



October 1, 2012

Public Consultations on Use of Cosmetic Lawn Pesticides
Manitoba Conservation and Water Stewardship
Environmental Programs and Strategies Branch
1007 Century Street
Winnipeg, Manitoba R3H 0W4

Via Email: cosmetic.pesticides@gov.mb.ca

Dear Minister Mackintosh;

Re: Public Consultations on Use of Cosmetic Lawn Pesticides in Manitoba

We write in response to the public consultation currently occurring in your province. Ecojustice, the **Canadian Environmental Law Association**, and the Canadian Association of Physicians for the Environment are pleased to comment on what we hope will become an important step towards reducing the use and sale of unnecessary or “cosmetic” pesticides in Manitoba. This progressive move will protect Manitobans from environmental risks and also support sustainable economic opportunities in the lawn care and landscaping sector.

I. Background

Ecojustice Canada (formerly Sierra Legal Defence Fund) is an independent, non-profit organization supported by 17,000 Canadians, many of whom reside in Manitoba. We have a staff of lawyers and scientists who provide services to citizens and groups working to improve environmental laws across the country. Ecojustice lawyers also represent individuals and groups appearing before courts and tribunals in an effort to enforce the law to protect the environment. Since forming in 1990, legal reforms around toxic reductions generally and pesticide regulation specifically have formed a core of our work.

The Canadian Environmental Law Association (CELA) is a non-profit, public interest organization founded in 1970. CELA is an environmental law clinic – within Legal Aid Ontario – dedicated to providing legal services to low income people and disadvantaged communities, and advancing the cause of strong environmental protection through advocacy, education and

law reform. Members of CELA's staff have worked on pesticides issues for over 25 years, and have been at the forefront of Canadian activity summarizing the research about human health impacts of toxic substances including pesticides, particularly to children.

Members of CELA's and Ecojustice's staff were extensively involved in developing legal reforms to the *Pest Control Products Act*, which was substantially amended in 2002 with several progressive revisions proclaimed in 2006. Lawyers from our organizations have acted in the courts on behalf of clients adversely affected by pesticides as well as on behalf of multiple groups and individuals who successfully opposed repeated legal challenges to pesticide bylaws in Hudson, Quebec and Toronto, Ontario. Inquiries from members of the public about pesticides to our offices are numerous. We have assisted hundreds of groups and individuals across the country in efforts to achieve the dozens of bylaws now in place, and in 2009 celebrated the passing of Bill 64 in the Ontario legislature to ban the use and sale of cosmetic pesticides across the province – the most progressive law of its kind in North America and one that we hope Manitoba will emulate.

The Canadian Association of Physicians for the Environment (CAPE) is a national advocacy organization representing over 5,500 doctors, allied health care professionals and concerned citizens from across Canada. Founded in 1994 by a group of concerned doctors, CAPE's mandate is to protect human health by protecting the planet. CAPE works closely with municipal and provincial governments, as well as health and environment groups, to push for environmental legislation that protects the health of all Canadians by preventing serious illness. CAPE works to ban lawn and garden pesticides, promote renewable energy, support local food, and more.

II. Focus on Protecting Children's Health

While the federal and provincial governments in Canada have made important advances in recent years to recognize, reduce, and in some cases prevent, exposure to pollution and hazardous substances, serious problems remain. More children have asthma than ever before. Cancer in children, though rare, is the leading cause of illness-related death in children aged one year or older. Several cancers are on the rise among young adults in Canada, raising concern about exposure to carcinogens during vulnerable periods of development including in the womb. Very large numbers of children experience a wide range of learning, behavioural, and developmental disabilities. Emerging but rapidly expanding scientific evidence points to the ability of many different chemical exposures to disrupt the human endocrine system contributing to impacts on reproduction, development and the later development of cancer. Many complex, and not entirely understood, factors contribute to these various health outcomes.¹ However, scientific evidence is increasingly revealing that exposure to environmental contaminants, including pesticides, is one of these many interacting factors.²

¹ The recently developed theory relating to how cancer is triggered, known as the "hallmarks of cancer" suggests that the reduction of exposure to multiple chemicals is key to reducing cancer risk: [Hanahan D.](#), [Weinberg, R.A.](#), "Hallmarks of Cancer: The Next Generation", *Cell*, [Volume 144, Issue 5](#), 646-674, 4 March 2011.

