



Canadian Environmental
Law Association



New federal pesticide legislation does not override, duplicate, or negate the legitimacy of local pesticide bylaws. Nor is it yet in force.

The City of Toronto is considering a bylaw that would restrict the use of pesticides on lawns, gardens, and other green spaces by the spring of 2004. Some have argued that recent amendments to the federal pesticide legislation—the *Pest Control Products Act* (PCPA)—eliminate the need for and validity of local bylaws. While long overdue amendments to the 33-year-old Act are welcome and when ultimately implemented should contribute to reducing risk from chemical pesticides in Canada, **nothing in the new federal legislation overrides, circumscribes, or obviates local bylaws to reduce/eliminate pesticide use within municipal boundaries.**

Rather, as the Supreme Court of Canada affirmed in the Hudson, Quebec bylaw case, there are three different aspects of pesticide regulation. **The Court described in detail the federal role (registration), the provincial role (commercial use) and the municipal role (local use decisions) and noted that each are appropriate and complementary aspects of pesticide regulation.**

Moreover, it should be noted that the new legislation will not come into force for at least another year, and application will phase in over at least a decade as the 6,000 pesticides now registered are re-evaluated.

The Supreme Court set the legal precedent for municipal pesticide bylaws when it unanimously upheld the right of the Town of Hudson, Quebec to adopt a bylaw restricting the use of pesticides within its perimeter to specified locations and enumerated activities. **Municipal attention to pesticide use was found to be consistent with the federal government's exclusive authority to determine which pesticides are available in Canada for which applications and at what doses.** The bylaw proposed by Toronto's Medical Officer of Health parallels that of Hudson, Quebec, and other bylaws implemented in nearly 50 communities across Quebec, as well as in Halifax, Nova Scotia, Shediac, New Brunswick, and Perth and Cobalt, Ontario.

Background on the Federal Legislation

The *Pest Control Products Act* (PCPA) aims to “protect human health and safety and the environment by regulating products used for the control of pests.” Pest control products are to be registered and de-registered based on their efficacy, and on the risks they pose to human and environmental health. No other jurisdiction can actually register or de-register a pest control product. In theory, only products that pose no “unacceptable risk of harm” are registered. But in reality, most of the products in common use today were registered decades ago, with data sets that would be considered unacceptable today, without public input then and still without public access to information about health and ecological hazards.

The Pest Management Regulatory Agency (PMRA)—a branch of Health Canada—administers the Act under the authority of the Minister of Health.

The flaws in Canada's 33-year-old pesticide legislation have long been recognized by all parties. The PCPA was recently amended by Parliament, and received Royal Assent on December 12, 2002, incorporating some important improvements. It must be noted, however, that the new PCPA will not come into force for at least another year, until several Regulations have been drafted and approved. Even then, it cannot be expected that health and environment improvements will accrue immediately, but rather over an extended period as pesticides are re-evaluated, and only if processes are in place to ensure lower-risk products get precedence.

Some important improvements

Re-evaluations are required, special reviews are made possible. The government must now re-evaluate registered pest control products at least every 15 years including the backlog of older pesticides which comprise 70% of registered products. If a member country of the Organization for Economic Cooperation and Development (OECD) bans all uses of an active ingredient, the Minister will be obliged to conduct a special review.

Pesticide registrants bear the "burden of proof." The new legislation places the burden of proof on pesticide registrants such that applicants will be required to demonstrate to the Minister that the product is both effective and that its health and environmental risks are acceptable.

Public access to information is improved. For the first time, the public will have access to test data and information about pesticide use by province, and pesticide registrants and others will be required to report on adverse effects associated with pesticides.

Some initial recognition of children's special sensitivities. All registration decisions must consider "identifiable subgroups" or vulnerable populations (including pregnant women, infants, children, women and seniors).

Revised definition of a "pest control product." Under the old legislation, only the active ingredient was assessed for health and environmental hazard impacts. Now assessment is required for the active ingredient, and any formulants and by-products.

