Canadian Environmental Law Association
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April 14, 2015

Public Consultation
ONTARIO POLLINATOR HEALTH
Ministry of the Environment and Climate Change
Climate Change and Environmental Policy Division
Strategic Policy Branch
77 Wellesley Street West, Floor 11, Ferguson Block
Toronto Ontario
M7A 2T5
VIA email: pollinatorhealth.ebr@ontario.ca

Re: Amending Ontario Regulation 63/09 to Reduce Use of Neonic Pesticides
Response to EBR Registry number 012-3733 - Regulatory Amendments to Ontario Regulation 63/09 under the Pesticides Act to Reduce the Use of Neonicotinoid Insecticides

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 these regulatory amendments are made in the same context as those submitted in January of this year concerning the Pollinator Health Proposal. That is, to the extent that any neonicotinoid (neonic) 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[1]), 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. This approach is bolstered by the release this month of yet another comprehensive scientific review showing that neonics are a more pervasive concern to multiple pollinators than

[1] US Environmental Protection Agency, 2014 Memorandum from Clayton Myers, Entomologist and Elizabeth Hill, Economist to Neil Anderson, Chief, Risk Management and Implementation Branch, Re: Benefits of Neonicotinoid Seed Treatments to Soybean Production, October 3, 2014 online: http://www2.epa.gov/sites/production/files/2014-10/documents/benefits_of_neonicotinoid_seed_treatments_to_soybean_production_2.pdf

has previously been understood.[2]

In the alternative, we strongly support the province taking steps, as currently proposed, to classify treated seeds as pesticides and therein, to focus on achieving dramatic reductions in the use of three neonicotinoid pesticides on corn and soy crops.

Herewith, we make suggestions for improving the proposed approach and assisting the provincial government with meeting its intended targets of dramatic reductions in both overwintering losses of honey bees and corn and soy acreage planted with pesticide-treated seeds.

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.

The New Class 12

We continue to support the notion of classifying treated seed as a pesticide but note that the November 2014 Pollinator Health Discussion Paper stated that the new class 12 would include "some or all seeds treated with pesticides" and allow certain exemptions. However, the draft regulation takes the opposite approach and focuses the new Class 12 on only the three most commonly used neonics for corn and soy seed treatments – namely, imidacloprid, thiamethoxam and clothianidin.

We recognize that making the new class 12 applicable to all pesticide-treated seeds might create an administrative burden by having to itemize diverse treated seed applications that are not the subject of this regulatory initiative. Nevertheless, as previously noted in response to the November 2014 Pollinator Health Discussion Paper, 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.

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[2] German National Academy of Sciences, EASAC Secretariat (Halle (Saale)), Royal Academies for Science and the Arts of Belgium (RASAB), and EASAC Brussels Office (Brussels). 2015. *Ecosystem Services, Agriculture and Neonicotinoids.* Halle (Saale): German National Academy of Sciences.

It is entirely plausible that pesticide manufacturers will apply to the federal Pest Management Regulatory Agency for label and/or use changes for alternative neonic treated-seed formulations including with pesticides such as acetamiprid and thiacloprid. If approved federally, this would be a regrettable outcome that the drafting of this new Provincial Regulation should anticipate and prevent. **We therefore recommend an approach of either including all pesticide-treated seeds in Class 12 or a rigorous monitoring of new federal registrations and swift inclusion in Class 12 of relevant pesticide-treated seeds.**

Education and Training

We understand that education and training on this new regulatory framework is scheduled for 2015 and will continue according to the new regulatory requirements. While education of farmers and vendors appears on track, we are aware of a lack of certified professionals to conduct the necessary pest assessments and prepare associated reports. **Given that the requirements are to be phased in over the course of the next several years, we recommend that the Province immediately begin negotiations with Ontario colleges and universities with agronomy and pest control/integrated pest management programs, such as Fleming College and others, to update curricula accordingly.** It seems reasonable to expect that college and/or university curricula can be updated for the Fall 2015 sessions (and perhaps even the Summer session) to begin to train these professionals. Such a move would contribute towards an, albeit small but useful contribution to job creation for young people in rural Ontario.

Record Keeping and Public Reporting

The provisions in Sections 98 through 102 related to record-keeping by seed vendors appear to provide adequate measures to ensure records are kept concerning key documents including written declarations about using no more treated seed than required and the associated assessment reports, as well as the sales records of total mass of seeds and acreage planted in both treated and untreated seeds.

However, we are concerned that Section 102(3) does not provide sufficient regulatory authority for public reporting of this information. As drafted, it refers to public report, in the Ministry's Public Information Centre and on-line, of only the list of Class 12 pesticides being used in the province.

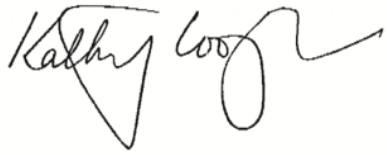
During briefings provided by Ministry staff, and in statements by the Environment Minister, it has been made clear to us that there is an intention to report publicly on progress towards reaching the goal of 80% reduction in acreage planted with pesticide-treated corn and soy seeds. The rest of Section 102 spells out the required record-keeping by vendors that will enable tracking towards achieving this goal. However, without public reporting applied to these crucial aspects of record-keeping, an opportunity is missed to ensure accountability and tracking of progress towards achieving the 80% reduction target.

We recommend that public reporting provisions in Section 102 be expanded to include annual reporting of total mass, and total acreage (i.e., the data collection required by Section 102(6)), of treated and untreated seed.

Finally, we wish to defer to the expertise of Ontario's beekeepers by generally supporting the Ontario Beekeepers Association comments made in response to this consultation with respect to their suggestions for improvements that will better protect honey bees.

We look forward to continuing to support the government of Ontario on this important program.

Yours truly,
CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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