

January 25, 2015

Ontario Pollinator Health
Ministry of Agriculture, Food and Rural Affairs
Policy Division
Food Safety and Environmental Policy Branch
1 Stone Road West
Floor 2
Guelph Ontario
N1G 4Y2
VIA email: pollinatorhealth@ontario.ca

Re: Ontario's Pollinator Health Proposal

Response to EBR Registry Number: 012-3068- Pollinator Health: A Proposal for Enhancing Pollinator Health and Reducing the Use of Neonicotinoid Pesticides in Ontario

To "Ontario Pollinator Health,"

We write concerning the above-noted posting to the *Environmental Bill of Rights* registry.

Context of This Response – Current Federal Regulation of Neonicotinoid Pesticides

Our comments in response to Ontario's Pollinator Health Proposal are submitted within the necessary context of federal regulation of neonicotinoid pesticides.

To the extent that any neonicotinoid pesticide is only conditionally registered in Canada under the federal *Pest Control Products Act*, lacks valid studies on chronic toxicity to pollinators, and may not provide any economic benefit to farmers (according to an October, 2014 US Environmental Protection Agency study showing no yield benefit on soybeans from using neonicotinoids pesticides), we believe that Ontario should place neonicotinoid pesticides in Section 11 of O. Reg. 63/09 of the *Pesticides Act* (i.e., the section that prohibits any use in Ontario of highly toxic pesticides such as DDT, etc.).

Through such an approach, Ontario would be removing from the market pesticides that simultaneously (1) pose risks to the environment, and (2) provide no economic benefit to farmers who use them.

In the alternative, if the province is not prepared to take the above steps, we offer the following comments in support of and to strengthen the Pollinator Health Proposal.

Comment Summary

- We strongly support the Ontario Government taking leadership on this important issue.
- The proposal to expand Ontario's pesticide regulatory classification scheme to include treated seed, and to focus this new regulation on field corn and soybeans, by far the largest uses of neonicotinoid (NNI) treated seed, is a welcome first step towards completely eliminating these dangerous chemicals.
- The two stated goals of this proposal are clear, worthy, and ambitious – to reduce honeybee over-wintering losses to 15% by 2020 and to reduce 80% of corn and soybean treated seed use by 2017. A third goal should echo the overall name of the initiative (Pollinator Health) and speak to the need to prevent broader ecological impacts from neonicotinoid pesticides, including but not limited to sublethal effects on bees.
- To achieve the stated goals, this new regulation must be clear, fair, and supported by an effective implementation strategy.
- We recommend that training begin immediately – during February and March of 2015 – and include the “third-party” evaluators.
- We also recommend specific measures and safeguards to include in the regulation to ensure accountability across the steps of documenting IPM, and conducting and evaluating risk assessments; certification of third-party evaluation; adequate record-keeping of sales; and overall monitoring by the province.

About CELA

The Canadian Environmental Law Association (CELA) is a public interest organization founded in 1970 for the purposes of using and improving laws to protect public health and the environment. Funded as a legal aid clinic specializing in environmental law, CELA represents individuals and groups in the courts and before administrative tribunals on a wide variety of environmental and public health matters. In addition, CELA staff members are involved in various initiatives related to law reform, public legal education, and community organization. CELA has a long history of work addressing the regulation of toxic substances, including pesticides, and we currently represent clients who are deeply concerned about the effects on pollinator species from neonicotinoid pesticides.

Clear Scientific Evidence about Neonicotinoid Risks

The discussion paper provides a compelling summary of the importance of protecting bees and other pollinators. Included is a summary of the large body of scientific evidence that points to several stressors, including NNI-treated seeds, as contributing to over-winter bee mortality and threats to other pollinators. All Ontario residents should appreciate that moving forward on a Pollinator Health Action Plan derives from a very strong scientific foundation.

Recalling our primary concern, noted above, that the federal regulatory context for NNI pesticides rests of a weak legal foundation of conditional registrations due to a lack of valid studies of chronic toxicity to pollinators, we nevertheless appreciate and support the approach of

placing the current regulatory proposal to regulate NNI-treated seeds within the necessary broader context spelled out in the proposed four-part action plan.

