

Comments on proposed amendments to Ontario's Pesticides Regulation (ERO Notice 019-0601)

December 12, 2019

These are the comments of the David Suzuki Foundation and Environmental Defence in response to Environmental Registry of Ontario Notice 019-0601, proposed amendments to Ontario's Pesticides Regulation.

The David Suzuki Foundation is a national non-profit organization headquartered in Vancouver, with offices in Toronto and Montreal. Through evidence-based research, education and policy analysis, the Foundation works to conserve and protect the natural environment, and help create a sustainable Canada.

Environmental Defence challenges and inspires change in government, business and people to ensure a greener, healthier and prosperous life for all.

We offer two general statements to provide context for our more detailed comments on the proposal, which follow. First, robust environmental regulation benefits people in Ontario and our environment. Changes to the Pesticides Regulation should be considered with a view to better protecting public health and the environment. The proposed changes do not strengthen health and environmental protections. The ERO notice states, "The proposed legislation and regulatory changes are not anticipated to have significant environmental impacts," but negative impacts are foreseeable. Proposed changes to the regulation of neonicotinoid-treated seeds, in particular, open the door to increased use of these harmful chemicals, undoing progress made over the past five years to reduce their prophylactic use. The only positive impacts cited in the ERO notice relate to "[bringing] pesticides to market and [accessing] pesticides immediately upon federal registration," and administrative cost savings attributed to "reducing requirements." In our view, these should not be the primary purpose of Ontario's pesticide regulatory regime and are not an appropriate rationale for the proposed changes.

Second, the ERO notice mischaracterizes provincial requirements as duplicative of the federal regulatory regime. In fact, as with many areas of environmental policy, federal and provincial governments share responsibility for regulating pesticides. Provincial requirements complement the federal regulatory regime in every province in Canada, and this enhances environmental and health protections.

Cosmetic pesticide ban

It is important that the proposed legislative and regulatory changes maintain Ontario's cosmetic pesticide ban, in place since 2006. Cosmetic pesticides are a needless source of toxic exposure. Adjustments are needed to the proposed regulation to ensure this intent is realized.

1. Maintaining the cosmetic ban on Class 9 pesticides

The ERO Notice states, “the same pesticides currently restricted for cosmetic use will continue to be restricted,” and while the proposed document entitled “List of Active Ingredients Authorized for Cosmetic Uses” (the Allowable List) reproduces the current Class 11 list,¹ we note with concern the provision allowing registrants to request that a pesticide be added to the Allowable List (sec. 17.2). To provide a measure of assurance that the current ban will be maintained, the Proposed Guide to Pesticide Classes should specify, in the section outlining the process for determining whether an active ingredient is appropriate for use for a cosmetic purpose (“Moving Forward” – page 11 of the consultation draft), that active ingredients listed in Class 9 at the time this proposal was issued will not be considered for addition to the Allowable List.

2. Rules for determining whether an active ingredient is appropriate for use for a cosmetic purpose

We are concerned that the regulation sets out the rules for determining which active ingredients may be allowed for cosmetic purposes in a way that could potentially undermine the ban — contrary to the stated intention of the proposal.

We recommend the following changes to Section 17 of the proposed regulation:

- a. Pesticides classified as Class B (Restricted)² by the PMRA should not be considered for inclusion on the Allowable List. The purpose of Ontario’s cosmetic pesticide ban, which was introduced as part of a larger toxics-reduction strategy, is to reduce needless exposure to toxic chemicals and promote access to lower-risk alternatives. Class B pesticides, by definition, are not lower risk; on the contrary the federal regulatory has classified them as Restricted out of concern for their environmental or health risks.
- b. The list of factors to be considered when determining whether an active ingredient is appropriate for cosmetic use should be redrafted to adopt the wording in the original 2006 Guideline and require application of the precautionary principle. We support the recommended language submitted by Ecojustice for paragraph 17(1)2, concerning (see annex), including a requirement to apply the precautionary principle and avoiding the misleading and potentially dangerous reference to “safe use” or pesticides. Pesticides are intended to kill living organisms. The PMRA’s regulatory approval of pesticides is a determination of acceptable risk, not safety. Referring to pesticides as “safe” undermines public awareness efforts about careful use, and reading labels, as well as the fact that it is against federal law to not follow instructions on a pesticide label given that failure to do so could result in undue exposure, and health or environmental harm.

