

8 | 41

TO:	CHAIR AND MEMBERS ENVIRONMENT AND TRANSPORTATION COMMITTEE MEETING ON DECEMBER 8, 2008
FROM:	JAY STANFORD, M.A., M.P.A. DIRECTOR - ENVIRONMENTAL PROGRAMS & SOLID WASTE
SUBJECT:	UPDATE #4 ON ONTARIO PROPOSAL FOR A PROVINCIAL BAN ON THE COSMETIC USE OF PESTICIDES AND CITY BY-LAW UPDATE

RECOMMENDATION

That, on the recommendation of the Director of Environmental Programs & Solid Waste, the following actions be taken with respect to City of London By-law PH-14 entitled "By-law to Regulate the Use of Pesticides" (Pesticide By-law):

- a) The comments and discussion contained in this report **BE ENDORSED** and submitted by London Municipal Council in its entirety to the Ministry of the Environment's (MOE's) Environmental Bill of Rights (EBR) Registry posting (#010-5080, November 07, 2008) which outlines the Provincial Government's *Cosmetic Pesticides Ban Act, 2008* (formerly Bill 64), was passed in the Ontario Legislature on June 18, 2008. The Act amends the *Pesticides Act (1990)* to prohibit the use and sale of pesticides that may be used for cosmetic purposes. The due date for comments is December 22, 2008.
- b) The update on enforcement actions **BE RECEIVED** for information.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

Current relevant reports that can be found at www.london.ca include:

1. Report to the February 11, 2008 ETC Meeting, Ontario Proposal for a Provincial Ban on the Cosmetic Use of Pesticides (Agenda Item #7)
2. Report to the April 7, 2008 ETC Meeting, Pesticide By-law Education & Awareness Update and By-law Amendments on Golf Courses, Playing Fields, and Lawn Bowling Greens. (Agenda Item #11)
3. Report to the May 5, 2008 ETC Meeting, Update on Ontario Proposal for a Provincial Ban on the Cosmetic Use of Pesticides and the City By-law (Agenda Item # 13b).
4. Report to the July 14, 2008 ETC Meeting, Improvements to the Household Special Waste Program (Agenda Item #16)
5. Report to the August 11, 2008 ETC Meeting, Update #2 on Ontario Proposal for a Provincial Ban on the Cosmetic use of Pesticides and City By-law (Agenda Item #19)
6. Report to the September 22, 2008 ETC Meeting Update #3 on Ontario Proposal for a Provincial Ban on the Cosmetic use of Pesticides and City By-law (Agenda Item # 7)

BACKGROUND

PURPOSE

The purpose of this report is to:

- update Council on the Province of Ontario's latest activity announced on November 7, 2008 related to *Cosmetic Pesticides Ban Act, 2008* to prohibit the use and sale of pesticides that may be used for cosmetic purposes
- confirm the comments that will be sent to the EBR Registry regarding the proposed Provincial ban on the sale and use of cosmetic pesticides due December 22, 2008
- update Council on the enforcement actions to date

8
42

CONTEXT

On November 7, 2008, the government released more details on the *Cosmetic Pesticides Ban Act, 2008* containing the proposed regulations for the Provincial ban on the sale and use of cosmetic pesticides (Attachment #1). The public has a chance to comment on this draft regulation, which is on the Environmental Registry for a 45-day public comment period ending on December 22, 2008.

The City of London’s Pesticide By-law came into effect on September 30, 2008 regulating the use of pesticides. The By-law has exemptions and measures that are similar to but with some differences from the provincial initiative. These differences and uncertainties are described in this 4 part report:

- Part A Overview of Provincial Details and Comparison with City of London By-law
- Part B Comments to be submitted to the EBR Registry (#010-5080)
- Part C Enforcement Issues
- Part D Next Steps

DISCUSSION

Part A - Overview of Provincial Details and Comparison with City of London By-law

On April 22, 2008, the Provincial government took the first step towards fulfilling it’s commitment to a toxics reduction strategy by introducing new legislation that bans the use and sale of pesticides for cosmetic purposes. This legislation passed in June, amended the existing *Pesticides Act 1990*, which originally set out the rules for the transportation, storage, application and disposal of pesticides.