Targets and Scope of the Proposal

The proposal to expand Ontario's pesticide regulatory classification scheme to include treated seed, and to focus this new regulation on field corn and soybeans, by far the largest uses of neonicotinoid (NNI) treated seed, is a welcome first step towards completely eliminating these dangerous chemicals.

The two stated goals of this proposal are clear, worthy, and ambitious – to reduce honeybee overwintering losses to 15% by 2020 and to reduce 80% of corn and soybean treated seed use by 2017. We recommend a third goal that reflects the overall name of the initiative (Pollinator Health) and speaks to the need to prevent broader ecological impacts from NNI pesticides, including but not limited to sublethal effects on bees.

To achieve the stated program goals, it will be essential to meet the proposed timeline of drafting a regulation by the spring of 2015 to then be in place for the 2016 growing season. The new regulation must be clear, fair, and supported by an effective implementation strategy, including crucially important training for farmers and seed vendors.

The Proposed Regulatory Approach

Again, we make comments on Ontario's proposed regulatory approach in the context of current federal regulation, as noted above. That is, on principle, we do not support the continued use of chemicals that are conditionally registered by the federal government due to the lack of valid studies of chronic toxicity to pollinators and that are implicated in killing or undermining the biological integrity of multiple pollinators that are crucial to much of our food system as well as diverse natural systems.

This pesticide chemistry was developed quite recently to replace an earlier generation of chemicals that have been banned or restricted because of other serious problems affecting either or both of human health and the integrity of natural systems.

It is extremely unfortunate and short-sighted that our federal pesticide regulatory approval process allowed the replacement of bad chemistry with bad chemistry, including via a risk assessment exercise that continues to allow conditional approvals of NIIs in the absence of studies evaluating their chronic toxicity to pollinators. We continue to work at the federal level on addressing this problem and therefore offer qualified support to Ontario's partial restrictions on these chemicals considering it a useful but partial step towards their elimination.

Mindful of the foregoing, we currently support the choice to regulate pesticide-coated seeds as a new class 12 within Ontario's pesticide regulatory classification scheme and offer our ongoing assistance to developing an effective regulation in support of this new classification category.

Necessary Elements for Ontario's New Approach

The New Class 12

We support the notion of classifying treated seed as a pesticide. While the discussion paper states that the regulatory proposal will address three pesticides used to treat field corn and soybeans – namely imidacloprid, thiamethoxam, and clothianidin – it also states that the new class 12 would include “some or all seeds treated with pesticides.” We recommend that this ambiguity be avoided and that the new class 12 be applicable to all pesticide-treated seeds, with no exceptions. Given the strong opposition that has been expressed to this regulatory proposal by representatives of some grain farming interests as well as by pesticide manufacturers, it will be necessary to ensure that this new classification scheme cannot be easily sidestepped.

It is plausible that pesticide manufacturers will apply to the federal Pest Management Regulatory Agency for label and/or use changes that seek to quickly bring onto the market seeds treated with alternative NII formulations including pesticides such as acetamiprid and thiacloprid. The new Class 12 approach should anticipate and prevent such efforts to undermine the overall objective of addressing the most extensive uses of NIIs in Ontario agriculture.

Further, an approach of including all treated seed and allowing certain exemptions, as contemplated on page 15 of the Discussion Paper, should explicitly work towards reducing and eliminating NII-treated seeds in other crop categories as the Province learns from the experience of working towards the aspirational target of 80% reduction in corn and soybeans by 2017.

We also recommend that the new Section 12 classification should extend to on-farm treatment of seeds and not just those pre-treated by pesticide manufacturers. Regardless of whether farmers are unlikely to treat their seed given the potentially high cost of equipment to do so, current situations can change. There should be no exception or loophole created and thus on-farm seed treatment procedures should be specifically included in Class 12.

Proposed Conditions for Purchase and Use

Training Must Start Immediately – During February and March of 2015

With the regulation intended to be in place for the 2016 growing season and the aspirational goal of an 80% reduction in NII use by 2017, training needs to start immediately and be completed no later than the fall of 2015 to influence seed purchasing for the 2016 growing season. As the discussion paper notes, “qualified farmers” and “licensed agricultural exterminators” will have already completed existing courses but additional training is necessary for the sake of not only expanding knowledge about IPM but applying it in existing fields during the 2015 growing season for the sake of fulfilling the risk assessment requirements that will be needed to purchase seed in the fall of 2015 for the 2016 growing season.