¹ Under Ontario’s current classification system for pesticides, Class 11 pesticides are biopesticides and lower-risk active ingredients permitted for cosmetic use with requirements for posting notice signs to alert the public to their use.

² The federal Pest Control Products Regulations defines Class B/Restricted as follows (emphasis added):
(c) “RESTRICTED”, if the pest control product is one for which the Minister, out of concern for its health or environmental risks, has set out additional information to be shown on the label concerning essential conditions respecting the display, distribution or limitations on use of, or qualifications of persons who may use, the product.

3. Exemption for cemeteries

The proposed exemption for cemeteries is unjustified, contrary to the intent of the cosmetic ban, and should be withdrawn. Currently, the regulation allows the use of pesticides for lawn maintenance only on specialty turf and sports fields, where turf must be maintained according to specific standards. The same considerations do not apply in cemeteries. Cemeteries in Ontario have operated under the cosmetic pesticides ban for more than a decade and should continue to do so. The proposed exemption could potentially result in a significant increase of lawn pesticides, including in urban areas.

Summary of recommendations to maintain Ontario's cosmetic pesticide ban:

- *Specify in the Proposed Guide to Pesticide Classes that active ingredients listed in Class 9 at the time this proposal was issued will not be considered for addition to the Allowable List.*
- *Pesticides classified as Class B (Restricted)¹ by the PMRA should not be considered for inclusion on the Allowable List.*
- *Adopt the wording in the original 2006 guideline with respect to the factors to be considered in determining whether an active ingredient is appropriate for cosmetic use – see annex. Avoid the misleading and potentially dangerous reference to “safe use” or pesticides.*
- *Require the Director to apply the precautionary principle in determining pesticides acceptable for cosmetic use.*
- *Do not exempt cemeteries.*

Restrictions on neonicotinoid-treated corn and soybean seeds (NNIs)

The main corn- and soybean-growing regions of Canada are in Ontario and Quebec, which together account for 90 per cent of Canadian corn production and 79 per cent of soybean production.³ Both provinces currently impose similar restrictions on the use of NNI-treated seeds to reduce risks to the environment. Key features of the Ontario and Quebec regulations, with respect to NNI-treated seeds, include a general prohibition on the sale and use of NNI-treated seeds; an exemption allowing the use of treated seeds where justified by a pest assessment (the Quebec regulation also requires evaluation of lower-risk pest control methods) conducted within the past year; third-party validation; requirements for seed vendors to report on sales of NNI-treated seeds.

The proposed amendments to Ontario's Pesticides Regulation represent an unjustified retreat from all aspects of this regime. Although the general prohibition on NNI-treated corn and soybeans is retained, the proposed changes to the terms of the exemption fundamentally undermine it. The proposal opens the door to increased use of NNI-treated seeds in Ontario, undoing five years of progress to curtail their overuse. The province should be considering ways to strengthen restrictions on NNIs in light of provincial water-monitoring data documenting widespread environmental contamination and seed sales

³ <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3210035901>

reports to date. NNI-treated corn and soybean seeds are still planted on 2.5 million acres hectares in Ontario;⁴ while the regulation has reduced the use of NNI-treated seeds, it has not achieved the targeted 80 per cent reduction. At a minimum, the province must maintain current restrictions and requirements.

