At the City Council’s June 8th workshop, the Council heard a presentation put together by Protect South Portland around the use of pesticides. Protect South Portland was joined by Jay Feldman, from Beyond Pesticides in Washington DC; Chip Osborne, of Osborne Organics LLC in Marblehead, MA; and Mary Cerullo, Associate Director, of the Friends of Casco Bay. Each talked about the harmful effects of pesticide use and the negative impacts to the environment. Alternative methods were presented as a means of providing another way for lawn care/vegetation maintenance.

An outcome of the evening’s meeting was the task given to staff for the exploration of a pesticide ordinance for the City. Since the June 8th workshop staff has been educating themselves on what other communities around the United States are doing in addressing pesticide use. The conclusion is that there is no silver bullet on addressing pesticide use. Many communities have gone through restricting/prohibiting pesticide use, but at varying degrees. The majority of the communities have implemented Integrated Pest Management Programs (IPM) or some other limited restrictions to pesticide use within their communities. Takoma Park, MD and Ogunquit, ME seem to have gone the furthest in restricting pesticides; however, incorporating exemptions into their ordinances.

The entire City Council has voiced support for pursuing a pesticide ordinance. The intent of the July 13th workshop will be to introduce different types of ordinances to the City Council and seek further input and guidance on how the Council would like to move towards a pesticide ordinance.

Some ordinances are developed in the following ways:

- Outright citywide Prohibition with exceptions and emergency waiver
- Limited citywide Prohibition with exceptions and emergency waiver
- Prohibition citywide based on established list/class of pesticides to be prohibited.
- Development of an Integrated Pest Management Program (IPM)
- Prohibition on municipal owned property with exceptions and emergency waiver

Many communities who have gone in the direction of restricting/prohibiting pesticides have incorporated within their ordinances a period of time to allow for adjustment of both public and private property owners. The period can be a year to up to three years with certain benchmarks along the way. Through the process the overall intent of the ordinance is followed, resulting in a successful implementation.
Included in the packet of information is a model public/private pesticides-free ordinance provided by Beyond Pesticides in Washington DC. The document is developed to promote management practices that emphasize non-chemical methods of pest prevention and management and least-toxic pesticide use as a last resort.

Much of staffs learning of the subject came from reading different ordinances from across the country. Some ordinances are very straight-forward as others are complex. I have attached a number of ordinances to the packet of information as I hope they provide the Council varying degrees of information on how communities are restricting/prohibiting pesticides.

- Ogunquit, ME
- Takoma Park, MD
- Scarborough, ME
- Montgomery County, MD
- Ontario Province, Canada
- Marblehead, MA
- Burlington, VT

City Manager
Memorandum

To: City Council

From: City Manager’s Office

Subject: Pesticide Restriction/Prohibition

Introduction: A number of Maine towns have adopted local ordinances to control pesticide use. Guidelines established by the Legislature found in 22 MRSA Section 1471 T must be followed. There is growing evidence of harmful effects associated with long-term use of or exposure to chemical pesticides. The EPA, the Committee on Environmental Health of the American Academy of Pediatrics, the National Academy of Sciences, and the 2010 President’s Cancer Panel have concluded that pesticide exposure is linked to reproductive disorders, birth defects, learning disabilities, neurological disease, endocrine disorders, and cancer; the EPA acknowledges, along with esteemed Mt. Sinai Children’s Environmental Health Center, that children, with their developing bodies and brains, are especially vulnerable to the harmful effects of lawn pesticides. Children’s behavior, proximity to the ground, exposes children to far more contact with lawn pesticides than adults.

Purpose: The purpose of a pesticide ordinance is to protect the public health, safety, comfort, and general welfare of the residents and businesses of the City of South Portland. The State of Maine is one of only 9 states, and the District of Columbia, that uphold the rights of localities to restrict pesticides. This authority allows local towns/cities the opportunity to protect the town’s ground water, estuarine, and marine and other natural resources. Depending upon what direction the City wants to pursue a pesticide ordinance depends on the level of minimization the use of chemical pesticides. A balanced and healthy ecosystem is vital to the health of the city and its citizens.

Federal Government: The U.S. Environmental Protection Agency (EPA) mentions that “all pesticides are toxic to some degree…, and the commonplace, widespread use of pesticides is both a major environmental problem and a public health issue.” All citizens, (particularly children), as well as other inhabitants of our natural environment, have a right to protection from exposure to hazardous chemicals and pesticides in particular. However, pesticide use is necessary in specific situations to ensure public health and safety.

Laws in Other Jurisdictions: There are only two examples of jurisdictions that have banned pesticide use on public and private property; Takoma Park, Maryland and Ogunquit, Maine. Several local and national jurisdictions have enacted legislation or adopted administrative policies related to pesticide reduction on public property, through pesticide free parks. Most communities have implemented Integrated Pest Management programs (IPM). Most provinces in Canada have banned the use of cosmetic lawn chemicals, and subsequent studies show a dramatic increase in stream health. Washington DC has enacted the Pesticide Education and Control Amendment Act of 2012; and Greenbelt, MD, strictly prohibits the use of synthetic chemical pesticides on all city-owned land with their Sustainable Land Care Policy of 2011.
Perhaps the most comprehensive pesticide restriction law in North America took effect in Ontario in 2009. The Ontario Law contains several classifications of pesticides, and generally bans the cosmetic use of pesticides. An Organic Land Management program or an Integrated Pest Management (IPM) are some of the ways municipalities have used to minimize or eliminate exposure to pesticides. An IPM program is prevention, monitoring, and control, which offers the opportunity to eliminate or reduce pesticides, and to minimize the toxicity of and exposure to any products, which are used. Education, in the form of workshops, training sessions and written materials is a component of an IPM program.

**Local Organic Land Management, IPM and Pesticide Reduction Policies and Programs**

| Plainville, CT | Santa Fe, NM | San Diego, CA |
| Durango, CO | Albany, NY | Santa Barbara, CA |
| Madison-Dane County | New York City, NY | Santa Cruz, CA |
| Marblehead, MA | Eugene, OR | Santa Cruz, CA |
| Newton, MA | King County, WA | Santa Monica, CA |
| Wellesley, MA | Olympia, WA | Marin, CA |
| Welfleet, MA | Seattle, WA | Fairfax, CA |
| Bernards’ Township, NJ | Washington, DC | Berkeley, CA |
| Carrboro, NC | Greenbelt, MD | Davis, CA |
| Vorhees, NJ | Arcata, CA | Contra Costa, CA |
| | San Francisco, CA | Corte Madero, CA |

**Pesticide-Free Parks**

| Eastwood Park, CA | Brick, NJ | Camden, ME |
| Fairfax, CA | Hazlet, NJ | Vorhees, NJ |
| Santa Barbara, CA | Chatham, NJ | Rockport, ME |
| Corte Madera, CA | Ocean City, NJ | Rockland County, NY |
| Plainville, CT | Wichita, KS | New Paltz, NY |
| Sarasota, FL | Portland, OR | Westchester County, NY |
| Lawrence, KS | Seattle, WA | Branford, CT |
| Marblehead, MA | Shoreline, WA | |

A growing number of communities across the country, concerned about pesticide impacts to public health, the environment, and wildlife. Municipalities are establishing pesticide-free parks, piloting organic playing fields, passing policies that restrict pesticides on municipal lands, or voluntarily for private land. Where plant, fungal or insect pests become otherwise unmanageable by the various low impact Integrated Pest Management methods, pesticides may be of need to control the problem.

Locally, a number of communities in Maine have limited the use of pesticides. Ogunquit by far has gone the furthest. Most Maine communities have restricted pesticide use based on lot size, tree growth area, shoreland area, aerial spraying or town-owned properties. Scarborough implemented a Pest Management Policy in 2011. Scarborough eliminated (with exemptions)
pesticide use on town-owned property and encourages reduction and elimination of pesticides on private property. Scarborough has established a Pest Management Advisory Committee to oversee the program for the town.

Below is a list of the Maine municipality ordinances that have filed with the Maine Board of Pesticide Control (with exemption of Scarborough who for some reason isn’t on the list). The majority of the town ordinances are protecting a specific area of land, body of water, or forestry. For the most part these are small limitations that are easier to regulate.

<table>
<thead>
<tr>
<th>Town</th>
<th>Ordinance Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allagash</td>
<td>Application of herbicides for forestry purposes prohibited</td>
</tr>
<tr>
<td>Amherst</td>
<td>Permit required to apply within shoreland zone</td>
</tr>
<tr>
<td>Arrowsic</td>
<td>Foliar application of herbicides banned for public works use</td>
</tr>
<tr>
<td>Brighton Plantation</td>
<td>Application of pesticides to woodlands prohibited</td>
</tr>
<tr>
<td>Brunswick</td>
<td>Prohibits use or storage of most pesticides other than for households and agriculture within the aquifer protection zone Also prohibits aerial applications other than public health applications performed under the auspices of the Town or State Exceptions may be approved by Codes Enforcement Officer</td>
</tr>
<tr>
<td>Castine</td>
<td>Within the Aquifer Protection Overlay District, storage or manufacturing of pesticides prohibited and application of pesticides requires site plan approval Permit required for non-residential pesticide/fertilizer application and Integrated Pest Management and Nutrient Management plans required, following Maine Board of Pesticides Control (BPC) publication Best Management Practices for the Application of Turf Pesticides and Fertilizers (PDF). Plans must be reviewed by BPC and Maine Department of Health and Human Services Drinking Water Program and approved by town Planning Board.</td>
</tr>
<tr>
<td>Coplin Plantation</td>
<td>Aerial and/or mechanical application of pesticides prohibited</td>
</tr>
<tr>
<td>Cranberry Isles</td>
<td>Permit required for forest management activities including pesticides</td>
</tr>
<tr>
<td>Harpswell</td>
<td>Prohibits the use of the insect growth regulators (IGRs) diflubenzuron and tebufenozide and the aerial application of all IGRs and any insecticide whose product label indicates that it is harmful to aquatic invertebrates</td>
</tr>
<tr>
<td>Lebanon</td>
<td>Aerial pesticide application and non-agricultural herbicide use banned</td>
</tr>
<tr>
<td>Limerick</td>
<td>Herbicide application to rights-of-way prohibited</td>
</tr>
<tr>
<td>Limestone</td>
<td>Aerial application of pesticides adjacent to Trafton Lake restricted</td>
</tr>
<tr>
<td>Town</td>
<td>Description</td>
</tr>
<tr>
<td>--------------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Newburgh</td>
<td>Herbicide application on roadside rights-of-way prohibited</td>
</tr>
<tr>
<td>New Gloucester</td>
<td>Application must be consistent with Department of Agriculture standards</td>
</tr>
<tr>
<td>New Sweden</td>
<td>Aerial application of pesticides prohibited</td>
</tr>
<tr>
<td>Ogunquit</td>
<td>Restricts the outdoor application of pesticides on public and private land. Pesticides used must be approved for organic use or exempt from Federal EPA registration.</td>
</tr>
<tr>
<td>Owl’s Head</td>
<td>Herbicide application banned</td>
</tr>
<tr>
<td>Rangeley</td>
<td>Powered application of pesticides on more than 2 acres restricted</td>
</tr>
<tr>
<td>Rockland</td>
<td>Restricts the outdoor application of pesticides on Town-owned, leased or managed land. Pesticides used must be approved for organic use or exempt from Federal EPA registration.</td>
</tr>
<tr>
<td>Southport</td>
<td>State or commercial application of pesticides prohibited</td>
</tr>
<tr>
<td>Standish</td>
<td>Storage of pesticides within the Shore land zone prohibited</td>
</tr>
<tr>
<td>Sweden</td>
<td>All forest pesticide application and any aerial application within the aquifer protection district prohibited, powered applications over 1 acre restricted</td>
</tr>
<tr>
<td>Waterboro</td>
<td>Hazardous waste generation permits required</td>
</tr>
<tr>
<td>Wayne</td>
<td>Storage of pesticides within the Shore land Zone prohibited</td>
</tr>
<tr>
<td>Wells</td>
<td>Restricted use pesticide application within the Resource Protection District around Branch Brook and the Branch Brook Aquifer Protection District requires notice to the Code Enforcement Officer and copy to Town of Kennebunk</td>
</tr>
</tbody>
</table>

