

Presentation to Organic Landscape Alliance Conference

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Primarily based on PMRA's and Competition Bureau's regulatory material.

USE OF THE WORD PESTICIDES (HERBICIDES, FUNGICIDES)

- The term used in the current Pest Control Products Act is "control product" which is anything used "directly or indirectly controlling, preventing, destroying, mitigating, attracting or repelling any pest",
- "Pest" means "any injurious, noxious or troublesome insect, fungus, bacterial organism, virus, weed, rodent or other plant or animal pest, and includes any injurious, noxious or troublesome organic function of a plant or animal"
- Accordingly the Act applies to all pesticides including herbicides, fungicides, insecticides, rodenticides etc.
- "Inert substances" and "Additives" included in the formulants could be such substances as such as solvents, stabilizers to slow down breakdown of the active ingredient, emulsifiers, surfactants, wetting agents, defoamers and there are policy provisions dealing with inert substances in addition to the active ingredients; they will be more formally covered under the new legislation.
- Under the new legislation, there will be a definition for "active ingredient": which "means a component of a pest control product to which the intended effects of the product are attributed and includes a synergist but does not include a solvent, diluent, emulsifier or other component that is not primarily responsible for those effects."
- The definition of "control product" will be changed to "pest control product" and slightly modified but includes not only the active ingredient but also the formulants and contaminants in the product.
- New Pest Control Products Act has received Royal Assent but has not been proclaimed; it is slated to be proclaimed once PMRA and the government finish developing some key regulations under the new legislation. It has been delayed but we now expect it to be proclaimed in 2005.

USE OF WORD "NATURAL" OR "ORGANIC" REGARDING PESTICIDES MISREPRESENTATION IN USE OF TERMS "NATURAL" OR "ORGANIC" STATEMENTS OR INFERENCES THAT PESTICIDES ARE SAFE

- PMRA has issued a Regulatory Directive, "Environmental Label Claims and Advertising of Pest Control Products" – Dir96-02

Labels

- If a registrant (the person who holds the registration of the pesticide) wants to add or remove environmental claims on product labels, they must apply to PMRA to do so. PMRA must evaluate and amend the registration.
- The "label" is defined to include "any legend, word, mark, symbol or design applied or attached to, included in, belonging to or accompanying any control product."
- The legislative provision in the current PCPA is:

“No person shall package, label or advertise a control product in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety.”

Environmental Claims

- The Directive advises that “Industry is responsible for ensuring that any environmental claims on their product labels or advertising are accurate and in compliance with the PCP Act.”
- “Environmental labelling” means any term and/or symbol describing or promoting environmental attributes or features of the pest control product or packaging that is part of the product label defined above.
- “Industry” in this context includes the registrant for the pesticide, as well as those who import, manufacture, distribute, import, sell the pesticide.
- The directive states that “Environmental claims must be truthful and accurate, **based on recognized standards, and where applicable, supported by scientifically defensible studies or rationale**” (Emphasis added)
- The directive also prohibits “vague and potentially misleading statements” such as “environmentally friendly”, “green” or “ozone” friendly since “they cannot clearly indicate a specific benefit.” Furthermore, comparative claims such as “best”, “superior” or “greener” must not be used either.
- The precise environmental impact reduction of the product and/or package must be stated. For example, “No CFC’s, No VOC’s” is acceptable but it is NOT acceptable to broaden the claim to “does not damage the ozone layer”. Furthermore the substitute must be considered as well.

Use of the terms “safe or safer”

- Directive 96-02 also states that use of the terms “safe” or “safer” are not acceptable on pest control product labels – and explains in part that it is because using those terms for environmental claims may lead to confusion and misinterpretation regarding personal safety. So it states that the terms “environmentally safe” or “safe for the environment” for example, are not acceptable.

Use of the terms “Organic” or “Natural”

- The PMRA directive states that “No further consideration will be given to the use of the term “natural” as an environmental claim for pest control products.
- As for the use of the term “organic”, the directive states,
“The term ‘organic’ as an environmental claim for pest control products refers to a particular type of food production methodology which does not use synthetic inputs. This term must not be linked with the quality or safety of products. At this time, it is not acceptable to use the term ‘organic’ for pest control products.
- The french term “biologique” may be used on pest control product labels and advertising when it is intended to mean biological but not when it is intended to mean organic.
- “The term “botanical” may be used on product labels if the product is derived from plant extracts. A botanical claim must be qualified to specify the botanical ingredient (e.g. product contains X% rotenone, a botanical insecticide)”

- The term “degradable” may be used as a suffix to denote the ability of a material to break down significantly in a land or water eco-system; the prefix “bio” denotes the ability to break down biologically by means of microorganisms; while the prefix “photo” is by means of light. Such a claim must state the conditions under which degradation will occur and over what time. A degradable claim cannot be made unless all of the components of the product meet the description and the potential for persistence must be considered.