This training should also be required for those who will be “third-party evaluators” under the new regulatory scheme.

We have reviewed some of the on-line training modules on the Ontario Ministry of Agriculture, Food, and Rural Affairs (OMAFRA) website. Clearly, much work has already been done towards developing detailed educational resources for farmers in IPM methods, including the evaluation techniques contemplated in the discussion paper for assessing risk of insect damage in the range of field conditions that exist in Ontario's agricultural regions.

This training will be as important for those farmers who choose to stop using NNI-treated seeds as for those who continue to do so. It is essential that this training also include the perspectives of farmers who apply more holistic and/or organic practices that focus on the long-term health of the soil.

We recommend that immediate efforts occur to provide outreach and training programs for all grain farmers that can be applied during the 2015 growing season. **Given that farmers must devote long hours to their farming operations during the growing season this educational work should start immediately, during February and March of 2015.**

Moreover, given the time constraints, this immediate training could be used to involve participants (Qualified Farmers, licenced agricultural exterminators, and "third party evaluators") in the development of the forms and other documentation that will be necessary to confirm that the anticipated steps in the process will be followed. Hence, their collective expertise could be used to develop or refine the procedures and forms that they will need to use to document IPM activities and complete credible risk assessments of the need to use/avoid NNI-treated seeds. Involvement of seed vendors in this training seems advisable as well.

Documentation of IPM and NNI Risk Assessment – Ensuring Accountability

Whether the training program is used as a means to tap into the agricultural expertise of those who will be required to implement the new regulation, the regulation will need to include safeguards to ensure accountability. For example, the new requirement for a risk assessment to demonstrate the need to use NNI-treated seeds when pests are above a specific threshold should be evaluated beyond a simple determination that a risk assessment has actually been done. For this reason, and to address additional issues raised above, the regulation should:

- Require that Qualified Farmers, licenced agricultural exterminators, and third party evaluators complete the Section 12-specific training program;
- Set out the basic requirements for the risk assessment to determine the need for using NNI-treated seeds;
- Include prescribed forms to document IPM and risk assessment activities (discussed further below);
- Place a one year limit on the validity of risk assessments;
- Require that third-party evaluators maintain for five years records of all evaluations;
- Require that third-party evaluators not just confirm that a risk assessment has occurred but evaluate the validity of the conclusions reached;
- Empower government inspectors to conduct spot audits of third party evaluations;

- Set out the required qualifications of and a certification mechanism for third-party evaluators, enable an on-line registry for farmers to reach them, and allow for their certification to be revoked by government inspectors;
- Specify that when a risk assessment demonstrates a need to use NNI-treated seed, the volume of seed should be noted, confirmed by the third-party evaluator, and then be used to specify the maximum amount of seed that can be purchased;
- Require seed vendors to keep records of sales including ensuring that only the maximum allowable seed is sold to individual farmers as determined by the risk assessment and confirmed by the third-party evaluator; and
- Require that seed vendors annually submit sales records to the Ontario government and that these tabulated records be publicly available.

Prescribed Forms to Document IPM Activities and Risk Assessment of Need for NNI-Treated Seed

We support the notion in the regulatory proposal that the ability to purchase NNI-treated seeds must be based on a credible evaluation of need but recognize that this is a novel approach. It is important that it not place seed vendors in the role of gate-keepers to evaluate whether purchasers have met the new regulatory requirements.

Rather, the regulation should include a prescribed form or forms that can be shown to vendors for a simple pass/fail test to enable the purchase of treated seed. This new approach can build upon existing arrangements whereby vendors are only allowed to sell higher risk pesticides to qualified purchasers (“Qualified Farmers” and “licensed agricultural exterminators”).

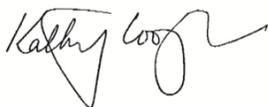
Additionally, prescribed forms or some equivalent form of record-keeping will be necessary to document each step in the chain to demonstrate that training has occurred, the documentation of IPM activities, the completion and evaluation of risk assessments, including a calculation for the maximum volume of treated seed that can be purchased.

Finally, a monitoring scheme will be necessary to assess and review progress towards achieving the stated goals of this regulatory initiative.

We look forward to continuing to support the government of Ontario on this important program and offer our ongoing assistance in developing the detailed regulatory mechanisms to ensure its success.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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