Prohibited: Municipalities have shown different ways to classify what types pesticides are prohibited. The use and applications of toxic, non-essential, and restricted pesticides by both city/town employees and/or by homeowners on both private and public lands have been addressed through limitation or prohibition. Many towns specifically mention the type of pesticides or “class” of pesticides that are restricted/prohibited. The classification of prohibited pesticides has come from a combination of different sources. Mainly from:

- Any pesticide classified as “carcinogenic to human” or “likely to be carcinogenic to humans” by the U.S. Environmental Protection Agency;
- Any pesticide classified as “restricted use products” by the U.S. Environmental Protection Agency;
- Any Pesticide classified as “Class 9” pesticide by the Ontario, Canada, Ministry of the Environment; and
- Any pesticide classified as a “Category 1 Endocrine Disruptor” by the European Commission
- Any pesticide classified as a “Toxicity Category I or Toxicity Category II” by the U.S. Environmental Protection Agency
**Exemptions:** Pesticide ordinances have exemptions included. Some are structured to have outright exemptions, some require waivers and some are developed with a tiered system that allows stronger pesticides to be used only if other methods have been unsuccessful (IPM). There are specific exemptions that are necessary to ensure public health and safety. The US Environmental Protection Agency has a classified list of pesticides determined to be of a character not requiring regulation under the Federal Insecticide, Fungicide, and Rodenticide Act.

One example of “exemptions” within an ordinance is Ogunquit’s ordinance. Though Ogunquit has passed an Ordinance that prohibits the use of pesticides, the ordinance does have a number of exemptions:

- Commercial agriculture;
- Pet supplies such as shampoos, tick and flea collars and dusts;
- Disinfectants, germicides, bactericides, and virucides;
- Insect repellents;
- Outdoor animal repellants;
- Swimming pool supplies;
- Aerosol products;
- General use paints, stains and wood preservatives and sealants; and
- CMP, and other, routine vegetation maintenance programs on transmission sections that run through the Town of Ogunquit.

Ogunquit also exempts: drinking water and wastewater treatment; indoor pesticide use; contained baits or traps for rodent control; use of pesticides classified by the US Environmental Protection Agency as exempt materials under 40 CFR 152.25 or pesticides permitted by the Organic Materials Review Institute; management of town-owned land not used or used infrequently by the public (spraying of roadway medians, for example).

In Ogunquit the below four instances also are exempt from the ordinance:

1. Noxious Growths – The control of plants, including and not limited to, poison ivy (Rhus radicans or Toxicodendron radicans), poison oak (Rhus toxicodendron or Toxicodendron quercifolium), and poison sumac (Rhus vernix or Toxicodendron vernix).
2. Invasive Species – The control of invasive species that may be detrimental to the environment.
3. Mandatory Applications– Use of pesticides mandated by state or federal law.
4. Health and Safety – The control of insects that are venomous or disease carrying.

**Public Notice:**

Many municipalities require the posting of notice when a property owner applies a pesticide or when a situation calls for city employees to use restricted pesticides.
**Golf Courses:** No municipality in the country outright prohibits the use of pesticides on golf courses. Ontario bans the use of Class 9 pesticides, but provides an exception for golf courses, if certain conditions are met. Golf courses are defined as areas used or intended to be used as playing surfaces including: tees, fairways, greens, and rough.

**Outreach and Educational:** Public outreach and educational campaigns have been established before and during the implementation of ordinances. In Takoma Park, MD the city is responsible to identify or prepare, and then periodically disseminate, materials designed to educate the community about the role of pesticides in our local environment, compliance with restrictions imposed by their ordinance, and provide alternatives to the use of harmful pesticides. Education may take the form of pamphlets and brochures, whether produced and distributed on paper or electronically, and classes and seminars, involving City staff, non-City governmental agencies, community and advocacy groups, and other resources. Here in South Portland SPC-TV would be a great resource.

**Emergency waiver:** Depending upon how an ordinance is development, many ordinances have provisions for emergency situations. If an emergency situation warrants the use of non-exempt pesticides, typically the Code Enforcement Officer will have the authority to; grant a thirty (30) day temporary waiver. The waiver may typically be extended to a six (6) month total period. Waiver approval shall be subject to the use of the least toxic material available to address the given emergency. The presence of weeds or common fungal diseases in the usual course of turf maintenance shall not constitute an emergency. In Ogunquit the waiver determination is based on if the pest situation presents an immediate threat to human health or environmental quality or an immediate threat of substantial property damage or loss and if viable alternatives consistent to the ordinance do not exist. In Scarborough a waiver request goes through the Pest Management Advisory Committee.

**Penalties:** Depending upon community depends on whether there are penalties for the use of a prohibited pesticide. Many communities impose fines for first, second and third offenses. Some communities are more general and call is a Class B or C misdemeanor. Other communities, like Ontario tend to focus on licensing and permits rather than the illegal application of pesticides.

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<table>
<thead>
<tr>
<th>Target Site</th>
<th>Product Name</th>
<th>Product Type</th>
<th>Total Undiluted Formulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Athletic Fields</td>
<td>Imidacloprid</td>
<td>Pesticide</td>
<td>.4 gallons</td>
</tr>
<tr>
<td>Athletic Fields</td>
<td>Quincept</td>
<td>Pesticide</td>
<td>5 gallons</td>
</tr>
<tr>
<td>Athletic Fields</td>
<td>Momentum</td>
<td>Pesticide</td>
<td>.75 gallons</td>
</tr>
<tr>
<td>Athletic Fields</td>
<td>Arena .25</td>
<td>Pesticide</td>
<td>60 pounds</td>
</tr>
<tr>
<td>Athletic Fields</td>
<td>Lesco 19-0-0 with Dimension .10%</td>
<td>Fertilizer</td>
<td>4350 pounds</td>
</tr>
<tr>
<td>Athletic Fields</td>
<td>Lesco 25-0-6 with 5% FE</td>
<td>Fertilizer</td>
<td>8000 pounds</td>
</tr>
<tr>
<td>Athletic Fields</td>
<td>Lesco 18-0-12</td>
<td>Fertilizer</td>
<td>6000 pounds</td>
</tr>
<tr>
<td>Baseball Warning Track</td>
<td>Prosecutor</td>
<td>Pesticide</td>
<td>.06 gallons</td>
</tr>
<tr>
<td>Fencelines</td>
<td>Roundup Pro Max</td>
<td>Pesticide</td>
<td>.25 gallons</td>
</tr>
<tr>
<td>Golf Fairways</td>
<td>Low Odor Triplet</td>
<td>Pesticide</td>
<td>4.03 gallons</td>
</tr>
<tr>
<td>Golf Fairways</td>
<td>30-0-0 Greenwave</td>
<td>Fertilizer</td>
<td>50 gallons</td>
</tr>
<tr>
<td>Golf Greens, Tees and Aprons</td>
<td>Disarm G</td>
<td>Pesticide</td>
<td>60 pounds</td>
</tr>
<tr>
<td>Golf Greens, Tees and Aprons</td>
<td>Iprodione</td>
<td>Pesticide</td>
<td>2.96 gallons</td>
</tr>
<tr>
<td>Golf Greens, Tees and Aprons</td>
<td>Chlorothalonil</td>
<td>Pesticide</td>
<td>7.01 gallons</td>
</tr>
<tr>
<td>Golf Greens, Tees and Aprons</td>
<td>Tebuconazole</td>
<td>Pesticide</td>
<td>.9 gallons</td>
</tr>
<tr>
<td>Golf Greens, Tees and Aprons</td>
<td>Seablend 12-4-5</td>
<td>Fertilizer</td>
<td>350 pounds</td>
</tr>
<tr>
<td>Golf Greens, Tees and Aprons</td>
<td>Vibrant Green</td>
<td>Fertilizer</td>
<td>5 gallons</td>
</tr>
<tr>
<td>Golf Greens, Tees and Aprons</td>
<td>Krystal Clear 4%FE</td>
<td>Fertilizer</td>
<td>2.5 gallons</td>
</tr>
<tr>
<td>Golf Greens, Tees and Aprons</td>
<td>3-0-1 Early Bird</td>
<td>Fertilizer</td>
<td>100 pounds</td>
</tr>
<tr>
<td>Greenhouse Application</td>
<td>Peters Pro</td>
<td>Fertilizer</td>
<td>5 pounds</td>
</tr>
<tr>
<td>Greenhouse Application</td>
<td>BotaniGard 22 WP</td>
<td>Pesticide</td>
<td>1 pound</td>
</tr>
<tr>
<td>Greenhouse Application</td>
<td>Rootshield WP</td>
<td>Pesticide</td>
<td>1 pound</td>
</tr>
<tr>
<td>Greenhouse Application</td>
<td>Subdue Max</td>
<td>Pesticide</td>
<td>.007812 gallons</td>
</tr>
<tr>
<td>Landscape Beds</td>
<td>Roundup Pro Max</td>
<td>Pesticide</td>
<td>1.242 gallons</td>
</tr>
<tr>
<td>Ornamental Plants</td>
<td>Excel 15-16-17</td>
<td>Fertilizer</td>
<td>5 lbs</td>
</tr>
<tr>
<td>Ornamental Plants</td>
<td>Osmocote</td>
<td>Fertilizer</td>
<td>50 pounds</td>
</tr>
<tr>
<td>Ornamental Plants</td>
<td>Peters Bloom Booster 10-31-10</td>
<td>Fertilizer</td>
<td>25 pounds</td>
</tr>
</tbody>
</table>
Model Public and Private Pesticide-Free Policy/Ordinance

Section 1. Purpose.

The [enacting entity] hereby finds and declares that it shall be the policy of the [locality name] to eliminate toxic pesticide use in and on public and private property in order to promote a healthy environment and protect the public from the hazards of pesticides, and for implementation of sustainable land and building management practices on all public and private property.

Section 2. Findings.

WHEREAS, scientific studies associate exposure to pesticides with asthma, cancer, developmental and learning disabilities, nerve and immune system damage, liver or kidney damage, reproductive impairment, birth defects, and disruption of the endocrine system;

WHEREAS, infants, children, pregnant women, the elderly, people with compromised immune systems and chemical sensitivities are especially vulnerable to pesticide effects and exposure;

WHEREAS, pesticides are harmful to pets, wildlife including threatened and endangered species, soil microbiology, plants, and natural ecosystems;

WHEREAS, toxic runoff from chemical fertilizers and pesticides pollute streams and lakes and drinking water sources;

WHEREAS, the use of hazardous pesticides is not necessary to create and maintain green lawns and landscapes given the availability of viable alternatives practices and products;

WHEREAS, people have a right not to be involuntarily exposed to pesticides in the air, water or soil that inevitably result from chemical drift and contaminated runoff;

WHEREAS, recognizing that if an emergency public health situation warrants the use of pesticides, which would otherwise not be permitted under this policy, the Sustainability Coordinator shall have the authority to grant a temporary waiver on a case by case basis after an evaluation of all alternative methods and materials.
WHEREAS, sustainable land and building management practices that emphasize nonchemical methods of pest prevention and management and least-toxic pesticide use as a last resort will eliminate the use of and exposure to pesticides while controlling pest populations;

WHEREAS, sustainable land and building management practices complements other important goals of [locality name] maintenance and administration, such as energy conservation and security; and

WHEREAS, [locality name] embraces a precautionary approach to the use of toxic pesticides in order to adequately protect people and the environment from pesticides' harmful effects.