The *Cosmetic Pesticides Ban Act, 2008* would also make a municipal by-law inoperative “if it addresses the use, sale, offer for sale or transfer of a pesticide that may be used for cosmetic purposes.” The City’s pesticide by-law, By-law PH-14, would therefore become inoperative should this legislation come into force. *The Cosmetic Pesticides Ban Act, 2008* if passed would come into force on the day to be named by proclamation of the Lieutenant Governor. The MOE’s website indicates that the legislation would likely take effect next spring, if enacted.

Table 1 is a comparison of the *Cosmetic Pesticides Ban Act, 2008* with London’s By-law with additional comments following the table.

Table 1: Comparison of *Cosmetic Pesticides Ban Act, 2008* with London's By-law

Topic	Ontario	London	Provincial Compared with London
1. Scope of the Ban	<ul style="list-style-type: none"> • to ban both the sale and use of pesticides. • identify the pesticides which would be prohibited, • define the exceptions to the ban, and conditions attached to the exceptions. 	All pesticide use in the municipality, with certain exemptions.	Provincial is more comprehensive
2. Sale of Cosmetic Pesticides	Prohibit sale of pesticides for cosmetic or non-essential purposes	not included	Provincial is more restrictive
3. Exemptions	Total of 9	Total of 11	
4. Pesticide Classes	Proposed 12 Classes of pesticide	Used definitions from the Pesticide Act	Provincial is more comprehensive
5. Golf Course Exemption	Integrated Pest Management (IPM) accreditation by an approved accreditation body	practice the principals of IPM	Approximately the same

8 **43**

Topic	Ontario	London	Provincial Compared with London
6. Sports fields:	limited exception to fields that host national or international level sports competitions	Exempted all sports fields	Provincial is more restrictive
7. Specialty turf:	Lawn bowling, cricket, lawn tennis and croquet if certain conditions are met	Practice the principals of IPM	Provincial is more restrictive
8. Trees:	able to buy and use lower risk products only. Licensed exterminators would be able to use conventional pesticides under certain conditions	for injection into trees, stumps and insect infestations	Provincial is less restrictive
9. Public health or safety exception:	control of plants that are poisonous to touch, animals that bite, sting, are venomous or are disease carrying and animals or plants that may cause significant damage to a structure or infrastructure	animal, plant or other organism which is harmful to human health	Provincial is more detailed
10. Insect infestation	no exceptions for pest infestations	Exceptions for insect infestations	Provincial is more restrictive
11. Natural Resources	to protect or manage natural resources including the control of invasive species.	not included	Provincial is more detailed
12. Agriculture	Exception	Exception	Same
13. Managed Forests	Exception Exist	for injection into trees, stumps	
14. Timing	Proposed for Spring 2009 (depends on the passing of the legislation by the Legislature of Ontario)	In effect now	Different time frames
15. Enforcement	No specific details provided at this time	City of London	No details
16. Citizen and business education and awareness	No specific details provided at this time	City of London	No details

In summary the *Cosmetic Pesticides Ban Act, 2008* provides more exemptions than London's Pesticide bylaw. Some of these exceptions are:

- Sports fields must be national or international in status to be exempt
- Spraying for invasive species (as in Environmentally Significant Areas), in reforestation applications and related to public works are exempt
- Golf courses must be IPM accredited by an approved accreditation body

Other differences are:

- There are no "pest" infestations exceptions (bugs, weeds or fungus) with a reliance on alternative treatments
- The Act requires posting of signs that will include a "green" sign for low-risk, alternative pesticide use (e.g. corn gluten meal).

Staff note that most of City of London comments submitted to the previous EBR posting dated May 22, 2008 were incorporated and / or addressed. These comments were included in our previous ETC report dated May 5, 2008.



Part B - Comments to be Submitted to the EBR Registry (#010-5080)

City of London staff recommend that the following comments be submitted to the EBR posting (Attachment #1):

1. Banning the sale and use of pesticides for cosmetic use is a positive environmental initiative that will provide consistency across the Province with a baseline standard.
2. As previously stated in our May 2008 EBR comments, the Province should allow municipalities be given the opportunity to go beyond the *Cosmetic Pesticides Ban Act, 2008*.
3. Also as previously stated, City staff strongly recommend that the Province be the enforcement agency for the *Cosmetic Pesticides Ban Act, 2008*.
4. Further to #3 above, the Province must share with municipalities and stakeholders a summary of its enforcement strategy, resource plans and transition plans for those municipalities with existing by-laws.
5. City staff support the *Cosmetic Pesticides Ban Act, 2008* in the following areas:
 - The use of a new pesticide 'notice' sign that informs the public when a low risk alternative to conventional pesticide is used.
 - When banned pesticides are permitted to be used under certain exceptions, these products would not be available as self-serve items.
 - Golf courses must have (IPM) accreditation by an approved accreditation body
6. The Province should recognize the need for an exception for insect infestation on lawns and gardens in certain situations, as damage to public and private property could be extensive.
7. Municipalities should have input on what pesticide products would be approved in the future as a Class 7 Pesticide which are proposed for sale with restrictions.
8. We will rely on the comments of other health related groups (e.g. London Middlesex Health Unit) to assess the Pesticide Classes proposed and their health implications.