4. Pest assessment requirements

The intent of Ontario's NNI restrictions, in line with the principles of integrated pest management, is to end the prophylactic use of treated seeds, which is a major source of environmental contamination, and allow targeted use only where "needed" to address demonstrated pest threats. This approach depends on credible requirements for pest assessment, and this is lacking in the proposal.

We recommend the current regulatory requirements be maintained with respect to:

- a. Pest Assessment Guide — The proposal to allow the sale and use of NNI-treated seeds based on the presence of *risk factors* in the absence of pest scouting runs contrary to the principles of IPM. The presence of one or more risk factors does not guarantee the presence of relevant pest populations, and lower-risk interventions to control pests should be attempted before resorting to NNI-treated seeds.
- b. Pest assessment report validity period — The proposal to remove the requirement to update pest assessments annually in order to purchase or use NNI-treated seeds essentially caps reductions in the use of NNI-treated seeds at current levels. No further reductions in the use of NNI-treated seeds can be expected as a result of the regulation, as proposed, and use may increase. The current requirement for a pest assessment conducted within the past year better ensures that the assessment is valid at the time NNI-treated seeds are purchased and also provides an incentive for farmers to consider lower-risk interventions in future years.
- c. Independent pest assessments — The current requirement for an independent, professional pest advisor to conduct the assessment provides an appropriate measure of assurance. Quebec adopted a similar approach in its pesticide regulation, requiring a justification and prescription from an agronomist to purchase and use NNIs. Indeed, across various regulatory regimes, third-party verification is required to enhance compliance and build public confidence.

5. Annual reporting to track NNI-treated seed sales

Current requirements for seed vendors to maintain records and submit reports on sales of NNI-treated and non-NNI-treated corn and soybean seeds should be maintained to enable the government to assess results, and also to support compliance activities. There is no other source for this information in Ontario. The PMRA's report on annual pesticide sales — total sales of active ingredients, by volume — does not include seed treatments, and in any case does not provide provincial-level or product-specific sales data.

⁴ <https://www.ontario.ca/page/neonicotinoid-regulations-seed-vendors#section-5>

The current requirement for MECP to post total sales of NNI-treated and non-NNI-treated seeds should also be maintained. Public reporting is a critical public accountability mechanism and enables informed public policy dialogue. Indeed, the limited reporting requirement in the current regulation should be expanded to develop more comprehensive reporting on pesticide use in Ontario.

Summary of recommendations to maintain Ontario's restrictions on NNIs:

- *Maintain the current guidelines for pest assessment; withdraw the proposed risk assessment method.*
- *Maintain the current requirement for a pest assessment report to be completed within the past twelve months in order to purchase and use NNI-treated seeds.*
- *Maintain the current requirement for a pest assessment conducted by independent, professional pest advisors within the past 24 months in order to purchase and use NNI-treated seeds.*
- *Maintain current requirements for seed vendors to submit reports on sales of NNI-treated and non-NNI-treated corn and soybean seeds, and for the government to post summary reports annually. Consider extending public reporting requirements to other pesticides and pesticide-treated seeds.*

Annex: Recommended changes to the proposed amendments to the Pesticide Act Regulation 63/09 General, at section 17. (1) 2.

Highlighted and red is new proposed language and red only is taken from current (original) low-risk criteria.

An active ingredient is appropriate for use for a cosmetic purpose only if the Director is satisfied that,

- i. the active ingredient is a biopesticide, or
- ii. based on consideration of the following factors and the application of the precautionary principle, the active ingredient poses a low risk to human health and the environment:

- A. The active ingredient has a low inherent toxicity to non-target organisms.
- B. ~~The products in which the active ingredient is contained are unlikely to be used in a manner that is likely to cause significant exposure to humans~~ Used in ways that do not cause significant exposure to humans or the environment;
- C. The active ingredient is not persistent in the environment.
- D. The active ingredient is widely available to the public for use, other than use as a pesticide, for some time ~~and has a history of safe use.~~
- E. The active ingredient has a non-toxic mode of action.