

## **Pesticide Law and Policy in Canada**

There are many outstanding issues regarding implementing a by-law to achieve a phase out of “non-essential” outdoor uses of pesticides in Toronto, including the question of whether, in fact, there should be a by-law at all.

We cannot deal with all of these issues in this short discussion document. What we will do in this section is describe the main regulatory and policy issues as they apply to pesticide use, and provide a brief description of municipal by-laws that control the use of pesticides on private property.

### **What is the federal role in pesticide regulation?**

The federal legislation that applies to pesticides is the Pest Control Products Act (PCPA).<sup>74</sup> Regulations under this Act provide that any pest control product used or manufactured in Canada must be tested and registered with the federal government, including pesticide products used on residential properties in urban environments.

### **How are pest control products evaluated by the federal government?**

It is the purpose of the federal Pest Management Regulatory Agency (PMRA) to protect human health and the environment against the risks posed by pest control products while preserving for society the benefits of these same products.

The PMRA bases its decisions upon a process known as **risk assessment**. The risk assessment process employs a wide range of sources of information and relies on the judgement of scientific experts.

When a pesticide manufacturer proposes a new chemical for use as a pesticide it must provide the PMRA with the information that allows the Agency to judge the safety of the product. In order for the PMRA to assess safety, manufacturers have to provide results from multiple types of animal studies that test for toxicity.

### **Does federal registration of a product mean it is safe?**

It is often said that federal regulations provide adequate assurance that a product is safe. It may be more accurate to say that the federal

regulatory regime acknowledges that there are risks associated with the products, but the risks are acceptable - by a very wide margin of safety - and can be managed through labeling information. This is what people mean when they say, “pesticides are safe when used as directed”.

## **Merit® Solupak®**

### **RESTRICTIONS**

**Do not graze treated areas or use clippings from treated areas for feed or forage.**

**Do not plant any food crop within one year of a treatment.**

### **ENVIRONMENTAL HAZARDS**

**Do not apply within 30 metres of environmentally sensitive areas such as lakes, streams, rivers or other aquatic systems.**

**Do not contaminate water when disposing of equipment washwaters.**

**This product is highly toxic to bees exposed to direct treatment or residues on blooming crops or weeds.**

**Do not apply this product or allow it to drift to blooming crops or weeds if bees are visiting the treatment area.**

**This product is highly toxic to aquatic invertebrates.**

**Apply this product only in accordance with this label.**

**This chemical demonstrates the properties and characteristics associated with chemicals detected in groundwater.**

**The use of this chemical in areas where soils are permeable, particularly where the water table is shallow, may result in groundwater contamination.**

## **Are the risks of older pesticides being addressed?**

Most of the pesticides commonly used on lawns were registered long before the new standards described above came into effect and have all been under re-evaluation. The PMRA has identified eight “older” pesticides as candidates for priority re-evaluation. These are four insecticides (chlorpyrifos, diazinon, malathion and carbaryl) and four herbicides (2,4-D, MCPA, dicamba and mecoprop).

New scientific data indicate that the once commonly used insecticide chlorpyrifos may pose more risks to children than had previously been estimated.<sup>75</sup> This evidence has prompted PMRA to institute a phase-out of all home uses of the pesticide.<sup>76</sup> Diazinon, another insecticide in widespread use, is also on a program of voluntary phase-out that will substantially reduce how much is available for public use by the year 2003.<sup>77</sup>

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***Science is always changing.***

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***Provincial law requires homeowners and licensed applicators to follow the instructions on the product label.***

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### **What is the provincial role in pesticide regulation?**

Every province and territory in Canada has passed pesticide-related legislation. In Ontario, the Pesticides Act<sup>78</sup> and its regulations cover the shipment, sale, application, storage and disposal of pesticides. The Act also provides for permitting requirements, training, certification and licensing of applicators and sellers of pesticides.

Provincial laws are designed to manage the risks posed by pesticides by controlling who may apply them. The Ontario Pesticides Act and regulations create six different pesticide classifications. The classifications rank products on the basis of how toxic and persistent they are. For example, a Schedule 1 pesticide is in the “Restricted Category”. Every pesticide in this category is very toxic, very persistent and highly mobile in the environment. Only licensed applicators or certified agriculturists may use this category of pesticide and must apply for a permit first. The provincial regulations require that applicators of pesticides in the restricted categories (Schedules 1, 2 and 5) be trained in pesticide safety and certified at least once every five years.

Three of the pesticide categories (Schedules 3, 4, and 6) – ranging from moderate toxicity and **persistence** to low toxicity and no persistence – are available to homeowners without any licensing or permitting requirements. Licensed applicators may use these pesticides without a permit. Provincial law requires homeowners and licensed applicators to follow the instructions on the product label.

