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May 20, 2008

Association of Local Public Health Agencies  
425 University Avenue  
Suite 502  
Toronto, ON M6G 4B6

RECEIVED

JUN 05 2008

alPHA

Dear Sir or Madam:

The Toronto Board of Health on May 20, 2008:

1. requested the 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;
  - 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;
  - c. ensure funding for activities related to education and/or enforcement of provincial regulations under the Cosmetic Pesticide Ban Act should these activities be required of municipalities;
  - d. make no exemption for weeds except for health reasons;
  - e. not exempt golf courses from the Act;
  - f. restrict the use of glyphosate ("Roundup"); and
  - g. delete Clause 7.1(2)5. "Other prescribed uses" from the Cosmetic Pesticides Ban Act;
2. communicated these recommendations to other Ontario Health Units, the Ontario Public Health Association (OPHA), the Association of Local Public Health Agencies (alPHA), and municipalities with cosmetic pesticides by-laws for their support; and

3. requested the Medical Officer of Health to submit a report to the Board of Health on what legal options might be available to the Board of Health and the City of Toronto to preserve our right to protect the health of the public if Bill 64 is adopted without the amendment proposed in Recommendation 1a.

Background:

The Board of Health on May, 2008, considered a report (May 5, 2008) from the Medical Officer of Health, entitled "Implications of the Proposed Provincial Cosmetic Ban Act for the Toronto Pesticide Bylaw" recommending 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.

The following persons addressed the Board of Health:

Gideon Forman, Canadian Association of Physicians for the Environment;  
Jan Kasperski, Chief Executive Officer, Ontario College of Family Physicians;  
Katrina Miller, Toronto Environmental Alliance; and  
Councillor Joe Mihevc.



Secretary,  
Board of Health

C. Davidovits/jd  
Item HL14.1

- c. Medical Officer of Health  
Interested Persons

HL14.1



**STAFF REPORT  
ACTION REQUIRED**

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

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

**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.

## CONTACT

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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



1ST SESSION, 39<sup>TH</sup> LEGISLATURE, ONTARIO  
57 ELIZABETH II, 2008

1<sup>re</sup> SESSION, 39<sup>e</sup> LÉGISLATURE, ONTARIO  
57 ELIZABETH II, 2008

## Bill 64

## Projet de loi 64

**An Act to amend the  
Pesticides Act to prohibit the use  
and sale of pesticides that may be used  
for cosmetic purposes**

**Loi modifiant la Loi sur les pesticides  
en vue d'interdire l'usage et la vente  
de pesticides pouvant être utilisés  
à des fins esthétiques**

**The Hon. J. Gerretsen**  
Minister of the Environment

**L'honorable J. Gerretsen**  
Ministre de l'Environnement

**Government Bill**

**Projet de loi du gouvernement**

1st Reading      April 22, 2008  
2nd Reading  
3rd Reading  
Royal Assent

1<sup>re</sup> lecture      22 avril 2008  
2<sup>e</sup> lecture  
3<sup>e</sup> lecture  
Sanction royale



EXPLANATORY NOTE

The Bill amends the *Pesticides Act* to prohibit the use and sale of certain pesticides that may be used for cosmetic purposes.

NOTE EXPLICATIVE

Le projet de loi modifie la *Loi sur les pesticides* en vue d'interdire l'usage et la vente de certains pesticides pouvant être utilisés à des fins esthétiques.

**An Act to amend the  
Pesticides Act to prohibit the use  
and sale of pesticides that may be used  
for cosmetic purposes**

**Loi modifiant la Loi sur les pesticides  
en vue d'interdire l'usage et la vente  
de pesticides pouvant être utilisés  
à des fins esthétiques**

Note: This Act amends the *Pesticides Act*. For the legislative history of the Act, see the Table of Consolidated Public Statutes – Detailed Legislative History on [www.e-Laws.gov.on.ca](http://www.e-Laws.gov.on.ca).

Remarque : La présente loi modifie la *Loi sur les pesticides*, dont l'historique législatif figure à la page pertinente de l'Historique législatif détaillé des lois d'intérêt public codifiées sur le site [www.lois-en-ligne.gouv.on.ca](http://www.lois-en-ligne.gouv.on.ca).