Outstanding concerns

The new legislation could have been a much more effective tool for protecting children and wildlife from the dangers of pesticides, notwithstanding the long-overdue step forward. Similarly, an opportunity was missed to ensure access to safer natural, biological and other substances with the legislation giving little more than lip service to prioritizing and expediting review of new and effective lower-risk pesticides. Such provisions were supported by environmental, health and industry groups, since having alternatives available is a key mechanism to reducing risk to health and the environment.

Given that many of the ‘nuts & bolts’ aspects of the legislation were relegated to Regulations, its effectiveness remains to be seen. In addition, the Pest Management Regulatory Agency has been chronically under funded and under pressure by the pesticide industry for faster registrations. The requirement for a Parliamentary review of the legislation within seven years offers an opportunity to address such outstanding concerns.

The re-evaluation situation

There are currently several dozen pesticides undergoing ad hoc re-evaluation under the existing legislative rules; some of these for the first time in decades, including most, if not all of the most commonly used lawn and garden pesticides. While re-evaluation is long-overdue, re-evaluations under the current PCPA rules gives third parties – the public, academics, wildlife centres, etc. – little opportunity to influence the data used, the assessment methodology, the data interpretation, and therefore the outcome. While the PMRA maintains that the most modern methodologies are being used, the ability to demand data, the data available on uses, the requirement for considering cumulative and aggregate exposures and safety factors are not legally in effect. Since Canada is using the U.S. priority list of most toxic pesticides, this means important opportunities may be missed.

Under the new legislation re-evaluation must be undertaken every 15 years. This is still a long timeline when considering the pace at which new information about the hazards of pesticides to health and the environment emerges and the fact that evidence of harm might only emerge once a product is in active use. In addition, some important tests (e.g. for developmental neuro-toxicity and endocrine disruption) will not be conducted. Given that there are 6,000 pesticides currently registered for use in Canada, this will be an important but time consuming process.

Since most, if not all, of the current toxicological data considered by government is generated and/or funded by industry, the Senate Standing Committee on Social Affairs, Science and Technology called for additional funding to Health Canada to conduct independent scientific research into the health and environmental effects of pesticides.

Background on Provincial and Municipal Powers

Municipalities have the power, under section 130 of the new Ontario *Municipal Act* to enact pesticide bylaws, provided they do not cause a direct operational conflict with provincial or federal legislation. Since the scope of federal power is limited to pesticide registration, de-registration and re-evaluation, it is well within the bounds of provincial and municipal governments to address use patterns, notification guidelines, licensing of commercial pesticide operators for the purposes of health, safety, and nuisance control, etc. While a municipality cannot ban the sale of a pesticide, it can restrict its use through various mechanisms.

Further, nothing in the federal legislation prohibits any level of government from using non-regulatory tools such as incentives, research, education and awareness to reduce the risks from pesticides. Ontario provincial legislation has not specifically addressed municipal by-laws, leaving the field to municipalities under their general health and welfare residuary powers. This was the exact type of power that the Supreme Court considered in the Hudson case.

The Supreme Court found that municipal pesticide bylaws were consistent with the international precautionary principle. The Supreme Court also articulated the importance of local governance; municipal governments can play a significant role in reducing reliance on, use of, and risk from pesticides.

Conclusion

Federal-level pesticide registration and de-registration, provincial-level scheduling and agricultural programs, and municipal-level limitations on pesticide use are all legitimate initiatives within the bounds of their respective legislative powers. The Supreme Court of Canada affirmed this “tri-level regulatory regime” as a complementary package of controls on pesticides, which are, after all, intentionally toxic. **Neither the current Pest Control Products Act, nor the new federal pesticide legislation which will hopefully come into force within a year, overrides or negates the legitimacy of local pesticide bylaws.**

For more information, contact:

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For the Supreme Court Ruling on Spraytech versus the Town of Hudson, Quebec:
http://www.lexum.umontreal.ca/csc-scc/en/pub/2001/vol2/html/2001scr2_0241.html

For WWF-Canada’s *Pesticide Reduction is Possible!* web site:
<http://www.wwf.ca/satellite/prip/index.html>

For toxics news, reports, articles and press releases from the Canadian Environmental Law Association (CELA): http://www.cela.ca/toxics/toxic_index.htm

For CELA’s analysis of the Municipal Act (and link to full review):
http://www.cela.ca/Intervenor/26_4/26_4bill111.htm