Section 3. Definitions.

Crack and Crevise Treatment — means the application of small quantities of a pesticide into openings in a building such as those commonly found at expansion joints, between levels of construction, and between equipment and floors.

Emergency — means an urgent need to mitigate or eliminate a pest that threatens public health or safety.

Sustainable Land and Building Management Practices — means a managed pest control program that:

(A) eliminates or mitigates economic and health damage caused by pests;

(B) uses— (i) integrated methods; (ii) site or pest inspections; (iii) pest population monitoring and prevention strategies; (iv) an evaluation of the need for pest control; and, (v) 1 or more pest prevention and management methods, such as habitat modifications, sanitation practices, entryway closures, structural repair, mechanical and biological controls, effective mowing, watering and fertilizing practices that provide a healthy soil, other nonchemical methods, and if nontoxic options are unreasonable or have been exhausted, a least-toxic pesticide; and

(C) minimizes— (i) the use of pesticides; and (ii) the hazards to human health and the environment associated with pesticide applications.

Sustainability Coordinator — means an individual who is designated by the City of [locality name] to oversee implementation of the sustainable land and building management practices for the City.

Least-Toxic Pesticide — means any pesticide product or ingredient that, at a minimum, has not been classified as, or found to have, any of the following characteristics or ingredients:
(A) Classification as "Carcinogenic to Humans" or "Likely to be Carcinogenic to Humans" by the U.S. Environmental Protection Agency;
(B) Classification by the U.S. Environmental Protection Agency as a "Restricted Use Product";
(C) Classification as a "Class 9" pesticide by the Ontario, Canada, Ministry of Environment;
(D) Classification as a "Category 1 Endocrine Distruptor" by the European Commission.

**Natural Organic Fertilizer** — means fertilizers that contain nutrients naturally derived solely from the remains or a by-product of an organism, or from a mineral. The term includes cottonseed meal, fish emulsion, compost, and composted manure. The terms does not include any fertilizer containing biosolids or synthetic ingredients, natural minerals or substances that are reacted with acids or produced in a petrochemical process.

**Pesticide** — any substance or mixture of substances intended for—(i) preventing, destroying, repelling, or mitigating any pest; (ii) use as a plant regulator, defoliant, or desiccant; or (iii) use as a spray adjuvant such as a wetting agent or adhesive. The term ‘pesticide’ does not include cleaning products, other than those that contain pesticidal agents.

**Grounds** — means the area outside of a building, including lawns, playgrounds, sports fields, and any other property or facility controlled, managed, leased or owned by [locality name].

**Lawn** — means an area of land, except agricultural land, that is: (i) mostly covered by grass, grass, other similar herbaceous plants, shrubs, or trees; and (ii) kept trim by mowing or cutting.

**Garden** — means a plot of land, except agricultural land, consisting of a majority of annual plants.

**Agricultural Land** — means land that lies in an agricultural zoning district.

**Synthetic Fertilizer**—means a substance containing a plant nutrient created by a synthetic, chemical process, including triple super phosphate made by treating rock phosphate with phosphoric acid, potassium chloride, urea quick release synthetic fertilizers, petroleum-based fertilizers. The term does not include natural organic fertilizers that are made from naturally occurring materials, such as fish or kelp, or manure based organic compost.

**Universal Notification** — means notice provided by the Sustainability Coordinator to all employees working at the facility where the pesticide will be applied.

Sec. 4 Sustainable Land and Building Management Practices Components.
(1) In General.—Each City department shall implement sustainable land and building management practices, that at a minimum—

(A) Applies to [locality name] controlled, managed, or owned buildings and grounds;

(B) Establishes a Sustainability Coordinator within the [City Department] responsible for carrying out sustainable land and building management practices; and

(C) Follows sustainable land and building management practices for addressing pest problems.

(2) Duties of the Sustainability Coordinator.—The Sustainability Coordinator shall—

(A) Oversee the implementation of sustainable land and building management practices;

(B) Act as a contact for inquiries about the sustainable land and building management practices;

(C) Maintain and make publicly available material safety data sheets, labels, and fact sheets or other official health and safety information for all pesticides classified as least-toxic;

(D) Maintain a make publicly available a list of pesticides that may be used in emergencies that are not classified as least-toxic under this law;

(D) Have the authority to determine whether to remove a pesticide from a designation of least-toxic, based on essentiality in pest control or harm to human health or the environmental which is not captured by the current definition of a least-toxic pesticide.

(E) Be informed of Federal and State chemical health and safety information and contact information;

(F) Maintain scheduling of all pesticide use by [locality name];

(G) Maintain contact with Federal and State sustainable land and building management experts;

(H) Obtain periodic updates and training from State sustainable land and building management experts;

(I) Pre-approve any public health emergency pesticide applications; and
(J) Maintain all pesticide use data for each pesticide used at City buildings and grounds for at least 3 years after the date on which the pesticide is applied.

(K) Oversee the implementation of a public outreach and education campaign before and during implementation of the provisions of this Article. This campaign should include:
   (i) informational mailers to [locality name] households;
   (ii) distribution of information through [locality name] internet and web-based resources;
   (iii) radio and television public service announcements
   (iv) news releases and news events
   (v) information translated into Spanish, French, Chinese, Korean, Vietnamese, and other languages, as needed;
   (vi) extensive use of local public access channels funded by the [locality name]
   (vii) posters and brochures made available at [locality name] events, publicly-owned transportation, libraries, recreation facilities, senior centers, public schools, colleges, health care providers, hospitals, clinics, and other venues.

(3) Property Owners and Tenants.

   (A) [Locality name] shall distribute education materials regarding the role of pesticides in the environment, compliance with the restrictions imposed by the model ordinance, and information on sustainable land and building practices and least-toxic products to all landlords, single-family homes, duplexes, and townhomes in the [locality].

   (B) Use of pesticides, other than those defined as least-toxic, on lawns and gardens by property owners and tenants is prohibited except in the case of a public health emergency pre-approved by the Sustainability Coordinator.

   (C) Property owners and tenants are encouraged to follow sustainable land and building management practices and employ least-toxic pesticides only as a last resort.

(4) Use Of Pesticides. — [Name of locality] shall only use a least-toxic pesticide as part of the sustainable land and building management practices. The least-toxic pesticide may only be used as a last resort and only if the area or room treated is unoccupied or not in use by an employee or the public. Pesticides are only to be applied by certified commercial applicators.

(5) Use Of Fertilizers. — [Name of locality] shall only use natural organic fertilizers. The use of a synthetic fertilizer is prohibited.

(6) Public Health Emergency. —
(A) In General.—If the Sustainability Coordinator determines that a pest in a [jurisdiction] building or on the grounds cannot be controlled after having used sustainable land and building management practices and least toxic pesticides and it is a public health emergency, [locality name] may use a pesticide in accordance with this subsection.

(B) Sustainability Coordinator Approval Required.—The Sustainability Coordinator shall approve, after identifying the pesticide product ingredients and acute and chronic adverse health effects, the pesticide product before any public health emergency application can be made.

(C) Area Use Limitation.—The use of an area or room treated by an emergency pesticide, other than a least-toxic pesticide, shall not be occupied or used at the time of application or during the 24-hour period beginning at the end of the application.

(D) Authorized Applicator.—The pesticide application shall only be made by a State certified pesticide applicator.

(E) Notification of Occupants and Users.—The Sustainability Coordinator shall provide to each employee of the facility/grounds where the application is to take place a notice of the application of the pesticide for emergency pest control. Notification will be provided at least 24 hours prior to the application. The notification shall include—

(i) the common name, trade name, and Environmental Protection Agency registration number of the pesticide;
(ii) a description of the location of the application of the pesticide;
(iii) a description of the date and time of application;
(iv) the statement ‘The EPA cannot guarantee that registered pesticides do not pose risks, and unnecessary exposure to pesticides should be avoided’;
(v) a description of potential adverse effects of the pesticide based on the material safety data sheet of the pesticide any additional warning information related to the pesticide;
(vi) the name and telephone number of the Sustainability Coordinator;
(vii) a description of the problem and the factors that qualified the problem as an emergency that threatened public health; and
(viii) a description of the steps the [jurisdiction] will take in the future to avoid emergency application of a pesticide under this paragraph.

(F) Method Of Universal Notification.—The Sustainability Coordinator shall provide the notice by—(i) written notice provided to each employee; (ii) a notice delivered electronically (such as through electronic mail or facsimile); (iii) a telephone call; or (iv) direct contact.
(G) Posting Of Signs.—If applying a pesticide under this paragraph, the Sustainability Coordinator shall post a sign warning of the application of the pesticide—in a prominent place that is in or adjacent to the location to be treated; and at each entrance to the building or ground to be treated. A sign required for the application of a pesticide shall remain posted for at least 72 hours after the end of the treatment; be at least 8½ inches by 11 inches; and state the same information as that required for prior notification of the application under subparagraph (E).

(H) Modification Of Sustainable Land and Building Management Practices.—If the [Locality name] applies a pesticide under this paragraph, the Sustainability Coordinator shall modify the sustainable land and building management practices to minimize the future applications of pesticides under this paragraph.

Section 5. Grounds Management Implementation Guidelines.

It is the policy of the City of [name of locality] to take the following preventive measures to eliminate pest-conducive conditions on public and private land:

(A) To maintain healthy soil, soil sampling and analysis will be conducted to evaluate and assess the level of care needed for the facility’s turf and landscape.

(B) Well-adapted, pest-resistant grass varieties that are more suitable for [Locality name’s] climate will be planted.

(C) Lawn aeration will be scheduled twice a year.

(D) De-thatching practices must keep the thatch layers less than ½” in order to keep the grass less susceptible to insects, disease and weather stress.

(E) A proper pH for the soils will be maintained.

(F) Annual fall fertilizer applications will be scheduled and carried out. Only slow-release fertilizer formulations will be used.

(G) Approved soil amendments will be applied as necessitated by soil test results. Following, but not limited to, the recommendations of the Northeast Organic Farmers’ Association and/or the Organic Material Review Institute.

(H) Outdoor management practices will be modified to comply with organic horticultural science, including scouting, monitoring, watering, pruning, proper spacing and mulching.

(I) Practices will include the use of physical controls, including hand-weeding and over-seeding.

(J) Practices will also include the use of biological controls, including the introduction of natural predators, and enhancement of a favorable environment for a pest’s natural enemies.

Section 6. Enforcement.

(1) [Locality name] shall be responsible for the enforcement of this act and its agents shall be authorized to issue statements of offense;
(2) Officials of [locality name] may visit and examine any property to ascertain whether there has been compliance with the provisions of this act.

(3) The City can take any legal action before the appropriate court in order to obtain compliance with this act.

(4) Any citizen may commence a civil action on his own behalf—(1) against any person who is alleged to be in violation of (A) a standard or limitation under this chapter or (B) an order issued by the [local jurisdiction] with respect to such a standard or limitation, or (2) against the State where there is alleged a failure of the State to perform any act or duty under this chapter which is not discretionary with the State in accordance with the deadlines established by this chapter.