Part C - Enforcement Issues

Under Proposed Legislation

The existing *Pesticides Act (1990)* sets out the authority of a "provincial officer" to inspect and enforce under this Act. The Minister of the Environment designates a provincial officer. Such person may be public servants employed under Part 111 of the *Public Service of Ontario Act, 2006* who work in the Ministry, or other persons.

It appears from the information available that the Minister would have authority to appoint municipal employees as a "provincial officer" under the Act, but it is not clear whether it is the Minister's intent to do so, or whether it is intended that only Provincial MOE officers enforce the cosmetic pesticide use provisions. Clarification has been requested under Part B of this report.

It is important to recognize that there is a precedent for the Province designating municipal employees as Provincial Offences Officers for Provincial legislation such as for regulating pit bull dogs under the *Dog Owners' Liability Act*.

City staff in conversation with other municipalities confirm that this is one of the main issues to resolve with the Province. Staff are continuing to meet and discuss the issue of enforcement with the Ad Hoc Pesticide Committee of the Association of Ontario Municipalities (AMO) as well as another Toronto centered group comprised of staff from such centres as Oakville, Markham, Hamilton, Toronto and Waterloo.

London's Enforcement Update

London's by-law enforcement officers were proactively monitoring neighbourhoods for pesticide use after the Pesticide By-law came into effect as well as responding to complaints. Observations made by City Staff in several neighbourhoods involving several thousand properties, suggest lawn care companies complied with the London pesticide ban as evidenced by the absence of lawn signs placed after pesticide application. One complaint received by our staff was investigated and confirmed NOT to be a by-law infraction. Table 2 shows the type and number of telephone calls received to the pesticide complaint number. City of London's staff will continue to enforce the Pesticide By-law until the Province enacts the *Cosmetic Pesticides Ban Act, 2008* which is proposed to make our municipal by-law inoperative. At this time, future enforcement by City staff is unclear.

8
45

Table 2: Pesticide Information/Complaint Numbers

Season	General Information Requests	By-law Specific Requests	Reporting a Potential Infraction	Other	Total Number of Calls
Fall 2008	120	75	1	4	200
	60%	37%	1%	2%	100%

Subsequently to the September 22, 2008 ETC report, Council requested Civic Administration to report back in December 2008, with respect to the effectiveness of the amount of the fines. The following fines/fees were approved for use with the Pesticide by-law:

- Sampling fee \$450
- Set fine \$125
- Inspection fee \$95

Staff comments on the effectiveness of the fine amount are limited as no fines were issued. Possible reasons for the apparent compliance are:

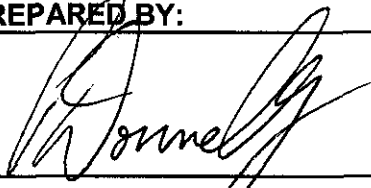

- The education campaign, which promoted and educated individuals on how to maintain a healthy lawn and garden without the use of pesticides was effective.
- Homeowners and lawn care companies had two years to adapt to the by-law
- The pesticide by-law came into effect at the end on the spraying season
- The fines were a deterrent
- Increase use of pesticide applications before the by-law took effect

Part D - Next Steps

1. Staff continue to implement the education and awareness program, "Growing Naturally" and expand the scope of options available where appropriate to encourage landowners to use more sustainable landscape options. These may include:
 - Native plants
 - Water conservation techniques
 - Organic products
2. Continue to enforce and monitor pesticide complaints consistent with the City's bylaw until the Provincial Act comes into force, and
3. Monitor the proposed Provincial pesticide ban and consider adjustments to our approach if and when necessary.
4. Update Council as more details are known on the impact of the Provincial legislation.

