

# TORONTO STAFF REPORT

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July 10, 2001

To: Board of Health

From: Dr. Sheela V. Basrur, Medical Officer of Health

Subject: Strategy to Achieve a Phase Out of Non-essential Outdoor Uses of Pesticides

Purpose:

This report responds to a request from the Chair of the Board of Health to develop a strategy to phase out non-essential outdoor uses of pesticides on public and private property.

Financial Implications and Impact Statement:

There are no financial implications stemming directly from this report. Any budget implications arising from an approved action plan will be considered in a future budget cycle.

Recommendations:

It is recommended that the Board of Health:

- (1) request City Council to authorize the Pesticides Subcommittee of the Toronto Interdepartmental Environment Committee (TIE) to:
  - (a) determine public attitudes towards greater restriction on the non-essential outdoor use of chemical pesticides on private property;
  - (b) continue to identify alternatives to the outdoor use of chemical pesticides;
  - (c) continue to consult with organic and traditional lawn care companies regarding chemical pesticide phase out options;
  - (d) develop a strategy to phase out non-essential outdoor uses of pesticides on private property, including an expanded education and outreach campaign targeted at pest control companies and the general public;
  - (e) submit the recommended strategy to the Board of Health and other appropriate standing committees for consideration;
- (2) request City Council to direct the City Solicitor, in consultation with the Pesticides Subcommittee of the Toronto Interdepartmental Environment (TIE) Committee, to report

to City Council on the most appropriate legal mechanisms by which the City can phase out non-essential outdoor use of pesticides; and

- (3) authorize and direct the appropriate City Officials to take the necessary action and give effect thereto.

Background:

On June 28, 2001, the Chair of the Toronto Board of Health requested the Medical Officer of Health to prepare a response to a recent decision by the Supreme Court of Canada regarding the capacity of a municipality to regulate the non-essential outdoor use of pesticides. The Chair requested that a preliminary strategy be developed for consideration by the Board of Health at its meeting on July 16, 2001.

In 1991, the Town of Hudson in the Province of Quebec adopted By-law 270 that restricted the use of pesticides to specified locations and purposes within the City boundary. (See Appendix A for relevant sections of By-law 270.)

The appeal to the Supreme Court of Canada was brought by landscaping and lawn care companies charged under the by-law in November 1992. The companies pleaded not guilty and asked that the court declare By-law 270 to be beyond the authority of the town of Hudson.

The landscaping companies lost at trial level, on appeal, and finally at the Supreme Court in June 2001. In short, all courts found that the municipality had legitimate power to restrict the non-essential use of pesticides within its boundaries.

Comments:

The Supreme Court began its decision with a description of the fundamental rule of municipal powers in Canada. The fundamental rule is that municipalities may exercise only those powers expressly granted by provincial statute. The concept of 'expressly granted' includes those powers implied by the expressed power granted by statute and powers essential to effecting of the purposes of the corporation.

The Supreme Court found legitimate capacity for the Town of Hudson to regulate pesticide use in what it calls the 'general welfare' provisions in Quebec law (the Ontario equivalent is s. 102 of the *Municipal Act*). The Supreme Court concluded that 'general welfare' includes public health:

“...it is reasonable to conclude that the Town’s by-law’s purpose is to minimize the use of allegedly harmful pesticides in order to promote the health of its inhabitants.”

The Supreme Court found the “Precautionary Principle” sufficient cause for the city to control the non-essential use of pesticides-- even without perfect scientific certainty of the potential harm -- in order to protect public health.

This decision is an important affirmation of the role of municipalities in regulating substances that pose potential threats to human health. It also gives considerable impetus to the City of Toronto's ongoing efforts to reduce non-essential use of pesticides. There are other factors to be considered, however.

The Supreme Court's decision applies to the province of Quebec and the legislation in force in that province. The municipal control of pesticide use in Ontario gives rise to complex legal issues.

As recently as March 2001, the Ontario Ministry of the Environment's position on municipal control of pesticide use was that the *Pesticides Act* takes precedence. The Ministry of the Environment expressed the view that it wanted to avoid a patchwork of by-laws across the province (OMOE, 2001). With the affirmation by the Supreme Court of municipal capacity to regulate non-essential outdoor use of pesticides, the Ministry's current position needs to be determined. The preference to avoid a patchwork of by-laws may create the opportunity for the City to work with the Province to draft a model pesticides by-law.

Several Ontario municipalities have shown considerable interest in controlling non-essential outdoor use of pesticides. In October 2000, the City of Waterloo passed a resolution requesting that the Provincial government amend the *Municipal Act* to grant municipalities the capacity to pass by-laws controlling the non-essential outdoor use of pesticides. Other cities considering by-laws and/or implementing a pesticide use reduction plan on city property are Caledon, Leamington, Owen Sound, Brantford, Ottawa, LaSalle, Kingsville, Essex and Windsor. The Association of Municipalities of Ontario is also active on the issue of pesticides.