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Sa Majesté, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, édicte :

1. (1) Subsection 1 (1) of the *Pesticides Act* is amended by adding the following definition:

1. (1) Le paragraphe 1 (1) de la *Loi sur les pesticides* est modifié par adjonction de la définition suivante :

“cosmetic” means non-essential; (“esthétique”)

«esthétique» Non essentiel. («cosmetic»)

(2) Section 1 of the Act is amended by adding the following subsection:

(2) L'article 1 de la *Loi* est modifié par adjonction du paragraphe suivant :

Use of pesticide

Usage de pesticides

(4) For the purposes of this Act,

(4) Pour l'application de la présente loi :

- (a) the placement or application of a pesticide is a use of the pesticide; and
- (b) the mixing, dilution or loading of a pesticide for the purpose of placing or applying it is a use of the pesticide.

a) la mise en place ou l'application d'un pesticide constitue un usage de celui-ci;

b) le mélange, la dilution ou le chargement d'un pesticide aux fins de sa mise en place ou de son application en constitue un usage.

2. The Act is amended by adding the following section:

2. La *Loi* est modifiée par adjonction de l'article suivant :

Prohibitions – pesticides used for cosmetic purposes

Usages interdits : pesticides utilisés à des fins esthétiques

7.1 (1) No person shall use or cause or permit the use in, on or over land of a pesticide that has been prescribed for the purpose of this subsection.

7.1 (1) Nul ne doit utiliser dans ou sur un terrain, ou au-dessus de celui-ci, un pesticide qui est prescrit pour l'application du présent paragraphe, ni permettre ou faire en sorte que cela se fasse.

Excepted uses

Usages : exceptions

(2) Subject to the regulations, subsection (1) does not apply to the following uses of a pesticide:

(2) Sous réserve des règlements, le paragraphe (1) ne s'applique pas aux usages suivants d'un pesticide :

- 1. Uses related to golf courses, if any prescribed conditions have been met.
- 2. Uses related to agriculture.
- 3. Uses related to forestry.
- 4. Uses related to the promotion of public health or safety.
- 5. Other prescribed uses.

1. Les usages relatifs aux terrains de golf, si les conditions prescrites, le cas échéant, ont été remplies.

2. Les usages relatifs à l'agriculture.

3. Les usages relatifs aux activités forestières.

4. Les usages relatifs à la promotion de la santé ou de la sécurité publiques.

5. Les autres usages prescrits.

**Requirements related to exempted uses**

(3) A person who, pursuant to subsection (2), uses a pesticide prescribed for the purpose of subsection (1) shall comply with such requirements as may be prescribed.

**Prohibition on sale, etc.**

(4) Despite section 6, no person shall sell, offer to sell or transfer a pesticide that has been prescribed for the purpose of this subsection.

**By-laws inoperative**

(5) 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.

**3. The definition of "offence" in subsection 23 (1) of the Act is amended by striking out "4, 6 or 7" and substituting "4, 6, 7 or 7.1".**

**4. Section 34 of the Act is amended by adding the following subsection:**

**Exception**

(2) Subsection (1) does not authorize the Director to exempt a person from a provision of a regulation made with respect to section 7.1.

**5. (1) Section 35 of the Act is amended by adding the following paragraphs:**

38. prescribing pesticides for the purpose of subsection 7.1 (1) or (4);
39. defining golf courses for the purpose of paragraph 1 of subsection 7.1 (2);
40. defining agriculture for the purpose of paragraph 2 of subsection 7.1 (2);
41. defining forestry for the purpose of paragraph 3 of subsection 7.1 (2);
42. defining promotion of public health or safety for the purpose of paragraph 4 of subsection 7.1 (2);
43. prescribing uses for the purpose of paragraph 5 of subsection 7.1 (2);
44. prescribing conditions that must be met for paragraph 1 of subsection 7.1 (2) to apply;
45. prescribing requirements that must be complied with for the purpose of subsection 7.1 (3);
46. prescribing sales, offers to sell or transfers to which subsection 7.1 (4) does not apply;
47. providing for such transitional matters as the Lieutenant Governor in Council considers necessary or advisable in relation to section 7.1;
48. prescribing municipal by-laws to which subsection 7.1 (5) does not apply.

