



STAFF REPORT ACTION REQUIRED

Implications of the Proposed Provincial *Cosmetic Pesticide Ban Act* for the Toronto Pesticide Bylaw

Date:	May 5, 2008
To:	Board of Health
From:	Medical Officer of Health
Wards:	All Wards
Reference Number:	

SUMMARY

Toronto's Pesticide Bylaw (Municipal Code 612) came into effect on April 1, 2004 and restricts the outdoor cosmetic use of pesticides on all public and private property in the city. It was one of the first such bylaws passed in Ontario. Currently there are an estimated 29 pesticide bylaws in Ontario, and 140 across Canada.

On April 22, 2008 the provincial government introduced Bill 64, the *Cosmetic Pesticides Ban Act*, to prohibit the use and sale of pesticides for cosmetic purposes across Ontario. The province is currently seeking public comment on the Act, and will introduce more detailed regulation following the consultation.

The Medical Officer of Health (MOH) supports the intent of Bill 64. Toronto's bylaw has been successful in reducing pesticide use, and the provincial ban on sales and use will further restrict pesticides and therefore reduce human exposure to these substances.

However, the Act as currently written would render existing municipal bylaws inoperative, including Toronto's. The provincial government has not yet defined many important details of the proposed Act, including exemptions and an implementation timeline. Depending on these details, portions of the proposed Bill may be weaker than the current Toronto bylaw and therefore less protective of health. The MOH recommends that the Board of Health communicate this concern to the provincial government during its consultation period.

RECOMMENDATIONS

The Medical Officer of Health recommends that the Board of Health:

1. Request the Ontario Minister of Environment to:
 - a) amend the wording of the proposed *Cosmetic Pesticides Ban Act* so that if there is a conflict between a municipal bylaw and the Act, the provision that is most restrictive of the cosmetic use of pesticides prevails; and
 - b) clarify the timelines, enforcement provisions and resources for the *Cosmetic Pesticide Ban Act* implementation, particularly as they relate to municipalities that currently have pesticide bylaws.

Financial Impact

There are no financial impacts from this report.

DECISION HISTORY

At its meeting of May 21, 22, 23, 2003, Toronto City Council passed the Pesticide Bylaw (By-law 456-2003, Municipal Code, Chapter 612).

City Council discussed further elements of the Pesticide Bylaw at its meetings on May 18, 19 and 20, 2004 and February 16, 2005. Council made additional recommendations related to evaluating the bylaw, including assessing compliance and pesticide reductions by City agencies, boards, commissions and divisions and by lawn care companies, golf courses, bowling greens and companies managing transportation and utility rights-of-way.

The MOH presented an interim evaluation report of the Pesticide Bylaw to the Board of Health at its February 26, 2007 meeting.

ISSUE BACKGROUND

The City of Toronto's Pesticide Bylaw (Municipal Code 612) was passed in May 2003 and came into effect on April 1, 2004. It restricts the outdoor, cosmetic use of pesticides on all public and private property. The bylaw permits the use of pesticides in certain situations, such as to control or destroy a health hazard or a pest which has caused infestation to property. It also permits the use of certain lower-risk products.

On April 22, 2008 the provincial government introduced Bill 64, the *Cosmetic Pesticides Ban Act*, to prohibit the use and sale of pesticides for cosmetic purposes across Ontario (see Attachment 1). The province is currently seeking public comment on the Act through the Environmental Bill of Rights (EBR) Registry. Following this consultation, the government intends to introduce a more detailed regulation.

COMMENTS

The *Cosmetic Pesticides Ban Act* proposes to amend the 1990 *Ontario Pesticides Act* to:

- prohibit the use of certain pesticides for cosmetic purposes;

- prohibit the sale of certain pesticides used for cosmetic purposes;
- allow certain uses, including those related to forestry, agriculture and the protection of public health; and
- allow the use of pesticides on golf courses with conditions.

Many specifics of the Bill, including the actual list of pesticides that will be prohibited and exemptions to the ban, are not yet defined. The province has posted lists of pesticides in its EBR proposal that could be banned for use and sale. This report outlines strengths and concerns with the proposed legislation, and has been prepared in consultation with the City Solicitor.

Strengths of the proposed Act

The Medical Officer of Health (MOH) supports the intent of Bill 64 because it should significantly decrease the use of pesticides, and therefore human exposure to these substances, across Ontario.

The proposed *Cosmetic Pesticides Ban Act* would be particularly valuable in reducing pesticide use because it would restrict the sale of many pesticides. Municipalities do not regulate the sale of pesticides. Therefore the effectiveness of municipal pesticide bylaws is compromised because of the availability of pesticide products in retail outlets. Despite a four-year Toronto Public Health education program delivered in partnership with over 100 retail locations in the city, many residents continue to indicate that they assume that pesticides for sale are permitted for use under our bylaw. A ban on sales would be particularly helpful for pesticide-fertilizer combinations. These products (sometimes known as “weed and feed”) are not permitted under Toronto’s bylaw, but many consumers are not aware they contain pesticides and are likely to overapply them in both dosage and frequency and disregard safety precautions.

Concerns about the proposed Act

The MOH and the City Solicitor have noted that the current wording of the Act would render existing municipal pesticide bylaws inoperative. This has recently been confirmed by the provincial government. Section 2 of the Bill proposes to amend section 7 of the Pesticides Act by adding the following provision: *A municipal by-law is inoperative if it addresses the use, sale, offer for sale or transfer of a pesticide that may be used for a cosmetic purpose.* The Bill contemplates exemptions to this provision, but it would appear that the exemptions are available only in extremely limited circumstances.

Provincial legislation often includes wording to avoid conflict with other laws and in some circumstances includes language that allows the most restrictive provisions to prevail. For example, in Quebec, Section 102 of the Pesticide Management Code states: *“The provisions of the Pesticide Management Code and of the other regulations of this Act prevail over any inconsistent provision of any by-law passed by a municipality or metropolitan community.”* This provision enables a municipality to have stronger restrictions provided they don’t prevent someone from complying with the provincial code. This is also the approach that was successfully used in Ontario to regulate smoking

restrictions. Instead, the current wording of Bill 64 would, in most circumstances, render stricter municipal pesticide bylaws inoperable.

If the Act passes with its current wording, situations might arise in which residents receive less protection from pesticide exposure than they do under the current Toronto bylaw. For example, the proposed list of prohibited pesticides does not include a weed killer known as glyphosate (known by trade names such as “Roundup”), which is presently restricted in Toronto. Bill 64 could also allow “other prescribed uses” that Toronto’s bylaw restricts, such as applying pesticides to control weeds. Both of these examples could allow more herbicide use in Toronto than is currently permitted. The MOH’s submission on the Environmental Registry will request the amendment of the Bill to address these issues.

Bill 64 also lacks detail about how the provincial ban will be enforced and funded. Toronto’s bylaw is enforced by Public Health Inspectors who respond to complaints and conduct surveillance to identify violations. If Toronto is expected to enforce additional provisions such as sales restrictions arising from provincial legislation, there will be a need for the province to provide adequate resources.

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SIGNATURE

Dr. David McKeown
Medical Officer of Health

ATTACHMENTS

Attachment 1: Bill 64, An Act to Amend the Pesticides Act to Prohibit the Use and Sale of Pesticides that may be Used for Cosmetic Purposes