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Re: EBR Registry Number: 010-5080

Dear Mr. Bilyea:

CropLife Canada is pleased to provide comments on the proposed new regulations to implement the *Cosmetic Pesticides Ban Act, 2008*.

CropLife Canada is the trade association representing the manufacturers, developers and distributors of plant science innovations – pest control products and plant biotechnology – for use in agriculture, urban and public health settings.

We are extremely disappointed with the fact that, despite numerous meetings and specific suggestions for workable solutions from CropLife and its members as well as other concerned groups, the Ministry of Environment has proposed a set of regulations that fail to address so many of the critical concerns we have raised over the past year. Our foremost concern is that the scientific criteria that are absolutely critical to the regulation of pesticides, and which stakeholders and the public were promised by the ministry and the minister, are absent. We are also concerned that the reasonable phase-in period (e.g. three years) that was originally proposed by the Government in EBR Registry # 010-2248 on January 18, 2008 does not appear in these regulations. Further clarification of the term “cosmetic” has not been provided.

CropLife Canada believes the intent of the *Cosmetic Pesticides Ban Act* can still be met while addressing the serious flaws that exist in these proposed regulations. CropLife Canada is requesting that the Government of Ontario redraft the proposed regulations using science-based criteria in consultation with academia, industry, and other experts.

Provide clear scientific criteria for product classification

Any sale or use restrictions resulting from this process should be based on sound scientific criteria, thereby maintaining a predictable business environment. Under the current federal *Pest Control Products Act*, Health Canada uses the most modern scientific criteria in the world for evaluating the safety of all pesticides. We support this method of science-based regulation. Any alternative system established by the province should be science-based and must consider the needs of Ontario residents with respect to

protecting their property from infestations of pests that have environmental, safety, and economic consequences to sustainable landscapes.

In addition, new product innovations will depend on a predictable, science-based regulatory system in Ontario.

The current proposed classification system for Classes 5 through 11 has no scientific criteria. The criteria that would determine how products are to be classified must be clearly defined and explained before meaningful consultation can take place on any classification system. The fact that the role of the Ontario Pesticide Advisory Council (OPAC) is limited to classification of Classes 1 to 4 – those classes that have criteria outlined in regulation – is further evidence of the inconsistency of these regulations.

Once the criteria are established and consulted on, CropLife Canada would support and recommend a key role for OPAC in the classification of current and future pesticides in Ontario.

The description used in Class 11, “certain biopesticides and naturally derived pesticides” does not constitute scientific criteria. There is no scientific merit for the differentiation between naturally derived and synthetic products. This type of arbitrary designation perpetuates the misconception that ‘natural’ automatically means ‘safe’. We know of numerous examples of substances that are naturally occurring – such as arsenic, lead, and nicotine – that would clearly not be appropriate for this class. The active ingredients listed here certainly do not encompass the full range of innovative, low-risk products that have been made available by members of CropLife Canada. CropLife Canada requests that the Ministry provide its rationale for the definition of Class 11.

We would suggest that the Province of Ontario consider the Health Canada model, which bases all pesticide assessments on science and the inherent properties of all products - both natural and synthetic - as part of the risk assessment.

A number of the products proposed for the list of banned products, Class 8, were previously described by OPAC as “pesticides that are relatively innocuous to human health and/or the environment” and classified as Schedule 4 & 6 products under the previous Regulation 914 with the following criteria:

- Low toxicity (LD50>5000 mg/kg) (10X lower toxicity than federal cut-off for Domestic class)
- Non-persistent in environment (soil half-life < 2weeks)
- Non-mobile in the environment

What type of scientific data was evaluated and what risk assessment process was undertaken by the ministry to result in this dramatically different assessment of these products?

Minister Gerretsen’s challenge to industry in the news release that accompanied the publication of these draft regulations was to produce “innovative, low-risk products”. Our industry is extremely disappointed with this statement since innovation has been the cornerstone of our industry and continues to be a key priority. In fact, there are already a number of low and reduced risk products on the market - some synthetic, some biological. Our industry will continue to innovate but needs clear, predictable, science-based regulations in order to make the investments required to bring innovations to this province.

The stated goal of the *Cosmetic Pesticides Ban Act* is to reduce the unnecessary use of lawn and garden pesticides in Ontario. There are alternative ways of achieving this goal, such as by focusing on certain product types, education of consumers and establishment of clear criteria. These options are much preferable to the complicated, contradictory, non-scientific approach proposed in these draft regulations.

Cosmetic definition

The definition in the Act simply states cosmetic = non-essential.

CropLife Canada would like an explanation of what led to the current “cosmetic” designation for lawns, flower and vegetable gardens, shrubs, etc.

Impact analysis

We would like the government to conduct an impact analysis to determine the economic impacts, including potential job losses, cost to replace lost green spaces, lack of tools to control outbreaks, onerous exemption conditions, as well as the potential negative health and environmental impacts of homeowners not having access to properly regulated products intended specifically for their use.

Integrated Pest Management

We support the Integrated Pest Management (IPM) accreditation requirement for golf courses and the reasonable phase-in period provided. We feel it would be appropriate to extend this same requirement to the lawn care industry and thus provide businesses and homeowners the peace of mind of knowing that their service provider is IPM accredited, while ensuring that pesticides are applied only when and where necessary.