(5) Each application of a pesticide violates the restrictions of this code shall be considered a municipal infraction, with penalties determined by the City.

Section 7. And Be It Further Enacted That this Act shall take effect as of the date of the [insert number] months from its passage.
TITLE II
OGUNQUIT MUNICIPAL CODE
HEALTH, SAFETY & WELFARE

CHAPTER 11  Pesticide/Herbicide Usages

1101 Purpose

The purpose of this chapter is to safeguard the health and welfare of the residents of the Town of Ogunquit and to conserve and protect the town's ground water, estuarine, marine and other natural resources, while ensuring preservation of the land.

1102 Provisions.

The following provisions shall be applicable to all turf, landscape and outdoor pest management activities conducted within the Town of Ogunquit, on both public and private land.

(a) Permitted:

1102.1 Use or application of natural, organic land care protocols.

1102.2 All control products and soil amendments, including fertilizer and compost, used under the terms of this article shall be in keeping with, but not limited to, products that can be used on Maine Organic Farmers and Gardeners Association Certified Farms, and/or products permitted by the Organic Materials Review Institute or the USDA National Organic Program.

1102.3 Use or application of sludge or sludge-derived products to the extent permitted by the Maine Hazardous Waste, Septage and Solid Waste Management Act 38 M.R.S.A. §§1301-1319-Y, the Protection of Natural Resources Act 38 M.R.S.A. §§ 480-A-480-Z, the Site Location of Development Act 38 M.R.S.A.§ 481-490, and any rules related thereto, as amended from time to time.

(b) Prohibited:

1102.4 Use or application of chemical pesticides, other than pesticides classified by the US Environmental Protection Agency as exempt materials under 40 CFR 152.25, and those products permitted by the Organic Materials Review Institute.
1102.5 Use or application of sludge or sludge-derived products not listed as permitted above.

1103 Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Natural, organic land care: An extension of the principles and practices of organic agriculture to the care of turf and landscape.

Pesticide: Any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; any substance or mixture of substances intended for use as a plant regulator, defoliator or desiccant; and any nitrogen stabilizer. It does not include multicellular biological controls such as mites, nematodes, parasitic wasps, snails or other biological agents not regulated as pesticides by the U.S. Environmental Protection Agency. Herbicides, fungicides, insecticides and rodenticides are considered pesticides.

Sludge: Defined in 38 M.R.S.A. § 1303-C (28-A), as amended from time to time.

Pest: Any undesirable insect, plant, fungi, bacteria, virus or micro-organism.

1104 Exemptions

The following situations are exempt from the provisions of this Ordinance:

a. Commercial agriculture;
b. Pet supplies such as shampoos, tick and flea collars and dusts;
c. Disinfectants, germicides, bactericides, and virucides;
d. Insect repellents;
e. Outdoor animal repellants;
f. Swimming pool supplies;
g. Aerosol products;
h. General use paints, stains and wood preservatives and sealants; and
i. CMP, and other, routine vegetation maintenance programs on transmission sections that run through the Town of Ogunquit.

and the following processes are exempt: drinking water and wastewater treatment; indoor pesticide use; contained baits or traps for rodent control; use of pesticides classified by the US Environmental Protection Agency as exempt materials under 40 CFR 152.25 or pesticides permitted by the Organic Materials Review Institute; management of town-owned land not used or used infrequently by the public (roadway medians, for example).

A specific exemption is made for poison ivy control on the Marginal Way, using the least toxic product in accordance with the US Environmental Protection Agency under 40 CFR 152.5, the Maine State Regulations Title 7 and Title 22: “Use of Pesticides”, and the Best Management Practices for the Application of Turf Pesticides and Fertilizers of the Maine Board of Pesticide Control.

Restricted pesticides may also be applied for the following purposes:

1. **Noxious Growth**s – The control of plants, including and not limited to, poison ivy (Rhus radicans or Toxicodendron radicans), poison oak (Rhus toxicodendron or Toxicodendron quercifolium), and poison sumac (Rhus vernix or Toxicodendron vernix).

2. **Invasive Species** – The control of invasive species that may be detrimental to the environment.

3. **Mandatory Applications** – Use of pesticides mandated by state or federal law.

4. **Health and Safety** – The control of insects that are venomous or disease carrying.

**1105 Emergency waiver**

If an emergency situation warrants the use of non-exempt pesticides, the Code Enforcement Officer may grant a thirty (30) day temporary waiver. The waiver may be extended to a six (6) month total period. Waiver approval shall be subject to the use of the least toxic material available to address the given emergency. The presence of weeds or common fungal diseases in the usual course of turf maintenance shall not constitute an emergency.

(a) **Waiver determination shall be based on the following criteria:**

1105.1 The pest situation presents a) an immediate threat to human health or environmental quality, or b) an immediate threat of substantial property damage or loss; and
1105.2 Viable alternatives consistent with this article do not exist. The Select Board shall request the Conservation Commission to review any waiver requests made under this section, and to recommend a course of action.

1106. **Enforcement and permits**

This article shall be enforced by the Code Enforcement Officer, according to the policies governing enforcement of municipal ordinances of the Town of Ogunquit.

1107. **Conflict and invalidity**

If a conflict or inconsistency is found between this article and other sections of the Zoning Ordinance or Town Charter, the terms of the stricter provisions shall prevail. The invalidity of a provision of this article shall not invalidate any other provision of this article.

1108. **Authority**

Pursuant to 30-A M.R.S.A. § 3001, municipalities may enact ordinances to protect the welfare of their inhabitants. Pursuant to 22 M.R.S.A. § 1471-U, Maine municipalities may enact ordinances that apply to pesticide storage, distribution, or use. Pursuant to 38 M.R.S.A., § 1310-U, municipalities may enact ordinances with respect to solid waste facilities with standards that are not more strict than those contained in the Maine Hazardous Waste, Septage and Solid Waste Management Act 38 M.R.S.A. §§ 1301-1319-Y, the Protection of Natural Resources Act 38 M.R.S.A. §§ 480-A-480-Z, the Site Location of Development Act 38 M.R.S.A.§ 481-490, and the rules adopted under those articles, as amended from time to time.

IN WITNESS WHEREOF, UNDER SEAL OF THE TOWN, this Ordinance as duly approved by the voters acting on Article 2 at a Special Town Meeting held on November 4, 2014.

Ordinance Change Effective January 1, 2015.
Town of Scarborough Pest Management Policy

Adopted September 21, 2011

SECTION I. POLICY.

All pesticides are toxic to some degree and the widespread use of pesticides is both a major environmental problem and a public health issue. Federal regulation of pesticides is no guarantee of safety.

Scarborough recognizes that the use of pesticides may have profound effects upon indigenous plants, surface water and ground water, as well as unintended effects upon people, birds and other animals in the vicinity of treated areas. Scarborough recognizes that all citizens, particularly children, have a right to protection from exposure to hazardous chemicals and pesticides.

Scarborough recognizes that it is in the best interest of public health to eliminate the use of pesticides on town-owned lands; to encourage reduction and elimination of pesticide use on private property; and to introduce cultural and management practices to prevent, and when necessary, address pest problems on town-owned land.

Scarborough supports the Precautionary Principle (as defined by the Wingspread Statement of January 1998) as the basis for its Pest Management Policy. The Precautionary Principle states, "When an activity raises threats of harm to the environment or human health, precautionary measures should be taken, even if some cause and effect relationships are not yet fully established."

Therefore, it is the express policy of Scarborough to refrain from the use of pesticides upon property it owns, uses or controls, except in situations that pose an imminent threat of serious injury to persons, property or agriculture.

SECTION II. AUTHORITY.

The Scarborough Town Manager shall oversee the implementation of the Pest Management Policy. A Pest Management Advisory Committee shall act in an advisory capacity to develop and oversee a Pest Management program consistent with this policy, and advise the Town Manager of any problems encountered or amendments required to achieve the full and successful implementation of this policy.

The Pest Management Advisory Committee may have additional responsibilities granted by the Town. The Pest Management Advisory Committee shall work with the Town Manager to keep pesticide use at or near zero levels.

The Pest Management Advisory Committee shall advise the Town Manager on all matters related to this policy and shall consider granting waivers in emergency situations (see Section VIII).

The Pest Management Advisory Committee will seek the participation, advice and counsel of experts in the fields of organic turf and landscape management, maintenance of trees and shrubs,
and organic pest management/integrated pest management (see definitions section) protocol. Broad community participation, from parents, schools, advocates, and local arboriculture and landscaping businesses, will be encouraged (on a non-voting basis).

The Pest Management Advisory Committee shall include:

- Representative from the School Department, preferably the Director of Facilities;
- Representative from the Community Services Parks & Recreation Advisory Board; Two resident or taxpayer representatives knowledgeable about organic approaches to pest problems and organic horticulture, one of which is a member of the Conservation Commission; and,
- An Arborist or Horticulturalist.
- Two resident or taxpayer representatives, at-large

SECTION III. DEFINITIONS.

The following words and phrases, whenever used in this Pest Management Policy, shall be construed as defined in this section:

**Pests** are considered undesirable terrestrial or aquatic plants, insects fungi, bacteria, virus, nematodes, rodents, birds, animals, or other micro-organisms (except viruses, bacteria or other micro-organisms on or in living persons or other living animals) declared to be a pest under federal or state laws. Common examples in turf grass and the landscape can be, but are not limited to, crabgrass, knotweed, poison ivy, chinch bugs, grubs, and a variety of plant pathogens.

**Pesticides** are defined by the State of Maine as "any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; any substance or mixture substances intended for use as a plant regulator, defoliant, or desiccant; and any nitrogen stabilizer. It does not include multicellular biological controls such as mites, nematodes, parasitic wasps, snails, or other biological agents not regulated as pesticides by the U.S. Environmental Protection Agency." Herbicides, fungicides, insecticides, miticides, avicides and rodenticides are all considered pesticides. The State of Maine considers pheromones pesticides only if the label advertises it to act as such.

**Allowable Products** are pesticides or products which should be considered and/or used first. This Section can be expanded by the Pest Management Advisory Committee and includes:

1.) Products not considered pesticides by the State of Maine, such as:
   (a.) Multicellular organisms as defined by the State of Maine including nematodes, parasites, wasps, lady beetles and other biological controls including the introduction of natural predators and enhancing the environment of a pest's natural enemies.

2.) Products considered pesticides by the State of Maine, such as:
   (a.) Single celled organisms as defined by the State of Maine including Bt, insecticidal soap, corn gluten, vinegar, nematodes, and milky spore disease.
   (b.) Pesticides contained in baits or traps for the purpose of rodent control.
   (c.) Pesticides classified by the US EPA as exempt materials under 40CRF 152.25, or those pesticides of a character not requiring Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) regulation.

3.) Products listed on the Organic Materials Review Institute (OMRI) of Eugene, Oregon.
Organic Pest Management is a problem-solving strategy that prioritizes a natural, organic approach to turf grass and landscaping management, and care of trees and shrubs without use of pesticides. It mandates the use of natural, organic cultural practices that promote healthy soil and plant life as a preventative measure against the onset of turf and landscape pest problems.

Essential Organic Pest management practices include, but are not limited to:

Regular soil testing;
- Addition of approved soil amendments as necessitated by soil test results, following, but not limited to, the recommendations of the Maine Organic Famers and Gardeners Association or the Northeast Organic Farming Association;
- Selection of plantings using criteria of hardiness; suitability to native conditions; drought, disease and pest-resistance; and ease of maintenance;
- Modification of outdoor management practices to comply with organic horticultural science, including scouting, monitoring, watering, mowing, pruning, proper spacing and mulching; * The use of physical controls, including hand-weeding and over-seeding;
- The use of biological controls, including the introduction of natural predators, and enhancement of the environment of a pest's natural enemies;
- Through observation, determining the most effective treatment time, based on pest biology and other variables, such as weather and local conditions; and,
- Eliminating pest habitats and conditions supportive of pest population increases.