**(2) Section 35 of the Act is amended by adding the following subsections:**

**Exigences : exceptions**

(3) Quiconque utilise, conformément au paragraphe (2), un pesticide prescrit pour l'application du paragraphe (1) est tenu de satisfaire aux exigences prescrites.

**Vente interdite**

(4) Malgré l'article 6, nul ne doit vendre, mettre en vente ou transférer un pesticide qui est prescrit pour l'application du présent paragraphe.

**Règlements municipaux sans effet**

(5) Est sans effet le règlement municipal qui traite de l'usage, de la vente, de la mise en vente ou du transfert d'un pesticide pouvant être utilisé à une fin esthétique.

**3. La définition de «infraction» au paragraphe 23 (1) de la Loi est modifiée par substitution de «4, 6, 7 ou 7.1» à «4, 6 ou 7».**

**4. L'article 34 de la Loi est modifié par adjonction du paragraphe suivant :**

**Exception**

(2) Le paragraphe (1) n'autorise pas le directeur à exempter une personne d'une disposition d'un règlement pris à l'égard de l'article 7.1.

**5. (1) L'article 35 de la Loi est modifié par adjonction des dispositions suivantes :**

38. prescrire des pesticides pour l'application du paragraphe 7.1 (1) ou (4);
39. définir «terrains de golf» pour l'application de la disposition 1 du paragraphe 7.1 (2);
40. définir «agriculture» pour l'application de la disposition 2 du paragraphe 7.1 (2);
41. définir «activités forestières» pour l'application de la disposition 3 du paragraphe 7.1 (2);
42. définir «promotion de la santé ou de la sécurité publiques» pour l'application de la disposition 4 du paragraphe 7.1 (2);
43. prescrire des usages pour l'application de la disposition 5 du paragraphe 7.1 (2);
44. prescrire les conditions qui doivent être remplies pour que la disposition 1 du paragraphe 7.1 (2) s'applique;
45. prescrire les exigences auxquelles il doit être satisfait pour l'application du paragraphe 7.1 (3);
46. prescrire les ventes, mises en vente ou transferts auxquels le paragraphe 7.1 (4) ne s'applique pas;
47. prévoir les questions transitoires que le lieutenant-gouverneur en conseil estime nécessaires ou souhaitables relativement à l'article 7.1;
48. prescrire les règlements municipaux auxquels le paragraphe 7.1 (5) ne s'applique pas.

**(2) L'article 35 de la Loi est modifié par adjonction des paragraphes suivants :**

**Pesticides prescribed for s. 7.1**

(2) A regulation made under paragraph 38 of subsection (1) shall not prescribe a pesticide unless the pesticide may be used for a cosmetic purpose.

**Municipal by-laws to which s. 7.1 (5) does not apply**

(3) A regulation made under paragraph 48 of subsection (1) shall not prescribe a municipal by-law unless the passing of the by-law is required under an Act.

**Commencement**

6. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

**Short title**

7. The short title of this Act is the *Cosmetic Pesticides Ban Act, 2008*.

**Pesticides prescrits pour l'application de l'art. 7.1**

(2) Le règlement pris en application de la disposition 38 du paragraphe (1) ne peut prescrire un pesticide que si ce dernier peut être utilisé à une fin esthétique.

**Règlements municipaux : non-application du par. 7.1 (5)**

(3) Le règlement pris en application de la disposition 48 du paragraphe (1) ne peut prescrire un règlement municipal que si l'adoption de celui-ci est exigée aux termes d'une loi.

**Entrée en vigueur**

6. La présente loi entre en vigueur le jour que le lieutenant-gouverneur fixe par proclamation.

**Titre abrégé**

7. Le titre abrégé de la présente loi est *Loi de 2008 sur l'interdiction des pesticides utilisés à des fins esthétiques*.