Use of Environment Canada’s Environmental Choice and Ecologo labels

- Application to Environment Canada is required for use of these labels.

Advertising Pest Control Products

- Regulatory Directive DIR99-02
- Definition of “advertise” under the Act:
 “... any representation by any means whatever for the purpose of promoting directly or indirectly the sale or other disposition of a control product...”
- Includes print, electronic and verbal
- The Directive states that its enforcement policy regarding advertising is aimed at the “regulatory objectives of protecting health and safety and the environment and preventing deception”, and that “The PMRA views advertising contraventions as serious offences.”
- As with environmental claims, advertising must not be false, misleading, deceptive or likely to create erroneous impressions regarding the character, value, quantity, composition, merit or safety of the control product.
- Advertising must not state or imply that a pesticide is approved, accepted or recommended by the federal government or its agencies.
- A product cannot be advertised before it is accepted for registration; same for amendments to the label (e.g. new uses).
- Advertising cannot be inconsistent with the label; nor can off-label uses be promoted.
- For unregistered products, technical information must be presented without promoting the product and it must be made clear that the product or use mentioned is not registered.

REGISTRATION OF MICROBIAL PEST CONTROL AGENTS AND PRODUCTS

- Regulatory Directive DIR 2001-02
- MCPA’s include naturally occurring as well as genetically modified bacteria, algae, fungi, protozoa, viruses, mycoplasmae, rickettsiae and related organisms
- Must undergo an evaluation for registration under the PCPA including effects on non-target species – see the directive and associated guidelines and manuals
- See also DIR 2002-02, Regulatory Directive “The PMRA Initiative for Reduced-Risk Pesticides” which describes the NAFTA joint review programs for reduced-risk pesticides (for example, including some biopesticides) as well as the PMRA initiatives for products submitted to the US EPA prior to 1996.

CONSUMER PACKAGING AND LABELLING ACT AND COMPETITION ACT

- Additional federal legislation with authority to control misrepresentation and misleading labelling and advertising

- For a relatively plain language overview of the detailed packaging and labelling requirements that apply to most products in Canada, based on both the legislation and regulations, see the Competition Bureau's web site at:
<http://competition.ic.gc.ca/epic/internet/incb-bc.nsf/en/cp01007e.html#Introduction>
- According to the Competition Bureau's web site, fines under the Consumer Packaging and Labelling Act (involving a range of industries such as paint and garden products) have been between \$1500 - \$6000 in four cases cited since 2000.
- The Competition Bureau runs an alternative case resolution process as an alternative to continuing with court proceedings and for example in a case of misrepresentation, the alternative resolution involved a compliance program whereby the offending statements were removed from the advertising material. The Competition Bureau's policy is not to publicize the names of those involved in compliance activities unless they are otherwise made public. So the cases of conviction have company names publicized but the alternative case resolution cases do not have their names publicized.
- Cases of misleading representation under the Competition Act have had much higher penalties ranging from \$30,000 to millions of dollars.

WHO REGULATES PESTICIDE USE

- Health Canada through its agency Pest Management Regulatory Agency considers applications for registration, decides on labels etc.
- Label instructions are a legal instrument – non-compliance with the label is an offence
- Use of product for which it is not registered is an offence
- Federal Pest Control Products Act deals with registration, importation, manufacture, packaging, distribution, labelling, sale and transport of pesticides.

