



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

May 21, 2008

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Sent by fax: (416) 314-2976
Sent by mail

Dear Mr. Bilyea,

RE: *Cosmetic Pesticides Ban Act, 2008* and related pesticide and pesticide product lists

EBR Registry Number 010-3348 - Legislative Amendments to the Pesticides Act to ban the use and sale of pesticides for cosmetic purposes.

CELA is pleased to provide this submission in response to the proposed legislative amendments to the *Pesticides Act* contained in Bill 64, the *Cosmetic Pesticides Ban Act, 2008* and the accompanying proposed lists of pesticides to be banned for use and pesticide products to be banned for sale in Ontario. In general, CELA supports this proposal with the qualifying comments noted herein.

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.

We therefore support the overall intent of banning the use and sales of cosmetic pesticides in Ontario but make the following comments to address two specific concerns with Bill 64 and to address issues that arise with the proposed lists of pesticides banned for use and pesticide products banned for sale.

Existing Municipal Bylaws

As noted in separate correspondence on May 7, 2008, to Premier McGuinty, subsection 7.1(5) of the Bill as currently drafted has the potential to render municipal by-laws completely inoperative where they address “the use, sale, offer for sale or transfer of a pesticide that may be used for a cosmetic purpose.”

We recommend that this section be deleted entirely and that the Bill remain silent on this issue. Section 14 of the *Municipal Act, 2001* and the developing body of case law are more than adequate to deal with any conflicts arising between municipal by-laws and Provincial regulation of pesticides. Further, Provincial regulation of pesticides ought to be the floor from which municipalities can regulate further in accordance with local needs.

Toronto’s Medical Officer of Health, Dr. David McKeown, has raised the same concern in his May 5, 2008 report to the Toronto Board of Health. He notes that Section 7.1(5) of Bill 64, accompanied by the proposed list of banned pesticides and pesticide products, would undermine the strength of Toronto’s existing bylaw, allowing the use of certain pesticides or pesticide products (specifically those containing the active ingredient glyphosate), that are currently not allowed under Toronto’s bylaw.

Hence, in addition to removing Section 7.1(5), we also recommend that glyphosate and other pesticide active ingredients (and related products) are included in the regulations to be drafted for Bill 64 specifying pesticides banned for use and pesticide products banned for sale in Ontario.

While improving these lists would eliminate the problem of the Provincial law weakening the Toronto bylaw, removing Section 7.1(5) will ensure that local bylaws can be stronger than the Provincial law, should municipalities choose to do so in response to local circumstances. This nesting of legal roles would continue to be in accordance with the “tri-level regulatory regime” described by the Supreme Court of Canada in its 2001 decision on the Town of Hudson bylaw.¹ Simply removing Section 7.1(5) would be consistent with the intent of the legislature when the *Municipal Act* was most recently amended, bolstering local regulatory powers to protect human health and the environment.

¹ Canada Ltée (Spraytech, Société d’arrosage) v. Hudson (Town), [2001] 2 S.C.R. 241, 2001 SCC 40

Delegation of Rulemaking

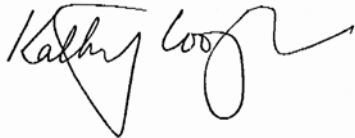
A second concern arises with the delegation of rulemaking under subsection 7.1(2)5 (“other prescribed uses”). This language is very open-ended, allowing for exceptions to the intended ban for any purpose. However, in our view, the exceptions provided in section 7.1(2)1-4 are broad enough. Subsection 7.1(2)5, has the potential to authorize exceptions that would run counter to the overall purposes of a bill designed to prohibit pesticide uses. For example, this subsection could, in future, be used to allow for the setting of thresholds for applying controlled products to control weeds. Although this government is committed to reducing pesticide use in Ontario, subsequent governments could, through prescribing excepted uses, render the purpose of these amendments to the *Pesticides Act* meaningless.

Nor are we convinced that the rest of the Bill, specifically the powers provided for in sections 5.(1) and 5.(2)(2), are sufficient to circumscribe the language of subsection 7.1(2)5. At a minimum, the language “other prescribed uses” should be qualified, for example: “other prescribed uses not in conflict with the overall intent of this bill.” On balance, the bill would provide simpler and clearer direction on pesticide rule-making if subsection 7.1(2)5 was deleted from the Bill in order to ensure that pesticide use in Ontario is reduced over the long-term.

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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