Exemption conditions

Many of the proposed exemptions for health protection, trees, and sports fields are unnecessarily burdened with onerous conditions that do not take into account the strict licensing and training requirements of applicators performing those functions, as well as the rigorous approval process that goes into these products by Health Canada.

Additional exemptions

While the current proposed regulations do contain some exemptions, we find them arbitrary and believe they should include additional essential uses. Once the regulations are redrafted based on scientific criteria, we would recommend the following additional exemptions:

- Property damage (recognition that landscapes have value, from both an economic and environmental standpoint)
 - Likely or imminent loss of landscape or desirable habitat (Note definition in the City of Toronto’s current bylaw: *INFESTATION — The presence of pests in numbers or under conditions which involve an immediate or potential risk of substantial loss or damage*)
 - Provisions for controlling pest infestations based on pest threshold levels being met are outlined in the OMAF (Ontario Ministry of Agriculture and Food) Turf IPM Manual - Publication 816. This exemption should also include a provision for the control of weed infestations that compromise the health of turfgrass, present a safety hazard (recreational turf areas), or limit the ability of turf to provide environmental benefits (i.e., oxygen production, carbon dioxide sequestration, runoff prevention, water purification, temperature moderation).
- Spot treatments, where appropriate, as part of an IPM program
- Fruits and vegetables grown for personal and commercial consumption

CropLife Canada supports an exemption for IPM-accredited, ministry-licensed landscape applicators for the current proposed exemptions as well as those listed in this paper.

Provide reasonable implementation timing

CropLife Canada recommends that the regulations be redrafted with the help of experts, using clear, predictable scientific criteria. Once that process is completed and public consultation has taken place, we recommend the following be considered:

- CropLife Canada recommends a minimum transition period of three years to provide enough time for users, industry and retailers to adapt
- All other restrictions at provincial or municipal level were conducted over two - three years minimum (e.g. Quebec and Toronto)
- Health Canada phase-outs of pesticides are usually conducted over a period of two - three years to prevent unintended consequences such as illegal use and unnecessary disposal costs.
- Even though some of Ontario is already under a varying patchwork of municipal bans, time is needed for education and training on the provincial approach.
- Orderly phase-out of existing products needed to avoid environmental issues (current collection and disposal programs are not designed to deal with massive province-wide stocks from retail and the public)
- Operators with approved product currently in storage for 2009 application will be faced with the financial and environmental burden of disposing of product that was perfectly legal at the end of their last use season.
- A short implementation period would place a significant economic burden on small retailers who are not able to simply return unwanted product to suppliers. An unrealistically short implementation period is a clear contradiction of the Government's initial proposal and intent of having a reasonable phase-in period e.g. three years as outlined in EBR Registry # 010-2248.

The release of a draft list of banned active ingredients and products in the spring of 2008 certainly does not constitute proper advance notice. There was significant uncertainty surrounding the content of the list, in fact the department has changed the list since it was first released. Two major active ingredients, glyphosate and glufosinate ammonium, were added many months later for reasons not explained by the ministry. The very fact that the identity of the final list of products affected was not made public until November 7, after the end of the use season, after retailers had placed orders and after manufacturers had prepared and packaged product underscores the clear reason to expect a reasonable phase-in period, as described above.

Summary

- **CropLife Canada maintains that there are alternative ways of achieving the stated goal of the *Cosmetic Pesticides Ban Act* - to reduce the unnecessary use of lawn and garden pesticides in Ontario - such as by focusing on certain product types, education of consumers and establishment of clear criteria.**
- **CropLife Canada is requesting that the Government of Ontario redraft the proposed regulations using science-based criteria in consultation with academia, industry, and other experts.**
- **CropLife Canada recommends that the Government of Ontario consider the needs of Ontario residents with respect to protecting their property from pests while recognizing the key role played by Health Canada in the safety assessment of all pesticides.**
- **CropLife Canada recommends a minimum transition period of three years to provide enough time for users, industry and retailers to adapt to the redrafted regulations.**

- **Once the criteria are established and consulted on, CropLife Canada supports and recommends a key role for OPAC in the classification of current and future pesticides in Ontario.**
- **CropLife Canada requests that the ministry provide its rationale for the definition of Class 11.**
- **CropLife Canada would like an explanation of what led to the current “cosmetic” designation for lawns, flower and vegetable gardens, shrubs, etc.**
- **We would like the government to conduct an impact analysis to determine the economic, health and environmental impacts of these regulations.**
- **CropLife Canada recommends additional exempted uses, including: property damage (infestation clause); spot treatments as part of an IPM program; and home fruit and vegetable gardens.**

CropLife Canada believes that the intent of the *Cosmetic Pesticides Ban Act* can be met in a very reasonable timeframe; however, these regulations are fundamentally flawed and must be addressed before moving forward. Our industry is committed to meaningful, constructive dialogue with officials and others to help arrive at a workable solution.

In closing, CropLife Canada would like to reiterate its commitment to ensuring the proper use of all pesticides by all use sectors. We strongly urge the Government of Ontario to redraft the proposed regulations using science-based criteria once those criteria are developed in consultation with academia, industry, and other experts. We would respectfully request a written response to all of our recommendations, questions and suggestions.

Sincerely,



Lorne Hepworth
President
CropLife Canada

cc Honourable Dalton McGuinty, Premier of Ontario
 Honourable John Gerretsen, Minister of Environment
 Honourable Michael Bryant, Minister of Economic Development

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