticide Ban**

*EBR Registry Number 010-5080 - New General Regulation under the Pesticides Act, 1990  
to implement the Cosmetic Pesticides Ban Act, 2008.*

CELA is pleased to provide this submission in response to the proposed new general regulation under the *Pesticides Act*.

We offer our continued strong support for the overall intent of this new law and regulation and congratulate the Province of Ontario for decisive leadership on this issue of widespread public interest. We make suggestions herein for further strengthening and clarifying the proposed regulation.

**Background about CELA's involvement in pesticide issues**

The Canadian Environmental Law Association (CELA) is a non-profit, public interest organization founded in 1970. CELA is an environmental law clinic – within Legal Aid Ontario - dedicated to providing legal services to low income people and disadvantaged communities, and advancing the cause of strong environmental protection through advocacy, education and law reform.

In addition to providing direct legal representation and summary advice, CELA's law reform and public educational mandates include advocacy on ensuring access to environmental justice and protecting public environmental rights. This work occurs at the local, regional, provincial, national and international level.

Members of our staff have worked on pesticides issues for over 25 years. We have been at the forefront of Canadian activity summarizing the research about human health impacts,

particularly to children, and were extensively involved in efforts to reform the *Pest Control Products Act*, several progressive revisions to which were proclaimed in June of 2006. We have acted in the courts on behalf of clients adversely affected by pesticides as well as on behalf of multiple groups and individuals who successfully opposed repeated legal challenges to pesticide bylaws in Hudson, Quebec and Toronto, Ontario. Public inquiries to our office are numerous. For over twenty years, a very large proportion of these inquiries have consistently included questions about pesticides. We have assisted hundreds of groups and individuals across Canada in their efforts to see pesticide bylaws enacted by their local municipalities.

### **The Regulation Must Remain Intact and be Further Strengthened**

This long involvement with community groups, related legal proceedings and advocacy for municipal pesticide bylaws underscores our reasons for continued concern that the new *Cosmetic Pesticides Ban Act* has removed from municipalities the power to enact pesticide by-laws. However, we are very encouraged that the Province has chosen to enact very strong legislation, particularly due to the inclusion of the ban on pesticide sales. It is our expectation that this new law, accompanied by the details contained in this proposed regulation, will be sufficient to ensure that the new Provincial requirements will indeed extend province-wide those elements of the most stringent of existing bylaws. However, this progress will be achieved only if the regulation remains as comprehensively protective as proposed. Indeed, the rest of our comments are intended to suggest ways to strengthen the regulation further and to seek clarification of certain elements to ensure effective implementation.

### **Increased Requirements for Public Disclosure and Public Involvement**

This new law enjoys very strong public support. Quite reasonably, there is a high degree of public concern about exposure to multiple chemicals in the environment and consumer products, not the least of which includes pesticide use. There is a correspondingly high degree of public support for eliminating needless chemical exposures.

For many years, reforms to pesticide legislation, at the federal, provincial and municipal level in Canada have included increasing requirements for public disclosure about the scientific evidence evaluating pesticides as well as conditions of pesticide use and data on sales. New requirements under the federal *Pest Control Products Act* address several of these issues with greater public accountability and access to information in the pesticide registration process and new requirements for reporting on pesticide sales. Over twenty years ago, Ontario demonstrated important leadership by requiring the posting of public notices when pesticides were used.

In reviewing the proposed regulation we find four areas where requirements for public disclosure of information or public involvement in decision-making should be strengthened, including:

1. Requirements for public disclosure about pesticide use by licensed applicators should be applied consistently to any circumstance allowed by the regulation. Hence, the requirement to disclose pesticide use on golf courses, specialty turf, or with respect to

protection of public works should specifically include all exempted uses such as for the protection of public health or safety, on sport fields or to protect natural resources.

2. Similarly, requirements for non-residential notice and warning signs are not consistently applied in the regulation. The same provisions that apply to posting notices about pesticide application on schools, child care facilities, parks, cemeteries, golf courses and campgrounds, should also apply to specialty turf and sport fields.
3. The new regulation allows for pesticide registrants to request that the province classify, reclassify or declassify a pesticide for use in Ontario. We recommend that the regulation provide the same opportunity for the public or public interest organizations to make such requests.
4. Further to #3 above, the regulation should also include greater clarity by specifying the criteria to be applied by the Director in making decisions about classifying any *new* pesticide active ingredient or pesticide products.
5. The new regulation applies necessary controls on the sales of so-called dual-use pesticides (in Class 7). It should be a simple matter for retailers to track the volume of sales in this Class. Such a requirement would support and amplify new federal requirements for pesticide sales data reporting, and more important, would assist in evaluation of the effectiveness of the new law. This information will of considerable interest to the public. Hence, the regulation should require public reporting of it.

### **Expanded Requirements to Ensure Adequate Education and Effective Implementation**

Extensive experience shows that the effectiveness of municipal pesticide bylaws derives from a clear link to effective education and awareness programs. Several areas of the regulation could be strengthened to ensure this link is strong and that implementation is effective, including:

1. The requirements for training of a “general vendor” may not be adequate to address training needs of staff in multiple retail outlets only covered by a “limited vendor” license. The same training requirements should apply in all circumstances.
2. Continuing education is necessary for pesticide applicators to ensure they remain fully up to date. The current provincial requirements include a test every five years which compares poorly to annual certification requirements in other jurisdictions. With Ontario poised to lead North America with such progressive legislation, it is important to ensure that pesticide applicators are well trained and that their training is reliably and regularly updated.
3. When restricted products are sold, the notification package provided with these sales to the public should be required to include a lawn sign for ensuring public notice.

### **Improve Proposals for Restrictions and Exemptions**

Finally, in three areas, pesticide packaging, golf courses and public works such as sidewalks, we recommend three additional measures to address public concern about the opportunity for ongoing unnecessary and/or excessive use of pesticides, including:

1. Where pesticide products continue to be available for sale to the public, the regulation should apply a size limit such that retail sales be restricted to single-use packages, preferably in a size less than one kilogram or one litre, to prevent abuse or overuse, and, as much as is feasible, these products should not contain propellants to avoid airborne drift or inhalation.
2. Require that golf courses be required to end their pesticide use within five years.
3. Require that continued use of pesticides by golf courses be limited to those areas where alternatives are not yet readily available. Hence, pesticide use by golf courses should be explicitly limited to putting greens while all other areas in a golf course property should be subject to the same cosmetic use restrictions as this new law and regulation applies to the province as a whole.
4. The exemption allowing pesticide use on sidewalks, parking lots or driveways, while qualified to indicate use where significant damage may occur, would seem open to abuse. The regulation and accompanying educational materials should specify that early and preventative application of non-toxic, low-risk methods (such as steam, boiling water or acetic acid) should be applied to prevent excessive vegetation growth that could later contribute to significant damage.

In closing, we echo and strongly support Minister Gerretson's statements that these new requirements concerning pesticide use are an innovative and worthwhile part of creating a sustainable green economy for Ontario.

All of which is respectfully submitted.

Yours very truly,

**CANADIAN ENVIRONMENTAL LAW ASSOCIATION**

A handwritten signature in black ink, appearing to read 'Kathleen Cooper', with a stylized flourish extending to the right.

Kathleen Cooper  
Senior Researcher

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