² Canadian Partnership for Children's Health and Environment, 2005. *Child Health and the Environment, A Primer*; Cooper K, Marshall L, Vanderlinden L, and Ursitti F (2011) *Early Exposures to Hazardous Chemicals/Pollution and Associations with Chronic Disease: A Scoping Review* (A report from the Canadian Environmental Law

We also know that we are faced with the double challenge of reducing ongoing emissions of toxic substances as well as facing ongoing exposure from historical sources that remain persistent in the environment.³ Scientific evidence confirms that we should focus on minimizing or eliminating exposures during sensitive life stages, to avoid harm to development in the womb and in early childhood. We should also be ensuring safe food and water supplies and ensuring good air quality, indoors and out, and minimizing exposure to toxic substances in consumer products. Given these multiple challenges, we should take every opportunity to minimize or eliminate exposures to toxic substances that are unnecessary and easily eliminated. The cosmetic use of pesticides falls squarely into this category.

We therefore strongly urge the Government of Manitoba to enact strong legislation prohibiting the *sale and use* of cosmetic pesticides. We urge the Manitoba government to take progressive, precautionary, and science-based legislative action similar to that taken in Ontario where we are proud to say the government has enacted the most progressive legislation in North America on this issue.

III. Appropriate Scope of Cosmetic Pesticides Law

The cosmetic use of pesticides is an unnecessary and potentially dangerous use of chemicals that have a myriad of known and suspected health impacts and even more unknown health and environmental impacts, given uncertainties around long-term exposures and synergistic effects of various pesticides.⁴ Despite recent reforms to federal law and policy governing pesticide evaluation and registration, pesticides continue to be assessed individually, in isolation from other pesticides and regardless of the daily reality of exposure to low levels of multiple chemicals. Indeed, the ability to assess the effects of long-term, low-level exposures and the combined effects of multiple pesticides remains a complex scientific exercise that is not adequately addressed in permitting pesticides for use in Canada under the federal *Pest Control Products Act*. Hence, as with other progressive municipal and provincial governments, the Manitoba government's move to regulate cosmetic uses is not only welcome, but necessary to protect health in a precautionary manner.

A. Locations

The cosmetic use of pesticides on private lawns and gardens in rural and urban settings, as well as on public parks, school yards, and commercial and institutional properties pose risks to human

Association, the Ontario College of Family Physicians and the Environmental Health Institute of Canada); Ontario College of Family Physicians, 2012. *2012 Systematic Review of Pesticide Health Effects*; Ontario College of Family Physicians, 2004. *Pesticides Literature Review* (OCFP).

³ Health Canada (2010) *Report on Human Biomonitoring of Environmental Chemicals in Canada. Results of the Canadian Health Measures Survey Cycle 1 (2007–2009)*; Centers for Disease Control and Prevention (2009) *Fourth National Report on Human Exposure to Environmental Chemicals*.

⁴ Colborn T (2006) A Case for Revisiting the Safety of Pesticides: A Closer Look at Neurodevelopment; *Environmental Health Perspectives*; 114:10–17; U.S. Environmental Protection Agency (2011) *Assessing Pesticide Cumulative Risk*. See multiple publications at: <http://www.epa.gov/oppsrrd1/cumulative/>.

health and the environment. Therefore, we suggest that the Government of Manitoba adopt an approach similar to that taken in Ontario, whereby the cosmetic use of pesticides throughout the province is prohibited, with the exception of certain exempted uses as appropriate.

B. Sale and Use of Cosmetic Pesticides

We strongly recommend that Manitoba adopt a prohibition on the sale and use of a number of active ingredients in pesticides. Some suggest that we should not ban use of pesticides for cosmetic use, but restrict them just as we do for agriculture, by taking steps that address rules around display, registered vendors, and sales only to licensed users. However, this approach would not achieve the intended goal of eliminating the needless use of pesticides for cosmetic purposes but simply create a monopoly on application of these toxic pollutants by lawn care companies that are uninterested in changing to non-toxic practices.