TO WHOM CAN YOU COMPLAIN ABOUT THE USE OF THESE TERMS

PMRA's Canadian Pesticide Management Information Service for questions re registration, precautions, labels: (5 days per week)

1-800-267-6315 or 613-736-3799

Fax 613-736-3798

pmra_infoserve@hc-sc.gc.ca

www.hc-sc.gc.ca/pmra-arla/

PMRA Regional Office Ontario: PMRA Director General, 174 Stone Road West, Guelph

1-519-837-9400

Fax 1-519-837-9773

email Pettigrewr@em.agr.ca

COMPLIANCE AND ENFORCEMENT POLICY

- PMRA has a Backgrounder, the Compliance and Enforcement Policy Guideline, B98-01
- The *Agriculture and Agri-Food Administrative Monetary Penalties Act* provides for official warnings or imposition of monetary penalties for certain offences of the Pest Control Products Act and regulations. There is also provision for prosecution, seizure and detention, forfeiture of goods, denial of entry of goods into Canada, voluntary recall, suspension or cancellation of registration of a pest control product, publicity.

- Compliance is mandatory and is encouraged first by information and education, then by on-site inspections including on-site education and compliance assessment which could include sampling, examining documents and facilities and reporting of information
- PMRA employs inspectors who may investigate and take action when an offence is suspected including the ability to obtain field evidence.
- PMRA lists the factors to consider in determining enforcement action, including the person's history of compliance with the PCPA, demonstrated willingness to achieve compliance, evidence of corrective action already taken, degree of actual or potential harm, expected standard of expertise, intent and level of response necessary to achieve and maintain compliance.

PROVINCIAL / TERRITORIAL LAWS

- Once pesticides are registered by PMRA, the provinces and territories may regulate the sale, use, storage, transportation and disposal of registered pesticides so long as they are consistent with the requirements of the federal law.
- A province or territory may prohibit the use of a federally registered pesticide or add more restrictive conditions
- For example, Ontario's legislation, among other things, provides for education and licencing of applicators, vendors, growers and others
- Ontario also classifies federally registered pesticides by toxicity and provides for limits on the sale or use of those products according to the qualifications of the users.

DO PESTICIDE BY-LAWS AFFECT THESE QUESTIONS

- So far, sixty-nine pesticide by-laws have been passed in Quebec, Nova Scotia, New Brunswick, Ontario, and British Columbia, and dozens more are actively under consideration in those and other provinces.
- The *Hudson* decision by the Supreme Court of Canada confirmed the validity of these pesticide by-laws although Crop Life is challenging them again in Ontario by taking the City of Toronto to Court over its by-law. The trial judge upheld the by-law and the Ontario Court of Appeal heard the appeal arguments in November. A decision is pending.
- The PMRA Fact Sheet on the Regulation of Pesticides in Canada describes the distribution of principal responsibilities in Canada among the federal, provincial / territorial and municipal governments as including Municipal bylaws for municipal and in some case, private and residential lands.
- In general the requirement would be to comply with the federal, provincial and municipal rules as set out in each piece of legislation or bylaw. So if a province restricts the use of a particular pesticide in the province, even though it is registered by PMRA, then it cannot be used in the province. Similarly, if a municipality imposes specific rules

ACTION PLAN ON URBAN USE PESTICIDES

- Approximately 2000 initiated in response to CELA's Children's Health Study, the federal standing committee on Environment, other studies, reports and initiatives within Canada and the CEC focussing on children, the *Hudson* case, various newly passed and developing municipal by-laws and public calls on the federal government for amendments to the PCPA to ban cosmetic pesticides.

- Includes the Healthy Lawns Strategy (see below).
- Also includes “priority re-evaluations, to be carried out by the PMRA, of the most common chemicals in lawn care pesticides”
- These re-evaluations are supposed to “aggressively apply the most modern risk assessment principles, including additional safety factors to protect children, to products used in the urban setting.”
- Although the Action Plan stated that the re-evaluations of the seven most common active ingredients used in lawn care (herbicides and insecticides) products was to be completed in 2001 and organophosphorous insecticides in 2002, it also stated that changes to registration or withdrawals of lawn care products from these re-evaluations would be implemented in the same time frame in Canada as those in the U.S. The insecticides diazinon, carbaryl, and malathion and the herbicides 2,4-D, mecoprop, dicamba and MCPA were the initial lawn care products targeted. As of November, 2004, PMRA’s update stated that the insecticides chlorpyrifos, diazinon, and malathion and the herbicide racemic mecoprop are being phased out. The re-evaluations of 2,4-D, dicamba and MCPA are targeted to be completed in fall 2004 and carbaryl is scheduled for 2004 – 2005.