SECTION IV. PROHIBITION.

The use and application of pesticides by Scarborough Town employees and/or private contractors is prohibited on all town-owned lands except as provided in SECTION VII and section VIII.

SECTION V. CONTROL OF POTENTIAL PEST PROBLEMS.

Organic Pest Management practices (i.e., natural, organic turf, tree, shrub and landscape cultural practices and maintenance) shall be the method of choice to understand, prevent and control potential pest problems.

Control products used under the terms of this Policy shall be "Allowable Products" as defined in SECTION III.

SECTION VI. TRAINING AND EDUCATION.

All Town of Scarborough personnel involved in the evaluation, approval, or implementation of organic turf and landscape maintenance and/or outdoor pest control, should receive regular hands-on training and education in natural, organic cultural and technical methods. Examples of acceptable training and educational programs include Northeast Organic Farmer Association's (NOFA) one-day workshop that focuses on organic maintenance of lawn and turf; NOFA's five-day Organic Land Care Accreditation Program; or similar workshops. Suggested reading includes the NOFA Organic Lawn and Turf Handbook by NOFA's Connecticut and Massachusetts Chapters; Standards for Organic Land Care; Practices for Design and
Maintenance of Ecological Landscapes by NOFA's Connecticut and Massachusetts Chapters; Handbook of Successful Ecological Lawn Care by Paul D. Sachs; Managing

Healthy Sports Fields by Paul Sachs; and Organic lawn Care Manual by Paul Tukey. The Pest Management Advisory Committee can provide town staff with additional training resources and reference materials upon request. The University of Maine and the Maine Board of Pesticides Control (BPC) offer pesticide training. The BPC's Yardscaping Partnership provides some information that would be useful in implementation of this Policy (although alone will not meet the requirements of this Policy).

SECTION VII. USE OF PESTICIDES.

1.) No town department shall authorize or apply non-allowable pesticides (see SECTION III) to town-owned property except as permitted by this policy. Prior to granting approval of non-allowable pesticide use, the Town Manager is encouraged to seek advice from the Pest Management Advisory Committee.

2.) Authorization for pesticide use shall not be given without consideration of allowable products and alternatives to pesticide use; potential property damage; potential effects upon ground or surface water; proximity of the application to sensitive areas and/or sensitive individuals; and other potential impacts upon people, pets and the environment.

3.) Any person applying pesticides to public property must possess a valid Maine Commercial Master Applicator License or a Maine Commercial Operator License issued by the Maine Board of Pesticides Control. (See ADDENDUM II. MAINE COMMERCIAL PESTICIDE LICENSES ISSUED BY THE MAINE BOARD OF PESTICIDES CONTROL) Any government employee applying pesticides must be licensed as a commercial pesticide applicator.

4.) Any pesticide application authorized under this policy shall be administered in accordance with all state and federal statutes and applicable administrative regulations.

SECTION VIII. EMERGENCY SITUATIONS AND EXEMPTIONS.

1.) The decision to grant a waiver is the responsibility of the Town Manager. In emergencies, if practical, the Town Manager shall meet with the Pest Management Advisory Committee, to seek advice on granting a waiver. In the event that the Committee is not able to be consulted prior to the decision, the Town Manager shall provide timely notice of the decision and the Committee is encouraged to meet as soon as possible thereafter.

2.) Any person applying pesticides under this exemption must possess a valid license issued by the Maine Board of Pesticides Control.

(a.) Exceptions: Control of stinging insects can be done by anyone as long as he/she purchases a "ready to use" product (including organic and synthetic products) and follows the instructions for proper use of the product.

3.) Exempted Property. The Scarborough Town Manager may exempt a pesticide application from some or all requirements of this policy. The Town Manager and/or the Pest Management Advisory Committee must be shown by the town department or person seeking the exemption that the potential for any adverse effect upon the public or to adjoining property is minimal and compliance with the terms of this policy is unduly
burdensome or impractical. The following guidelines must be considered in determining whether to exempt a pesticide application from any or all of the policy's requirements:

(a.) Whether the area to which pesticides are to be applied is sufficiently removed from residences, sensitive areas or other places frequented by the public so that the potential for drifting airborne chemicals or groundwater transport poses no unreasonable adverse effect to persons or property.

(b.) Whether access to the area to be exempted is sufficiently restricted or remote that members of the public are unlikely to come into contact with pesticides applied to the exempted area.

(c.) Whether the type of pesticide application to be performed is so highly controlled or so extremely localized that it is highly unlikely the application will expose other persons or property to the pesticides during or after application.

(d.) Whether the pesticide application would pose an undue threat to sensitive individuals in the vicinity of the application or in the community at large.

(e.) Whether the pesticide application could pose a risk of contamination to water bodies or other sensitive ecological habitats.

(f.) How best to address pest issues through Integrated Pest Management (ADDENDUM I).

4.) If pesticides are applied (except outdoor marked bait stations), the following Posting Requirements are to be followed:

(a.) Whenever pesticides are to be applied to any town land subject to this policy, the responsible department or person shall post warning signs that meet the requirements of this policy. These signs must be posted at least 48 hours prior to application and left in place for at least 72 hours after actual application or until expiration of the restricted entry interval or reentry time indicated by the pesticide label, whichever is longer.

(b.) All signs required under Section VIII shall be at least five inches high and four inches wide in size. Signs shall be attached to the upper portion of a dowel or other supporting device so that the bottom of the sign is not less than 12" and the top of the sign is not more than 48" above the ground. The signs shall be of rigid, weather resistant material substantial enough to be easily read for at least 48 hours when placed outdoors.

(c.) All notification signs must be light colored (white, beige, yellow or pink) with dark, bold letters (black, blue or green). They shall have lettering that is conspicuous and clearly legible.

(d.) The sign must bear the following state requirements:
   1.) The word "CAUTION" in 72 point type;
   2.) The words "PESTICIDE APPLICATION" in 30 point type or larger;
   3.) The Maine Board of Pesticides Control designated symbol;
   4.) Any reentry precautions from the pesticide labeling;
   5.) The name of the company making the pesticide application and its telephone number;
   6.) The date and time of the application;
   7.) A date and/or time to remove the sign.
(e) All notification signs shall state the chemical and trade name of the pesticide, the date to be applied, the length of time to remain off the treated area as indicated by the pesticide label, and a phone number for more information.

5.) Emergency Situations. Time frames for notice and posting requirements under this policy shall not apply where a town department or other person makes an appropriate showing to the Scarborough Town Manager that emergency conditions warrant exemption from these requirements. Emergency situations shall be defined by the Pest Management Advisory Committee and shall be limited to those cases where the application of pesticides is needed to control a life-threatening situation or situation which poses an imminent threat of serious injury to persons, property or agriculture. A list of alternatives to pesticides and least toxic pesticides for every foreseeable emergency will be available to town employees and should be given first consideration.

6.) Upon emergency application of pesticides, posting and notice shall take place as soon after application as practicable or as otherwise required by law.

SECTION IX. NOTIFICATION PROCEDURES.

In addition to the notice and posting requirements for pesticide use in emergency situations noted in Section VIII of this policy, as a precaution, public notification shall be required whenever "allowable products" are applied as well. Such notification shall conform to the standards of the Maine Board of Pesticide Control as more clearly defined in Section VIII, Subsection (4). In addition to posting in the field, the Town shall maintain an on-line notification, by way of posting on the Town's website, relating to the application of pesticides or allowable products.

SECTION X. OTHER APPLICABLE LAWS.

This Pest Management Policy shall not be interpreted or construed to permit the application or use of pesticides or other hazardous materials where such use or application is restricted by other applicable health, environmental, safety or fire codes, regulations or statutes.

SECTION XI. SEVERABILITY.

If any section, sentence or clause of this policy is held invalid or unconstitutional, such holding shall not affect the validity of the remaining portions of the policy.

SECTION XII. EFFECTIVE DATE.

This policy shall be in force from and after its passage, publication and recording according to law. Dated this 21st day of September, 2011.
ADDENDUM I

INTEGRATED PEST MANAGEMENT POLICY
DEFINED FOR USE IN EMERGENCY SITUATIONS

Organic Pest Management (OPM) strives first and foremost to prevent pest problems by using natural, organic horticultural and maintenance practices. OPM can incorporate some principles of integrated pest management (IPM) in its program when deemed necessary by the Pest Management Advisory Committee.

Integrated Pest Management (IPM) is an approach to suppressing and eliminating pest populations. IPM involves a decision-making process for managing pests that uses monitoring (to determine pest injury levels) and combines biological, cultural, physical, and chemical tools to minimize health, environmental and financial risks. The method uses extensive knowledge about pests, such as infestation thresholds, life histories, environmental requirements and natural enemies to complement and facilitate biological and other natural control of pests. IPM uses site-specific information about pest biology and behavior, environmental conditions and the dynamics of human characteristics and activities to prevent and control pests. The method uses the least toxic synthetic pesticides only as a last resort.

The Town of Scarborough shall follow the Integrated Pest Management (r" n) approach outlined below:

1.) Identify the pest or disease. For assistance, contact the State of Maine Insect and Disease Laboratory. (Insect and Disease Laboratory, 50 Hospital Street, Augusta, Maine 04330-6514 Phone (207) 287-2431).

2.) Monitor and scout each pest ecosystem, turf, landscape, tree or shrub to determine pest population, size, occurrence, and natural enemy population, if present. Identify decisions and practices that could affect pest populations. Keep accurate records of such monitoring and potential pest problems.

3.) Set an injury level, based on how much aesthetic or economic damage the site can tolerate.

4.) Evaluate the site with regard to any injury caused by a pest in question.

5.) Consider a range of potential treatments for the pest problem.
   - Employ non-chemical management tactics first.
   - The chosen treatment will be the least damaging to the general environment and one that best preserves the natural ecosystem.
   - The chosen treatment must minimize negative impact to non-target organisms.
   - The chosen treatment must be the least disruptive of natural controls available.
   - The chosen treatment must be the least hazardous to human health.
   - The chosen treatment must have the lowest potential for human exposure.
   - The chosen treatment must be the most likely to produce long-term reductions in pest requirements.
   - The implementation must be feasible and cost-effective in the short- and long-term.

6.) Consider the use of chemicals only as a last resort, and select and use chemicals only within an IPM program and in accordance with other provisions of this policy.
   - Determine the most effective treatment time, based on pest biology and other variables, such as weather and local conditions.
• Design and construct indoor and outdoor areas to reduce and eliminate pest habitats.
• Modify management practices, including watering, mulching, waste management, and food storage.
• Modify pest ecosystems to reduce food and living space.
• Use physical controls such as hand weeding, traps, barriers, probing, hand removal, pruning, and removing fallen diseased leaves and fruit. Sanitation measures such as cleaning tools and proper disposal of diseased materials shall be employed to prevent re-infection and spread of diseases and pests to other plants, trees, shrubs, and sites.
• Use biological controls, including introducing or enhancing pests' natural enemies.

7.) Conduct ongoing educational programs with guidance and support from the Pest Management Advisory Committee:
(a.) Acquaint staff with pest biology, the IPM approach, new pest management strategies as they become known, and toxicology of pesticides proposed for use.
(b.) Inform the public of the town's attempt to reduce pesticide use and respond to questions from the public about the town's pest management practices.