Where effective restrictions on cosmetic uses are in place, meaningful reductions in usage are occurring due to the elimination of all such pesticide uses regardless of whether they are done by individuals or private companies. The difference is the transformation of existing lawn care companies and the emergence of new companies using environmentally and economically sustainable practices.

C. Classification of Pesticides

Any statute or regulation adopted by the government to address the issue of cosmetic pesticide use should specify criteria for the classification of pesticides.

We also recommend that a compendium of classified pesticides be made available to the public on the Internet through the Ministry of Conservation and Water Stewardship's website, and that applications for classification of pesticides under the new law should also be posted online and that there be opportunities for public comment. The government's basis for decisions regarding classification of new pesticides, as well as reclassification and declassification, should be made accessible for public review and comment.

Finally, we urge the Government of Manitoba to learn from experiences in jurisdictions such as Quebec, and ensure that, like Ontario, its cosmetic pesticides law contains a list of approved products rather than merely a list of products or active ingredients that are prohibited for cosmetic use. This is because the latter approach makes it difficult for government to keep up with new products that are introduced into the marketplace. These products may be just as dangerous as others banned for cosmetic use but, because they are not on the list of prohibited products, they would not be caught by the cosmetic pesticide law. Keeping a list of approved substances decreases government resources needed to monitor new products, prevents exposures to new and potentially harmful pesticides, and puts the onus on industry to demonstrate that a new product is indeed safe.

D. Exemptions/Restrictions

We understand that the Manitoba government's proposal to regulate cosmetic pesticides does not apply to agricultural uses of pesticides. We suggest that the only areas of farm and other rural properties that should be exempt from the ban on cosmetic pesticide use are areas where the land is actually used for growing food or for livestock use. Homestead grounds for instance, should not be exempt any more than urban lawns should be. Manitobans in rural communities are no less deserving of the need for protection from exposure to toxic substances that will be realized through restrictions on non-essential pesticide use than are their urban counterparts. Indeed, these communities will likely achieve a greater benefit in terms of exposure reduction compared to those in urban areas given the reality of pesticide drift and the opportunity for tracking indoors of pesticides used during agricultural activities.⁵

Although the "Playing it Safe" consultation document states that pesticides on golf courses are not the subject of the present consultation, we highly recommend that Manitoba adopt requirements for a public engagement process for golf courses similar to that which exists under section 19 of Ontario Regulation 63/09 under Ontario's *Pesticides Act* (i.e. public meetings and publication of reports). We also recommend the phasing out of the use of cosmetic pesticides on golf courses over 5 years or less, as it is inevitable that their use will impact neighbouring lands, which often include residential developments and sensitive environments.

While some golf course owners may view requirements such as these as onerous, we are certain that golf course users will welcome them, and would also support a phase-out of the use of cosmetic pesticides over time. At a minimum, there should be an immediate ban on widespread cosmetic use on fairways and in gardens around clubhouses where such changes are easy to implement. Such an approach has been used on golf courses elsewhere and allows staff to focus further efforts on curbing pesticide use on golf greens where such change in maintenance practices is more challenging.

IV. Business Opportunities

Ecojustice, CELA, and CAPE suggest that in the coming months, as the Government of Manitoba develops its cosmetic pesticide laws, that it also highlight the increased business opportunities created by bans on the non-essential use of pesticides.