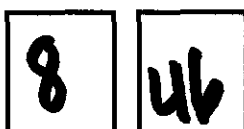
ACKNOWLEDGEMENTS

This report was prepared with assistance from Greg Sandle - Pesticide Education Coordinator and Lynn Marshall, Solicitor II, Legal Services.

PREPARED BY:	RECOMMENDED BY:
	
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Attachment #1 (MOE News Release on Cosmetic Pesticide Ban)

TAKING NEXT STEPS IN PESTICIDE BAN
McGuinty Government Asks Ontarians To Comment On Ban Details

NEWS

The province is asking Ontarians to comment on the specifics of its cosmetic pesticides ban.

In particular, the public is being asked to comment on:

the proposed lists of pesticides (products and ingredients) banned for use and banned or restricted for sale,

the rules for pesticide use on golf courses,

the exceptions to the ban for public health or safety reasons.

A draft regulation containing the specifics is posted on the Environmental Registry at www.ebr.gov.on.ca (#010-5080), and can also be found on the ministry's website at www.ene.gov.on.ca/en/land/pesticides/index.php. Comments will be accepted until December 22, 2008. The government will consider all comments before finalizing the regulation, expected to occur in spring 2009.

QUOTES

"I encourage Ontarians to take the time to review and comment on this proposed regulation," said Environment Minister John Gerretsen. "It's tough but workable, and it sends a strong signal to industry about the types of innovative low-risk products we want on Ontario's store shelves."

QUICK FACTS

The Cosmetic Pesticides Ban Act, passed in June, amended the Pesticides Act, which sets out the rules for the transportation, storage and disposal of pesticides.

Ontario's pesticide rules are among the toughest in North America.

LEARN MORE

See the **draft regulation and accompanying documents**, including the Environmental Registry notice, proposed lists of pesticide products restricted or banned for sale and pesticide chemicals banned for use, warning and notice signs, and the Cosmetic Pesticides Ban Act.

-30-

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Contact information for the general public:

416-325-4000 or 1-800-565-4923/
www.ontario.ca/environment



FACT SHEET

Ministry of the Environment

November 7, 2008

Implementing the Cosmetic Pesticides Ban Proposed New Regulation

The Cosmetic Pesticides Ban Act was passed in June 2008. It amended the *Pesticides Act* to ban the use and sale of pesticides for cosmetic purposes. The Act provides exceptions for agriculture, forestry, health or safety, and golf courses if certain conditions are met. The provincial ban supersedes local municipal pesticides by-laws to create one clear, transparent and understandable set of rules across the province.

Ontario Regulation 914 is the current General Regulation under the *Pesticides Act*. A proposed new regulation to replace Regulation 914 contains additional proposed provisions for implementing the ban. The Ministry of the Environment is seeking public input via the Environmental Registry until December 22, 2008. Following are the key provisions of the proposed regulation.

Banned Pesticides

The draft regulation includes a:

- List of pesticides (ingredients in pesticide products) to be banned for cosmetic use
- List of pesticide products to be banned for sale
- List of domestic pesticide products to be restricted for sale. Restricted sale products include those with cosmetic and non-cosmetic uses (i.e., a product that's allowed to be used inside the house but not for exterior cosmetic use), and would not be available self-serve.

Proposed Exceptions

Only the following uses of banned pesticides are proposed to be allowed. There are no exceptions for pest infestations (insects, fungi or weeds) on lawns, gardens, parks, school yards, cemeteries and other outdoor areas to which the ban applies, as lower risk alternatives currently exist.

- Public health or safety exception: Applies to the control of plants that are poisonous to touch (e.g. poison ivy), animals that bite, sting, are venomous or are disease carrying (e.g. mosquitoes) and animals or plants that may cause significant damage to a structure or infrastructure (e.g. termites). The exception is defined in section 18 and detailed in section 21 of the draft regulation.

Banned pesticides are allowed to be used to maintain safe conditions and emergency access to public works, which include highways, railways, power works, gas works, water works and other utilities. See section 21.

- Golf courses, as defined in section 18, are excepted from the ban provided they follow tough new rules. These proposed rules are detailed in sections 19 and 20.
 - Golf course maintains Integrated Pest Management (IPM) accreditation by an approved accreditation body
 - Accredited golf course has a pesticide report prepared annually which documents how IPM accreditation minimizes pesticide use
 - Accredited golf course displays a copy of the pesticide report in a prominent place at the golf course accessible to the public and holds a public meeting annually to present the report.

- Sports fields: This exception provides a limited exception to fields that host national or