ADDENDUM II

MAINE COMMERCIAL PESTICIDE LICENSES
ISSUED BY THE MAINE BOARD OF PESTICIDES CONTROL

A commercial license is required for any one of the following situations:
• Application of any restricted/limited use pesticide for purposes other than producing and agricultural commodity
• Use of any pesticide as a service for which compensation is received (examples include lawn care, pet grooming, tree & shrub care and pest control)
• Use of any pesticide on sites open to public use. Property is considered open to use by the public when the owner permits routine access by the public, even if a fee is charged for such use. Examples range from office and apartment buildings to golf courses and other outdoor recreation facilities.
• Use of any pesticide by a government employee as part of their job duties. Government employees include but are not limited to school, town, county, housing authority, water district, State, Federal and Defense officials.

Operator's Certificate: The commercial applicator/operator certification is the minimum license requirement for individuals employed as technicians under supervision of a licensed master applicator. The operator's license is in effect only if the employing company or organization has at least one licensed master applicator.

Master's Certificate: The commercial applicator/master certification is required for one individual within each company, organization or agency and at every branch office of that company. This license is generally intended for the owner, supervisor or manager as long as it is the person responsible for major pest control decisions, for establishing policies related to proper pesticide use, and for employee training and overall work practices.
License Categories: Pesticide applicators must have the proper license category for which they are applying pesticides. See below:

- 1A Agricultural - Animal
- 1B Agricultural - Plant
  - Option I - Limited Commercial Blueberry
  - Option II - Chemigation
  - Option III - Agricultural Fumigation
  - Option IV - Post-Harvest Treatment
- 2A Forest General
- 2B Forest Vegetation Management
- 3A Outdoor Ornamentals
- 3B Turf
- 3C Indoor Ornamentals
- 4 Seed Treatment
- 5 Aquatic Pest Control
- 6A Utility Right of Way Vegetation Management
- 6B Roadside Vegetation Management
- 6C Railroad Vegetation Management
- 6D Industrial/Commercial/Municipal Vegetation Management
- 7A Structural General Pest Control
- 7B Food Processing & Fumigation
- 7C Disinsectant and Biocide Treatments
- 7D Wood Preserving
  - Option I - Pressure Treatment
  - Option II - Sapstain/Blue Stain Treatment
  - Option III - Remedial Treatment
  - Option IV - General Wood Treatment
- 7E Biting Fly & Other Arthropod Vectors
- 7F Antifouling Paints
- 7G Termite Pests
- 8A Public Health - Biting Fly (a)
- 8B Public Health - Other (a)
- 9 Regulatory Pest Control (a)
- 10 Demonstration & Research Pest Control (b)
- 11 Aerial Pest Control (b)

(a) for government officials only
(b) requires another certification category
Pesticides Act

R.S.O. 1990, CHAPTER P.11

Consolidation Period: From December 31, 2011 to the e-Laws currency date.

Last amendment: 2009, c. 33, Sched. 15, s. 9.

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Interpretation

1. (1) In this Act,

"air" means open air not enclosed in a building, structure, machine, chimney, stack, flue or vehicle; ("air")

"analyst" means an analyst appointed under the Environmental Protection Act; ("analyste")

"Committee" means the Pesticides Advisory Committee; ("Comité")

"cosmetic" means non-essential; ("esthétique")

"discharge", when used as a verb, includes add, deposit, emit or leak and, when used as a noun, includes addition, deposit, emission or leak; ("rejet", "rejeter")

"document" includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account and information recorded or stored by means of any device; ("document")

"environment" means the natural environment, a building, structure, machine and vehicle, or any of them; ("environnement")

"extermination" means a land extermination, structural extermination or a water extermination; ("destruction")

"extermination business" means an activity or enterprise carried on for the purpose of causing an extermination or exterminations to be performed for fee or payment; ("entreprise de destruction")

"exterminator" means a person who, personally or through employees, assistants or agents, performs or enters into a contract to perform an extermination; ("destructeur")

"inspection" includes an audit, examination, survey, test and inquiry; ("inspection")

"justice" means a provincial judge or a justice of the peace; ("juge")

"land" means surface land not enclosed in a building or structure, land covered by water and all subsoil, or any combination or part thereof; ("terrain")

"land extermination" means the destruction, prevention or control in, on or over land of a pest or pests by the use of a pesticide but does not include a structural extermination, a water extermination or the destruction, prevention or control of termites; ("destruction de parasites terrestres")

"licence" means a licence issued under this Act and the regulations; ("licence")

"licensee" means a person who is the holder of a licence under this Act; ("titulaire de licence")

"Minister" means the Minister of the Environment; ("ministre")
“Ministry” means the Ministry of the Environment; ("ministère")

“natural environment” means the air, land and water, or any combination or part thereof, of the Province of Ontario; ("environnement naturel")

“operator” means a person who has the control and management of an extermination business, and “operate” has a corresponding meaning; ("exploitant")

“permittee” means a person who is the holder of a permit under this Act; ("titulaire de permis")

“person” includes a municipality, a corporation on behalf of Her Majesty in right of Ontario, and an agent of any of them; ("personne")

“person responsible”, when used with reference to a pesticide, substance or thing, means,

(a) the owner,

(b) the person having the charge, management or control of the handling, storage, use, disposal, transportation or display, or

(c) the person having the charge, management or control,

of the pesticide, substance or thing; ("personne responsable")

“pest” means any injurious, noxious or troublesome plant or animal life other than humans or plant or animal life on or in humans and includes any injurious, noxious or troublesome organic function of a plant or animal; ("parasite")

“pesticide” means any organism, substance or thing that is manufactured, represented, sold or used as a means of directly or indirectly controlling, preventing, destroying, mitigating, attracting or repelling any pest or of altering the growth, development or characteristics of any plant life that is not a pest and includes any organism, substance or thing registered under the Pest Control Products Act (Canada); ("pesticide")

“place” includes a building, structure, machine, vehicle or vessel; ("lieu")

“prescribed” means prescribed by the regulations; ("prescrit")

“provincial officer” means a person who is designated under section 17; ("agent provincial")

“receiver” means a person who has been appointed to take or who has taken possession or control of property pursuant to a mortgage, hypothec, pledge, charge, lien, security interest, encumbrance or privilege or pursuant to an order of a court, and includes a receiver-manager and an interim receiver; ("séquestre")

“regulations” means the regulations made under this Act; ("règlements")

“secured creditor” means a person who holds a mortgage, hypothec, pledge, charge, lien, security interest, encumbrance or privilege on or against property, but does not include a person who has taken possession or control of the property; ("créancier garanti")

“structural extermination” means the destruction, prevention or control of a pest that may adversely affect a building, structure, machine, vehicle or their contents or the use or enjoyment thereof by any person by the use of a pesticide in, on or in the vicinity of the building, structure, machine or vehicle and includes the destruction, prevention or control of termites; ("destruction de parasites dans une structure")

“Tribunal” means the Environmental Review Tribunal; ("Tribunal")

“water” means surface water and ground water, or either of them; ("eau")

“water extermination” means the destruction, prevention or control in, on or over surface water of a pest by the use of a pesticide. ("destruction de parasites aquatiques") R.S.O. 1990, c. P.11, s. 1 (1); 1993, c. 27, Sched.; 1998, c. 35, s. 77; 2000, c. 26, Sched. F, s. 14 (1, 2); 2001, c. 17, s. 6 (1); 2008, c. 11, s. 1 (1); 2009, c. 19, s. 71 (1).

Idem, Director

(2) In this Act,

“the Director” means a Director appointed under section 3. R.S.O. 1990, c. P.11, s. 1 (2).
Health or safety

(3) For the purposes of this Act, a danger to existing water supplies that are used for human consumption shall be deemed to be a danger to the health or safety of persons. 2001, c. 17, s. 6 (2).

Use of pesticide

(4) For the purposes of this Act,

(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. 2008, c. 11, s. 1 (2).

Powers and duties of Minister

2. The Minister, for the purpose of the administration of this Act and the regulations, may,

(a) investigate problems relating to pesticides and the control of pests;

(b) conduct research relating to pesticides and the control of pests;

(c) conduct studies of the effect of pesticides and the control of pests on the quality of the environment;

(d) convene conferences and conduct seminars and educational programs relating to pesticides and the control of pests;

(e) gather, publish and disseminate information relating to pesticides and the control of pests;

(f) make grants and loans for research related to pesticides and the control of pests in such amounts and upon such terms and conditions as the regulations may prescribe;

(g) appoint committees to perform such advisory functions as the Minister considers requisite;

(h) with the approval of the Lieutenant Governor in Council, enter into an agreement with any government or person relating to pesticides or the control of pests. R.S.O. 1990, c. P.11, s. 2.

Appointment of Directors

3. (1) The Minister shall appoint in writing such public servants employed under Part III of the Public Service of Ontario Act, 2006 who work in the Ministry as the Minister considers necessary as Directors in respect of such sections of this Act and in respect of such of the regulations or sections thereof as are set out in the appointments. R.S.O. 1990, c. P.11, s. 3 (1); 2006, c. 35, Sched. C, s. 109 (1).

Limitation of authority of Director

(2) The Minister, in an appointment under subsection (1), may limit the authority of a Director in such manner as the Minister considers necessary or advisable. R.S.O. 1990, c. P.11, s. 3 (2).

Prohibited use of pesticides

4. No person, whether acting or not acting under the authority of a licence or permit under this Act or an exemption under the regulations, shall discharge or cause or permit the discharge of a pesticide or of any substance or thing containing a pesticide into the environment that,

(a) causes or is likely to cause impairment of the quality of the environment for any use that can be made of it greater than the impairment, if any, for such use that would necessarily result from the proper use of the pesticide;

(b) causes or is likely to cause injury or damage to property or to plant or animal life greater than the injury or damage, if any, that would necessarily result from the proper use of the pesticide;

(c) causes or is likely to cause harm or material discomfort to any person greater than the harm or material discomfort, if any, that would necessarily result from the proper use of the pesticide;
(d) adversely affects or is likely to affect adversely the health of any person to a greater degree than the adverse effect, if any, that would necessarily result from the proper use of the pesticide;

(e) impairs or is likely to impair the safety of any person to a greater degree than the impairment, if any, of the safety of any person that would necessarily result from the proper use of the pesticide; or

(f) renders or is likely to render directly or indirectly any property or plant or animal life unfit for use by humans to a degree greater than the unfitness, if any, that would necessarily result from the proper use of the pesticide. R.S.O. 1990, c. P.11, s. 4.

Licences relating to exterminations

Prohibition as to exterminations

5. (1) No person shall engage in, perform or offer to perform an extermination except under and in accordance with a licence of a prescribed class and except by the use of a pesticide of a class and under the conditions for use prescribed for that class of licence or unless exempt under the regulations.

Licence required to operate extermination business

(2) No person shall operate an extermination business except under and in accordance with a licence of a prescribed class or unless exempt under the regulations.

Idem, assistant structural exterminator

(3) No person shall serve for a period of more than six months as an assistant to the holder of a licence to perform structural exterminations unless the person is licensed as an assistant exterminator or is exempt under the regulations.

Notice as to assistants to land exterminators or water exterminators

(4) No person shall serve for a period of more than seven days as an assistant to the holder of a licence to perform land exterminations or water exterminations unless the holder of the licence to perform the exterminations notifies the Director in writing or the person is exempt under the regulations. R.S.O. 1990, c. P.11, s. 5.