The debate over a pesticide by-law in Toronto began in 2001 with a by-law being enacted in 2003. Toronto's Medical Officer of Health released a study in February 2007 measuring the success of Toronto's pesticide by-law. It was found that Toronto's lawn care sector had grown steadily each year since 2001 since public discourse had begun regarding the ban on non-essential usage. In fact, Canadian Business Patterns data, compiled by Statistics Canada, shows

⁵ Roberts JW et al 2009. Monitoring and Reducing Exposure of Infants to Pollutants in House Dust. *Reviews of Environmental Contamination and Toxicology Volume 201*, DOI 10.1007/978-1-4419-0032-6_1; Colt JS et al 2004. Comparison of pesticide levels in carpet dust and self-reported pest treatment practices in four US sites. *Journal of Exposure Analysis and Environmental Epidemiology* (2004)14, 74–83.

that the number of landscaping/lawn care businesses operating in the City of Toronto between 2001 and 2006 increased by 30 per cent.⁶

A similar trend occurred in Halifax, where the number of landscaping/lawn-care businesses grew by 53 per cent between 2000 and 2005.⁷ Halifax's pesticide bylaw came into force in 2003.

In terms of whether a cosmetic pesticides ban might influence whether a household hires a lawn care company to care for their lawn, data indicate that the proportion of households that hired a lawn care company in Toronto remained stable from 2003 to 2005.⁸

In light of experiences in other jurisdictions which have adopted strong cosmetic pesticide laws, such a move in Manitoba could rightly be characterized as creating new and potentially lucrative opportunities for the lawn care sector, not to mention safer occupational conditions for workers in this sector.

V. Lessons Learned in Ontario: Dramatic Reductions Seen via Environmental Monitoring and the Importance of Education

The Ontario *Pesticides Act* is world-class legislation that protects both human and environmental health. Since the legislation came into effect in 2009, (a) concentrations in urban streams of lawn chemicals such as 2,4-D, Dicamba and MCPP, were reduced by up to 97 per cent,⁹ and (b) the third review of scientific literature by the Ontario College of Family Physicians of the health effects of pesticides reconfirms that many pesticides are harmful to reproductive, respiratory and neurodevelopmental health.¹⁰

The Ontario approach is simple and straightforward. It bans the use and sale of pesticides province-wide in the context of a series of exemptions for specific uses. These exemptions can include existing agricultural and forestry operations alongside those uses related to the protection of public health. The end-result is a ban on the use and sale of pesticides for unnecessary or "cosmetic" uses. This approach is in line with the Hudson, Quebec pesticide by-law, and many others that followed its approach and that withstood multiple legal challenges. In the context of the Supreme Court decision upholding the jurisdiction of Hudson and other municipalities to pass by-laws to control the use of cosmetic pesticides on private property, the case also held that governments, including municipal governments, have an obligation to respect the precautionary

⁶ Toronto Public Health, "Interim Evaluation of Toronto's Pesticide Bylaw" (February 2007), online: City of Toronto <http://www.toronto.ca/health/pesticides/pdf/interim_evaluation_report_02262007.pdf> at p 20.

⁷ *Ibid.*

⁸ *Ibid* at p21. See also: Cole DC et al 2011. Municipal bylaw to reduce cosmetic/non-essential pesticide use on household lawns - a policy implementation evaluation. *Environmental Health* 2011, 10:74

⁹ Aaron K. Todd. Ontario Ministry of the Environment. Nov 2010. Changes in Urban Stream Water Pesticide Concentrations One Year after a Cosmetic Pesticides Ban. p. 5

<http://www.ene.gov.on.ca/stdprodconsume/groups/lr/@ene/@resources/documents/resource/stdprod_080108.pdf>

¹⁰ OCFP, 2012, at *supra* at note 2.

principle.¹¹ In a world of multiple chemical exposures, banning the use and sale of needless pesticides is an exemplary way to apply a precautionary approach.

We can assure you that Ontario is not over-run with weeds. Public and private lawns and gardens, including vegetable gardens, are as beautiful and productive as ever. There is a wide variety of lawn care and gardening options available in stores and garden centres, and through landscaping companies. There has been no need to exempt vegetable gardens from this ban. Such small-scale gardening in healthy soil rarely requires the use of pesticides, non-toxic options are readily available, and it is generally the case that those who grow their own vegetables are doing so to avoid the use of pesticides rather than use them in their own backyard gardens.