INTEGRATED PEST MANAGEMENT – TWO EXAMPLES

Healthy Lawns Strategy and Healthy Lawns Working Group

- Part of the “Action Plan on Urban Use Pesticides”
- PMRA chairs the Healthy Lawns Working Group of the Federal / Provincial / Territorial Committee on Pest management and Pesticides.
- A response by Alan Rock who at the time was Minister of Health to the pressures to include a lawn chemicals ban in the new Pest Control Products Act – PMRA’s and industry’s perspective primarily represented
- Objective of the Healthy Lawns Strategy is
 “to reduce reliance on pesticide use for lawn care through the application of Integrated Pest Management principles, with particular emphasis on pest prevention, use of reduced risk products and application of pesticides only when necessary.”
- Target groups are home owners, lawn and landscape service providers, municipal parks managers, golf course managers and grounds keepers of school playing fields
- Stakeholder involvement is through the Working Group
- OLA should ensure it’s represented even if not in agreement with the Objective, to raise your perspective at all times
- www.healthylawns.net

Definition of Integrated Pest Management

- Health Canada’s definition (PMRA’s):
 “Integrated pest management (IPM) is a planning and control approach aimed at minimizing problems caused by harmful organisms to crops (and other sites) and at reaching decisions on when to take action and what action to take when those problems do arise. It is a sustainable approach, combining biological, agricultural (e.g. seeding depth), physical and chemical methods of controlling pests with a view to maximizing the resulting benefits and minimizing health hazards and environmental risks. The major concept underlying integrated pest management is that spraying should be carried out

only when the numbers or impact of pests warrant such action, instead of spraying on a regular basis. Integrated pest management represents much more than the application of pesticides, regardless of whether the pesticides in question are chemicals or “new” products. It may entail a broad range of prevention techniques and treatments. Integrated pest management reduces dependence on pesticides as the only approach to dealing with harmful organisms (definition taken from the Pest Management Regulatory Agency).” (This excerpt from the Eastern Canada Cranberry IPM Manual, PMRA, 2004)

Use of Biological Control Methods, Pheromones, Biopesticides in IPM

- IPM may provide for a wide use of methods that may be included in “organic practices” (subject to the rules of the organic certification agencies) such as:
 - Biological Control Methods,
 - Pheromones,
 - Biopesticides, e.g. registered biopesticides containing *Bacillus thuringiensis kurstaki* (Btk),
 - Entomophagous Nematods,
 - Predatory Insects and Parasitoids,
 - Establishing Beneficial Insects
 - Birds and Mammals
 - Pathogenic Micro-organisms including bacteria (e.g. Bt or Btk), Viruses, Fungi
 - Cultural Control Methods,
 - Choosing Resistant Cultivars,
 - Physical Barriers,
 - Proper Water Management,
 - Mechanical control (e.g. manual hoeing)
 - Maintaining ideal pH in soil and water,
 - controlling plant density,
 - adequate fertilizing,
 - pruning and sanding,
 - attracting pollinators with companion gardens
- This list comes from the Eastern Cranberry IPM Manual, dealing with one crop in particular, but demonstrates that IPM as contemplated by PMRA encompasses these approaches (and as stated in the document in preference to spraying). Of interest to OLA is the fact that pollinators and foraging insects are critical to this crop and so the insect control methods provided in this IPM manual must ensure that the beneficial insects are not harmed
- The Manual advises that useful species are more sensitive to pesticides than harmful species of insects
- Furthermore, many pesticides used in agriculture for insects are extremely toxic to bees and other pollinators. “Bees are poisoned when they touch a contaminated leaf or flower, or contaminated water, and when they collect contaminated pollen or nectar. A bee that returns to the hive with a load of contaminated pollen or nectar can cause extreme agitation and the death of many bees, including larvae. A number of workers can be seriously disturbed and this can cause damage in the colony. Under the influence of insecticide poisoning, bees may perform abnormal communication dances...also ... aggressiveness ... stupefaction, paralysis and abnormal activities ...” (Page 51 of the Manual)

- When spraying is chosen, (referred to as “Strategic chemical control”), the Manual advocates the “least toxic registered pesticides in order to safeguard the environment and beneficial organisms.”
- This Manual was also funded by five provincial departments in Ontario, Quebec, Newfoundland and Labrador, New Brunswick and PEI and by three cranberry industry associations including those in Ontario, Nova Scotia and Quebec.