Licence to sell, offer to sell or transfer

6. Unless exempt by the regulations, no person shall sell, offer to sell or transfer any pesticide unless the pesticide is classified in accordance with the regulations and except under and in accordance with a licence that shall be for such class and in respect of each premises on, in or from which the pesticide is or will be sold, offered for sale or transferred. R.S.O. 1990, c. P.11, s. 6; 1997, c. 37, s. 5 (1).

Where permit required

7. (1) No person shall perform a land extermination or a structural extermination,

(a) by means of a pesticide;

(b) by means of a pesticide of a class; or

(c) under the conditions of use,

prescribed for the purpose of this section unless the person is the holder of a permit for the land extermination or the structural extermination issued by the Director or is exempt under the regulations.

Idem

(2) No person shall perform a water extermination unless the person is the holder of a permit issued by the Director for the water extermination or is exempt under the regulations. R.S.O. 1990, c. P.11, s. 7.

Prohibitions – pesticides used for cosmetic purposes
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. 2008, c. 11, s. 2.

Excepted uses

(2) Subject to the regulations, subsection (1) does not apply to the following uses of a 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, if any prescribed conditions have been met. 2008, c. 11, s. 2.

Requirements related to excepted uses

(3) A person who, pursuant to subsection (2), uses or causes or permits the use of a pesticide prescribed for the purpose of subsection (1) shall comply with such requirements as may be prescribed. 2009, c. 33, Sched. 15, s. 9 (1).

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. 2008, c. 11, s. 2.

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. 2008, c. 11, s. 2.

Act of officer, etc., of corporation

8. For the purposes of this Act and the regulations, an act or thing done or omitted to be done by an officer, official, employee or agent of a corporation in the course of his or her employment or in the exercise of his or her powers or the performance of his or her duties shall be deemed to be also an act or thing done or omitted to be done by the corporation. R.S.O. 1990, c. P.11, s. 8.

Liability insurance

9. An operator shall insure against liability or furnish a bond as provided for by the regulations. R.S.O. 1990, c. P.11, s. 9.

Advisory Committee

10. (1) The Committee known as the Pesticides Advisory Committee established under The Pesticides Act, being chapter 346 of the Revised Statutes of Ontario, 1970, and consisting of not fewer than ten members appointed by the Lieutenant Governor in Council one of whom may be designated by the Lieutenant Governor in Council as chair and for whom the Lieutenant Governor in Council may appoint a person who is not a member as secretary, is continued under the name Pesticides Advisory Committee in English and Comité consultatif sur les pesticides in French.

Quorum

(2) Six members of the Committee constitute a quorum.

Functions

(3) The Committee shall,

(a) review annually the content and operation of this Act and the regulations and recommend changes or amendments therein to the Minister,
(b) inquire into and consider any matter the Committee considers advisable concerning pesticides and the control of pests, and any matter concerning pesticides and the control of pests referred to it by the Minister, and report thereon to the Minister;

(c) review publications of the Government of Ontario respecting pesticides and the control of pests, and report thereon to the Minister; and

(d) perform such other functions as the regulations prescribe. R.S.O. 1990, c. P.11, s. 10.

Licences and permits: issue, renewal and revocation

11. (1) Subject to subsection (2), the Director shall issue or renew a licence under section 5 or 6, and subject to subsection (3), the Director shall issue a permit under section 7 to any person who applies for the licence or permit, as the case may be, in accordance with the regulations and who meets the requirements of this Act and the regulations for the particular class of licence or for the permit applied for and who pays the fee prescribed for the licence or permit.

Revocation and refusal of licence

(2) Subject to section 13, the Director may refuse to issue or renew a licence or may suspend or revoke a licence where, in the opinion of the Director,

(a) the applicant or licensee is in contravention of this Act or the regulations;

(b) the licensee is in breach of any term or condition of the licence;

(c) the applicant or licensee or, where the applicant or licensee is a corporation, its officers or directors, is or are not competent to carry on the activity that would be or is authorized by the licence;

(d) the past conduct of the applicant or licensee or, where the applicant or licensee is a corporation, of any of its officers or directors, affords reasonable grounds for belief that the activity that would be or is authorized by the licence will not be carried on with honesty and integrity;

(e) the applicant or licensee does not possess or will not have available all premises, facilities and equipment necessary to carry on the activity authorized by the licence in accordance with this Act, the regulations and the licence;

(f) the applicant or licensee is not in a position to observe or carry out the provisions of this Act, the regulations and the licence;

(g) the licensee has been grossly negligent in carrying on the activity that is authorized by the licence; or

(h) the licensee has fraudulently misrepresented their services in performing an extermination or in carrying on an extermination business.

Revocation and refusal of permit

(3) The Director may refuse to issue or may cancel a permit, may impose terms and conditions in issuing or after issuing a permit and may alter the terms and conditions of a permit that has been issued where the Director is of the opinion, upon reasonable and probable grounds, that,

(a) the applicant or permittee is not competent to perform the extermination for which the permit is required;

(b) the applicant or permittee does not possess or will not have available all facilities and equipment necessary to perform the extermination in accordance with this Act, the regulations and the permit;

(c) there is or is likely to be danger to the health or safety of any person;

(d) there is or is likely to be harm or material discomfort to any person;

(e) there is or is likely to be impairment of the quality of the environment for any use that is being or is likely to be made of it;

(f) there is or is likely to be injury or damage to any property or to plant or animal life;

(g) any property or plant or animal life is or is likely to be rendered directly or indirectly unfit for use by humans;
(h) a different method of control or extermination will or will likely be substantially as effective as the proposed extermination for which a permit is required under section 7 and will or will likely cause less impairment of the environment, if any, for any use that is being or is likely to be made of it or less harm to or adverse effect, if any, on any plant or animal life, humans or property; or

(i) the use of the pesticide will not be or will not likely be effective or necessary to carry out the extermination. R.S.O. 1990, c. P.11, s. 11.

**Term of licence**


**Review, refusal to issue licences, etc.**

13. (1) Where the Director proposes,

(a) to refuse to issue or renew a licence;

(b) to suspend or revoke a licence; or

(c) to make, amend or vary a control order,

he or she shall serve notice of the proposal, together with written reasons therefor, on the applicant, licensee or person to whom the Director intends to direct the control order. R.S.O. 1990, c. P.11, s. 13 (1).

**Notice**

(2) A notice under subsection (1) shall state that the applicant, licensee or person to whom the Director intends to direct the control order is entitled to a hearing by the Tribunal if they mail or deliver to the Director and the Tribunal, within fifteen days after the notice under subsection (1) is served on them, notice in writing requiring a hearing. R.S.O. 1990, c. P.11, s. 13 (2); 2000, c. 26, Sched. F, s. 14 (4).

**Powers of Director where no hearing**

(3) Where an applicant, licensee or person to whom the Director intends to direct the control order does not require a hearing by the Tribunal in accordance with subsection (2), the Director may carry out the proposal stated in the notice under subsection (1). R.S.O. 1990, c. P.11, s. 13 (3); 2000, c. 26, Sched. F, s. 14 (4).

**Powers of Tribunal where hearing**

(4) Where an applicant, licensee or person to whom the Director intends to direct the control order requires a hearing by the Tribunal in accordance with subsection (2), the Tribunal shall appoint a time and place for and hold the hearing and may by order direct the Director to carry out the proposal or refrain from carrying out the proposal and to take such action as the Tribunal considers the Director ought to take in accordance with this Act and the regulations, and for such purposes the Tribunal may substitute its opinion for that of the Director. R.S.O. 1990, c. P.11, s. 13 (4); 2000, c. 26, Sched. F, s. 14 (4).

**Extension of time for requiring hearing**

(5) The Tribunal may extend the time for the giving of notice requiring a hearing by an applicant, licensee or person to whom the Director intends to direct a control order referred to in subsection (1), either before or after the expiration of such time, where it is satisfied that there are reasonable grounds for applying for the extension and that there are apparent grounds for granting relief to the applicant, licensee or person to whom the Director intends to direct the control order referred to in subsection (1), and the Tribunal may give such directions as it considers proper consequent upon the extension. R.S.O. 1990, c. P.11, s. 13 (5); 2000, c. 26, Sched. F, s. 14 (4).

**Continuation of licence pending renewal**

(6) Where, within the time prescribed therefor or, if no time is prescribed, before expiry of a licence, the licensee has applied for a renewal of the licence and paid the prescribed fee, the licence shall be deemed to continue,

(a) until the renewal is granted; or

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(b) where the licensee is served with notice that the Director proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing by the Tribunal has expired and, where a hearing is required, until the Tribunal has made its decision.

Emergency notice

(7) Despite subsection (6), where the Director is of the opinion that an emergency exists by reason of,

(a) danger to the safety or health of any person;
(b) impairment or immediate risk of impairment of the environment for any use that is being or is likely to be made of it;
(c) injury or damage or immediate risk of injury or damage to property, or to plant or animal life;
(d) the rendering or immediate risk of rendering directly or indirectly of any property or plant or animal life unfit for use by humans; or
(e) a failure by a licensee to have in force insurance against liability or to furnish or have in force a bond as required by section 9,

the Director, by a notice to a licensee or to a person to whom the Director intends to direct a control order, together with written reasons therefor, may refuse to renew, suspend or revoke a licence or make, amend or vary a control order and, even if the licensee or person to whom the control order is directed requires a hearing by the Tribunal, the licence shall not be deemed to continue or the suspension, revocation or the making, amendment or variation of the control order is effective upon the service of the notice, as the case requires.
R.S.O. 1990, c. P.11, s. 13 (7); 2000, c. 26, Sched. F, s. 14 (4).

Where permit cancelled or terms or conditions imposed or altered

(8) Where the Director refuses to issue or cancels a permit or imposes or alters a term or condition in a permit that has been issued, the Director shall forthwith thereafter serve or cause to be served notice of his or her decision, upon the applicant or permittee, together with written reasons therefor. R.S.O. 1990, c. P.11, s. 13 (8).

Reconsideration

(9) Where the Director issues a permit subject to a term or condition, refuses to issue or cancels a permit or imposes or alters a term or condition in a permit that has been issued and the applicant or permittee makes submissions to the Director, the Director, within three days after receiving the submissions, shall reconsider and vary, rescind or confirm his or her decision and shall serve or cause to be served notice of such variance, rescission or confirmation upon the applicant or permittee together with written reasons therefor and where the Director varies or rescinds the decision, the Director shall take such action as may be necessary to make the variation or rescission effective. R.S.O. 1990, c. P.11, s. 13 (9).

Notice

(10) A permit issued by the Director subject to a term or condition and a notice under subsection (8) shall inform the applicant or permittee that they are entitled to make submissions to the Director, in person or by a person authorized under the Law Society Act to represent the applicant or permittee and by telephone or otherwise and that they are entitled to a hearing by the Tribunal if they mail or deliver to the Director and the Tribunal, within fifteen days after the notice under subsection (9) is served on them, notice in writing requiring a hearing and they may so make such submissions and so require such a hearing. R.S.O. 1990, c. P.11, s. 13 (10); 2000, c. 26, Sched. F, s. 14 (4); 2006, c. 21, Sched. C, s. 129 (1).

Effect of service of notice

(11) Despite the making of submissions by an applicant or a permittee under subsection (10), the issuance of a permit subject to a term or condition or the cancellation of a permit or the imposition or alteration of a term or condition in a permit that has been issued by the Director is effective upon the issuance of the permit or upon the service of the notice under subsection (8). R.S.O. 1990, c. P.11, s. 13 (11).