Another very important lesson from Ontario, as well as from several years of experience with diverse municipal bylaws, is the need for public education. Indeed, many jurisdictions have successfully adopted public advertising campaigns that blend information with humour in an effort to inform residents about cosmetic pesticide bans and available options for weed-control. It cannot be emphasized enough that the success of these cosmetic pesticide bans flowed from effective educational efforts that accompanied the bans and helped the public transition to new practices.

Fortunately, there is a great deal of excellent educational work already done in many parts of Canada that Manitoba can emulate and that will not create significant costs for implementation. Similarly, it is important to coordinate this educational outreach in a collaborative approach with retailers and help them to implement the restriction on pesticide sales. Models for doing so exist elsewhere and there is no need to completely “reinvent the wheel.”

VI. Farmers Will Not be Adversely Affected

Given that the consultation currently being undertaken by the Government of Manitoba does not apply to the use of pesticides in the agricultural context, agricultural practices will not be impacted by the cosmetic pesticide law that is ultimately adopted. Complementary to the above educational work with the public and collaborative efforts with retailers, is the need to communicate with farmers to confirm that this new legislation will not affect them. The careful use of exemptions, including the ability to judiciously use pesticides to address matters of public health or noxious weeds, should further confirm to farmers that this law is not about agricultural activities.

We understand that some who oppose the government’s move to regulate cosmetic pesticides have argued that farmers will nonetheless be adversely affected by this effort due to drifting seed from weeds on properties near farms on which cosmetic pesticides are no longer used to control weeds. This position is flawed and inconsistent with experiences in other jurisdictions that have adopted cosmetic pesticide bans. We have made inquiries with farming and horticultural organizations in Ontario and have learned that although this fear was raised as part of the opposition raised during the deliberations over the Ontario Bill, the reality is that such fears have

¹¹ *Canada Ltée (Spraytech, Société d’arrosage) v. Hudson (Town)*, 2001 SCC 40, [2001] 2 SCR 241.

not become a reality. Agriculture has not had to begin using more pesticides in Ontario. It is notable that urban densities are much higher in Ontario than in Manitoba and dispersed throughout agricultural areas.

Also, as mentioned above, lawns and parks in provinces such as Ontario which have adopted bans on the use and sale of cosmetic pesticides have not become overrun with weeds since there are many weed control options readily available that do not involve the use of chemical pesticides which pose health and environmental risks. Drifting seeds have therefore not been a problem for farmers in these jurisdictions, just as they will not be a problem for farmers in Manitoba following restrictions on the use of cosmetic pesticides.

VII. Importance of Provincial Regulation of Cosmetic Pesticides

Some who oppose the restrictions on the use and sale of cosmetic pesticides in Manitoba have put forward the argument that because the federal government, through the Pest Management Regulatory Agency (PMRA), is responsible for registering pesticides for use in Canada, this is sufficient scientific proof that pesticide use is safe.

The reality is that PMRA may register a pesticide if it decides that the risk to human health is “acceptable”, based on data submitted by the registering company including an assessment of whether the pesticide is effective on a target pest. The PMRA does not, as a matter of policy, describe chemical pesticides as “safe.” Rather, this evaluation of acceptable risk, as noted above, addresses each chemical individually, rarely addresses exposure to groups of substances, and is based on an always incomplete understanding of health and environmental risks. In its assessments, the PMRA does not differentiate between cosmetic and non-cosmetic use. We therefore agree with organizations such as the Canadian Cancer Society, which have noted that while a pesticide may have an acceptable risk for one use (and thus be registered for use in Canada), no risk is acceptable when used for cosmetic purposes.

When new information about the risks posed by active pesticide ingredients comes to light, the regulatory process can react and respond with greater restrictions, though it tends to do so very slowly. The over 20-year push for banning the needless or cosmetic use of pesticides is in direct response to this scientific uncertainty and reactive rather than preventative regulatory approach.

Furthermore, even where the PMRA has registered pesticides for use nationally, it suggests limiting their use and reducing any unnecessary exposure to them.¹² The PMRA specifically highlights the importance of ensuring that children, pregnant women, the elderly, and animals should not be present when pesticides are applied or indeed for 24 hours after a pesticide is applied. Ensuring that such persons and animals avoid an area for a full 24 hours is difficult, if not impossible, in the context of lawns where there is pedestrian traffic as well as parks and schoolyards.