### **What is the municipal role in pesticide regulation?**

High population densities in urban areas increase the possibility that one person’s use of their property might conflict with another person’s enjoyment of theirs.

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***Law-making is best achieved at a level of government closest to the citizens affected.***

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It often falls to municipalities to impose by-laws and land use restrictions to reduce the potential for these kinds of conflict. Municipalities sometimes also pass by-laws to reflect local values. In its consideration of a Quebec community’s pesticide by-law, the Supreme Court of Canada observed that “Law-making [is] often best achieved at a level of government that is ... closest to the citizens affected and thus most responsive to their needs, to local distinctiveness and to population diversity.”<sup>79</sup>

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In Canada, provincial governments establish the powers and capacities of municipalities through legislation. This is what people mean when they say, “municipalities are creatures of the province”. Through various pieces of provincial legislation, municipalities have the power to pass by-laws. Ontario’s Municipal Act<sup>80</sup> also provides for a general power to make by-laws regulating health, safety, morality and welfare of the inhabitants of the municipality.<sup>81</sup>

This power under the Ontario Municipal Act (both the ‘old’ and the ‘new’ Acts) is important because, in June 2001, the Supreme Court of Canada found a legitimate municipal power to control the use of pesticides in a similar clause in Quebec law.

### **How did the Supreme Court define a municipality’s power to regulate pesticides?**

In 1991 the Town of Hudson, located west of Montreal, adopted By-law 270, which restricted the use of pesticides within its boundaries to specified locations and applications. In November 1992, two landscaping companies, Chemlawn and Spraytech, were charged for being in violation of the by-law. The companies pleaded not guilty and, when they lost at trial level, they appealed the decision. The companies also lost on appeal. They then took their case to the Supreme Court of Canada.

Chemlawn and Spraytech argued that it was outside the jurisdiction of the municipality to regulate pesticides. They also argued that the municipal law conflicted with provincial and federal law and was invalid. The Court found that there was no conflict between the by-law and other levels of regulation.

In its decision, the Supreme Court acknowledged that the primary value of local government is that it can move more sensitively and more flexibly in response to local needs. The Court observed that there is a ‘general enabling clause’ in the Quebec City and Towns Act which gives each municipality the ability to make by-laws to “secure peace, order, good government, health and general welfare in the territory of the municipality”.<sup>82</sup> The Court found that the by-law controlling the non-essential use of pesticides fell within the “health” component of the general enabling clause.



## What are Toronto's options to phase out non-essential uses of pesticides?

### Examples of municipal pesticide by-laws

There are many different ways that a municipality may control the use of pesticides. Existing Canadian municipal by-laws that regulate pesticides do not, for example, impose complete bans. Rather, they generally tend to define which uses of pesticides are permitted. Some, such as in Halifax, also provide lists of pest control products that are exempt from the by-law restrictions.

Described below are some of the main components of by-laws in Hudson, Quebec and the Halifax Regional Municipality in Nova Scotia.

#### The Town of Hudson, Quebec

The Hudson by-law starts with a general prohibition, and then lists exceptions to the prohibition. In this way, the by-law restricts pesticide use only to the ones it permits.

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***The Town of Hudson, Quebec restricted lawn care pesticides in 1991.***

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The by-law permits, for example, the use of pesticides in public and private swimming pools, to purify water intended for human and animal consumption, inside a building, and to control or destroy animals that constitute a danger to human beings. The Hudson by-law also permits the spraying of pesticides on farm crops and, until 2005, the spraying of pesticides on golf courses.

#### The Halifax Regional Municipality

Halifax Regional Municipal Council passed its pesticides by-law on August 15, 2000. The by-law has three implementation stages. Different provisions of the by-law come into effect at different times. In 2000, Council passed the by-law, giving immediate effect to a ban on the use of pesticides on all municipal property and initiated a public education and awareness program. On April 1, 2001, a general restriction came into effect on the use of pesticides on residential properties located within a 50-metre radius of: a property registered as being occupied by a person at risk who provides medical documentation; or any school, licensed daycare centre, park, playground, licensed senior citizens' residence, university, church or hospital. On April 1, 2003, there will be a general ban on the use of pesticides on all properties in Halifax Regional Municipality affected by the by-law.

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As with the Hudson by-law, there are exceptions to the ban to be enacted in 2003. The by-law will not restrict pesticide use on property used for agriculture or forestry, or on commercial or institutional properties. The by-law will not apply to the indoor use of pesticides or to outdoor use for other than plant and turf maintenance. In special cases where people are in danger or pests have infested a property, the by-law permits people to make special application to use otherwise banned pesticides.