The City Solicitor is best able to identify the most appropriate mechanism to achieve control of non-essential outdoor use of pesticides in the City of Toronto.

In addition to the legal complexities are issues surrounding the successful implementation of a law restricting the non-essential outdoor use of pesticides. The City must involve stakeholders in the development of strategies and mechanisms. Effective and ongoing public education is a crucial component of this initiative. Communication with key audiences at every stage as the strategy unfolds is also necessary.

The reasons for restricting non-essential outdoor use of pesticides are well known and have already given rise to strategic responses from the City. In October, 1998, Toronto Public Health released its report "Phasing Out Pesticide Use in the City of Toronto" in response to motions by Council in June, 1998. That report is attached (see Appendix B).

At its meeting of December 16-17, 1998, City Council adopted in principle the banning of pesticides on all City property and recommended a Pesticides Committee be convened. In February 1999, the Medical Officer of Health proposed terms of reference for a Toronto Inter-departmental Environment (TIE) Committee Pesticides Subcommittee. The Subcommittee first met in March 1999. The Terms of Reference for the Committee are attached (see Appendix C).

The City has reduced pesticide use on parks, sports fields and roadsides by more than 95 per cent since 1998. In 2000, TIE initiated a multi-department pesticide reduction communications plan and a “Green Guide to a Healthy Lawn” to encourage voluntary pesticide use reduction on private property.

Conclusion:

The Supreme Court ruling regarding the Town of Hudson Pesticides By-law creates a new impetus for the municipal control of non-essential outdoor use of pesticides. However, the decision deals with the law only in Quebec. In Ontario, there are still many outstanding issues the City must address. This report recommends a strategy where the Pesticides Subcommittee of the Toronto Interdepartmental Environment Team (TIE) takes the lead on developing a strategy. The Pesticides Subcommittee is the best mechanism to co-ordinate and implement any City initiative to control non-essential outdoor use of pesticides on private property. This report also recommends that the City Solicitor explore the most appropriate legal mechanisms to achieve the phase-out.

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List of Attachments:

Attachment A: Town of Hudson By-Law 270

Attachment B: Toronto Public Health, Staff Report, "Phasing Out Pesticide Use in the City of Toronto," October 30, 1998.

Attachment C: Pesticides Sub-Committee, Toronto Inter-Departmental Environment Team (TIE), Terms of Reference

References:

114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town), 2001 SCC 40.

Minutes – Pesticide Use Reduction Meeting, City of Toronto and Ontario Ministry of the Environment: Highlights of Meeting Discussion, Tuesday, March 6, 2001.

APPENDIX A  
Hudson Pesticides By-Law (excerpts)

Town of Hudson By-Law 270

1. The following words and expressions, whenever the same occur in this By-Law, shall have the following meaning:

a) "PESTICIDES": means any substance, matter or micro-organism intended to control, destroy, reduce, attract or repel, directly or indirectly, an organism which is noxious, harmful or annoying for a human being, fauna, vegetation, crops or other goods or intended to regulate the growth of vegetation, excluding medicine or vaccine;

b) "FARMER": means a farm producer within the meaning of the Farm Producers Act (R.S.Q., chap., P-28);

...

2. The spreading and use of a pesticide is prohibited throughout the territory of the Town.

3. Notwithstanding article 2, it is permitted to use a pesticide in the following cases:

- a) in a public or private swimming pool;
- b) to purify water intended for the use of human beings or animals;
- c) inside of a building;
- d) to control or destroy animals which constitute a danger for human beings;
- e) to control or destroy plants which constitute a danger for human beings who are allergic thereto.

4. Notwithstanding article 2, a farmer using a pesticide on an immoveable which is exploited for purposes of agriculture or horticulture, in a hot house or in the open, is requested to

a) register, by written declaration, with the Town, in the month of March of each year, the products which he stores and which he will be using during that year.

b) also provide, in the written declaration at article 4 a), the schedule of application of said products and the area(s) of his property where the products will be applied.

5. Notwithstanding article 2, it is permitted to use a pesticide on a golf course, for a period not exceeding five (5) years from the date this by-law comes into force:

...

6. Notwithstanding article 2, it is permitted to use a biological pesticide to control or destroy insects which constitute a danger or an inconvenience for human beings.

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10. For the purpose of article 8 of the Agricultural Abuses Act (R.S.Q. chap. A-2), an inspector designated by the Town may use a pesticide, notwithstanding article 2 of the By-Law, if there is no other efficient way of destroying noxious plants determined as such by the Provincial Government and the presence of which is harmful to a real and continuous agricultural exploitation.