¹² Health Canada, “Pesticides and Health” (2007), online: Health Canada <http://www.hc-sc.gc.ca/ewh-semt/alt_formats/hecs-sesc/pdf/pubs/contaminants/pesticides-eng.pdf>.

As recognized by the Supreme Court of Canada in its seminal decision in *114957 Canada Ltée (Spray-Tech, Société d'arrosage) v. Hudson (Ville)*, 2001 SCC 40, when it comes to matters such as environmental protection and pesticides, all levels of government – federal, provincial, and municipal – can have a valid and complimentary regulatory role to play. The federal government's registration of pesticides nationally in no way ousts the provinces' jurisdictional responsibility for pesticide regulation.

VIII. The Limits of Integrated Pest Management

Ecojustice, CELA, and CAPE strongly urge you to resist any recommendations to weaken a ban on cosmetic pesticide use by allowing the use of “integrated pest management” or IPM. It has been our long-standing experience that, while approaches to IPM can be laudable, particularly indoors where great care must be taken to control the possibility of excessive exposure, the use of IPM in the context of lawn and garden care, particularly by large lawn care companies, is more of a public relations exercise than any serious change in practices. We therefore strongly urge you to resist any suggestions that a cosmetic pesticide ban would be effective if it were implemented in the context of allowing continued pesticide use only by licensed companies trained in IPM practices.

IX. Timing of the New Cosmetic Pesticide Law

Ecojustice, CELA, and CAPE are of the strong opinion that delaying the implementation of the new Manitoba cosmetic pesticide law would be a serious mistake, and that the government should introduce legislation in the spring of 2013. Phasing in implementation of the legislation will allow for educational activities and programs to take place across the province. We believe that an 18-month phase-in period for the ban would be more than adequate given that many retail stores have already moved away from selling many particularly harmful pesticides and political leaders in the government have been discussing the possibility of a law restricting the use of cosmetic pesticides for over a year, with the Manitoba Roundtable for Sustainable Development recommending a ban on the use and sale of cosmetic pesticides in April of 2011.

In light of the environmental and health risks posed by the cosmetic use of pesticides, and consistently strong public support for banning their use and sale in jurisdictions where polling has been done, we believe that there is no reason to delay in moving forward with the new law at this time. We submit to you that giving businesses and individuals another two growing seasons to phase-in a ban would be more than adequate.

X. Conclusions

In closing, we urge the Province of Manitoba to enact strong, science-based restrictions on the non-essential use of pesticides. We urge you to do as Ontario has done, and enact comprehensive legislation without the loopholes or half-measures that exist in certain other laws enacted or proposed in New Brunswick, Newfoundland and Prince Edward Island.

To summarize, we recommend the following key elements be incorporated into Manitoba's cosmetic pesticide law:

1. The scope of the law should include all non-essential uses with exceptions only for the protection of public health.
2. The law should include strong restrictions on sales.
3. The only areas of farming exempt from the prohibition on cosmetic pesticide use should be those areas where the land is actually used for growing food or for livestock use.
4. The law should apply equally in rural and urban areas.
5. **Golf courses should not be exempted but alternatively, a planning regime should be put in place to limit the environmental impact of pesticides by golf courses and encourage continued improvements of their practices.**
6. The Province should appropriately characterize this proposal as creating business opportunities.
7. The phase-in period for the law be no more than 18-months and should include a public education strategy.

Staff from CELA, Ecojustice, and CAPE would be pleased to discuss the contents of these submissions further with Government of Manitoba representatives at any time.

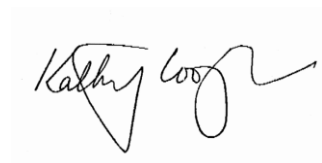
Yours truly,

ECOJUSTICE



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A handwritten signature in cursive script that reads "Farrah Khan".

Farrah Khan
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