Application of subss. (4), (5)
(12) Subsections (4) and (5) apply with necessary modifications to a hearing by the Tribunal required under subsection (10). R.S.O. 1990, c. P.11, s. 13 (12); 2000, c. 26, Sched. F, s. 14 (4).

Hearings

14. (1) The Director, the applicant, licensee, permittee or person to whom the Director intends to direct a control order who has required a hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under section 13. R.S.O. 1990, c. P.11, s. 14 (1); 2000, c. 26, Sched. F, s. 14 (4).

Notice of hearing

(2) The Tribunal shall afford to the applicant, licensee, permittee or person to whom the Director intends to direct a control order a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the issue or retention of the licence or permit or to take such action as will preclude the necessity for making, amending or varying the control order. R.S.O. 1990, c. P.11, s. 14 (2); 1994, c. 27, s. 117; 2000, c. 26, Sched. F, s. 14 (4); 2001, c. 9, Sched. G, s. 7 (3).

Examination of documentary evidence

(3) An applicant, licensee, permittee or person to whom the Director intends to direct a control order who is a party to proceedings under section 13 shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing. R.S.O. 1990, c. P.11, s. 14 (3).

Members holding hearing not to have taken part in investigation, etc.

(4) Members of the Tribunal holding a hearing shall not have taken part before the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or party’s representative except upon notice to and opportunity for all parties to participate, but the Tribunal may seek legal advice from an adviser independent from the parties and in such case the nature of the advice shall be made known to the parties in order that they may make submissions as to the law. R.S.O. 1990, c. P.11, s. 14 (4); 2000, c. 26, Sched. F, s. 14 (4).

(5) Repealed: 1997, c. 37, s. 5 (2).

Findings of fact

(6) The findings of fact of the Tribunal following on a hearing shall be based exclusively on evidence admissible or matters that may be noticed under the Statutory Powers Procedure Act. 1998, c. 35, s. 78; 2000, c. 26, Sched. F, s. 14 (4).


Release of documentary evidence

(8) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to the person by the Tribunal within a reasonable time after the matter in issue has been finally determined. R.S.O. 1990, c. P.11, s. 14 (8); 2000, c. 26, Sched. F, s. 14 (4).

Appeals

15. (1) Any party to proceedings before the Tribunal may appeal from its decision or order on a question of law to the Divisional Court in accordance with the rules of court. R.S.O. 1990, c. P.11, s. 15 (1); 2000, c. 26, Sched. F, s. 14 (4).

(2) Repealed: 1997, c. 37, s. 5 (4).

Minister entitled to be heard

(3) The Minister is entitled to be heard by counsel or otherwise upon the argument of an appeal under subsection (1). R.S.O. 1990, c. P.11, s. 15 (3).
Appeal to Minister

(4) Any party to a hearing before the Tribunal, within thirty days after receipt of the decision of the Tribunal or within thirty days after final disposition of an appeal, if any, under subsection (1), may appeal in writing to the Minister on any matter other than a question of law and the Minister shall confirm, alter or revoke the decision of the Tribunal as to the matter in appeal as he or she considers in the public interest. R.S.O. 1990, c. P.11, s. 15 (4); 2000, c. 26, Sched. F, s. 14 (4).

Protection from personal liability

16. (1) No action or other proceeding for damages or otherwise shall be instituted against any of the following persons for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of such a duty or authority:

1. A member of the Committee.

2. An employee in the Ministry.


4. A public servant employed under Part III of the Public Service of Ontario Act, 2006 who is acting under the direction of a person described in paragraph 1, 2 or 3. 2006, c. 35, Sched. C, s. 109 (2); 2009, c. 33, Sched. 2, s. 58.

Exception

(1.1) Subsection (1) does not apply in the case of an application for judicial review or an action or proceeding that is specifically provided for with respect to a person described in subsection (1) in any Act or in a regulation made under this or any other Act. 2006, c. 35, Sched. C, s. 109 (2).

Crown not relieved of liability

(2) Subsection (1) does not, by reason of subsections 5 (2) and (4) of the Proceedings Against the Crown Act, relieve the Crown of liability in respect of a tort committed by an agent or servant of the Crown to which it would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection (1) had not been enacted. R.S.O. 1990, c. P.11, s. 16 (2).

Provincial officers

17. (1) The Minister may designate in writing one or more public servants employed under Part III of the Public Service of Ontario Act, 2006 who work in the Ministry or other persons as provincial officers for the purposes of this Act and the regulations. R.S.O. 1990, c. P.11, s. 17 (1); 2006, c. 35, Sched. C, s. 109 (3).

Provincial officers are peace officers

(2) A provincial officer is a peace officer for the purpose of enforcing this Act. 1998, c. 35, s. 79.

Investigation and prosecution

(3) A provincial officer may investigate offences under this Act and may prosecute any person whom the provincial officer reasonably believes is guilty of an offence under this Act. 1998, c. 35, s. 79.

Obstruction

(4) No person shall hinder or obstruct any provincial officer or any employee in or agent of the Ministry in the performance of his or her duties under this Act. 1998, c. 35, s. 79; 2006, c. 35, Sched. C, s. 109 (4).

False information
(5) No person shall orally, in writing or electronically, give or submit false or misleading information in any statement, document or data to any provincial officer, the Minister, the Ministry, any employee in or agent of the Ministry or any person involved in carrying out a program of the Ministry in respect of any matter related to this Act or the regulations. 1998, c. 35, s. 79; 2001, c. 9, Sched. G, s. 7 (4); 2006, c. 35, Sched. C, s. 109 (5).

Same

(6) No person shall include false or misleading information in any document or data required to be created, stored or submitted under this Act. 1998, c. 35, s. 79.

Refusal to furnish information

(7) No person shall refuse to furnish any provincial officer, the Minister, the Ministry or any employee in or agent of the Ministry with information required for the purposes of this Act and the regulations. 1998, c. 35, s. 79; 2006, c. 35, Sched. C, s. 109 (6).

Calling for assistance of member of police force

18. Whenever a provincial officer is required or empowered by this Act or the regulations to do or direct the doing of anything, such provincial officer may take such steps and employ such assistance as is necessary to accomplish what is required, and may, when obstructed in so doing, call for the assistance of any member of the Ontario Provincial Police Force or the police force in the area where the assistance is required and it is the duty of every member of a police force to render such assistance. R.S.O. 1990, c. P.11, s. 18.

Inspection by provincial officer

19. (1) For the administration of this Act or the regulations, a provincial officer may, without a warrant or court order, at any reasonable time and with any reasonable assistance, make inspections, including,

(a) entering any place in which the provincial officer reasonably believes a pesticide can be found;

(b) entering any place in or from which the provincial officer reasonably believes a pesticide is being, has been or may be discharged into the environment;

(c) entering any place that the provincial officer reasonably believes is likely to contain documents related to,

(i) an activity or undertaking that is, or is required to be, the subject of a permit, licence or order under this Act,

(ii) an activity or undertaking that is exempted by a regulation from any requirement to have a permit or licence under this Act and that is regulated by the provisions of the regulation, or

(iii) the discharge of a pesticide into the environment; and

(d) entering any place that the provincial officer reasonably believes,

(i) is, or is required to be, subject to or referred to in a permit, licence or order under this Act, or

(ii) is subject to or referred to in a regulation that provides for an exemption from any requirement to have a permit or licence under this Act, where the regulation includes provisions that regulate the place. 1998, c. 35, s. 80; 2009, c. 19, s. 71 (2).

Same

(2) During an inspection under subsection (1), the provincial officer may,

(a) make necessary excavations;

(b) require that any thing be operated, used or set in motion under conditions specified by the provincial officer;

(c) take samples for analysis;

(d) conduct tests or take measurements;

(e) examine, record or copy any document or data, in any form, by any method;

(f) record the condition of a place or the natural environment by means of photograph, video recording or other visual recording;
(g) require the production of any document or data, in any form, required to be kept under this Act and of any other document or data, in any form, related to the purposes of the inspection;

(h) remove from a place documents or data, in any form, produced under clause (g) for the purpose of making copies; and

(i) make reasonable inquiries of any person, orally or in writing. 1998, c. 35, s. 80.

**Limitation re records**

(3) A record made under clause (2) (f) must be made in a manner that does not intercept any private communication and that accords with reasonable expectations of privacy. 1998, c. 35, s. 80.

**Limitation re removal of documents, data**

(4) A provincial officer shall not remove documents or data under clause (2) (h) without giving a receipt for them and shall promptly return the documents or data to the person who produced them. 1998, c. 35, s. 80.

**Power to exclude persons**

(5) A provincial officer who exercises the power set out in clause (2) (l) may exclude from the questioning any person except counsel for the individual being questioned. 1998, c. 35, s. 80; 2009, c. 33, Sched. 15, s. 9 (2).

**Inspection of vehicles and vessels**

19.1 (1) In this section,

“vehicle” includes a trailer or other equipment attached to the vehicle. 1998, c. 35, s. 80.

**Requirement to stop**

(2) For the administration of this Act or the regulations, a provincial officer may signal a vehicle or vessel to stop. 1998, c. 35, s. 80.

**Same**

(3) On the provincial officer’s signal to stop, the operator of the vehicle or vessel shall immediately come to a safe stop. 1998, c. 35, s. 80.

**Same**

(4) For the purposes of this section, a signal to stop includes,

(a) intermittent flashes of red light, in the case of a vehicle;

(b) intermittent flashes of blue light, in the case of a vessel; and

(c) a hand signal to stop by a provincial officer who is readily identifiable as a provincial officer. 1998, c. 35, s. 80.

**Sign to report**

(5) Where a clearly marked sign is posted indicating that a class of vehicles or vessels should report to a certain place in the vicinity of the sign, the operator of a vehicle or vessel that passes the sign and that falls within the class of vehicles or vessels indicated shall report forthwith to the place the sign directs. 1998, c. 35, s. 80.

**Same**

(6) Where the operator of a vehicle or vessel stops under subsection (3) or reports under subsection (5), the provincial officer may make any reasonable inquiries of the operator and the operator shall produce for inspection any documents related to the operation or ownership of the vehicle or vessel, including licenses, permits and any documents that are required to be kept by the law of any jurisdiction in relation to the carriage of any cargo or container. 1998, c. 35, s. 80.
Inspection powers

(7) Based on questioning or examination of documents conducted under subsection (6), the provincial officer may, without warrant or court order, inspect any means of containment that the provincial officer reasonably believes is being used for the handling or transportation of a pesticide. 1998, c. 35, s. 80; 2009, c. 19, s. 71 (3).

Same

(8) As part of an inspection under subsection (7), the provincial officer may open or require the operator to open any cargo hold, container or other means of containment. 1998, c. 35, s. 80.

Same

(9) During an inspection conducted under subsection (6) or (7), the provincial officer may exercise such powers under subsection 19 (2) as are reasonably required for the administration of this Act or the regulations. 1998, c. 35, s. 80.

Same

(10) Subsections 19 (3), (4) and (5) apply to the exercise of a power under subsection (9). 1998, c. 35, s. 80.

Power to administer other Acts

19.2 A provincial officer who exercises any power set out in section 19, 19.1, 22, 23 or 23.1 may, if the provincial officer is designated as such under the Environmental Protection Act, the Nutrient Management Act, 2002, the Ontario Water Resources Act, the Safe Drinking Water Act, 2002 or the Toxics Reduction Act, 2009, as the case may be, do anything authorized by,

(a) section 156, 156.1, 160, 161 or 161.1 of the Environmental Protection Act;

(b) section 13, 14 or 23 of the Nutrient Management Act, 2002;

(c) section 15, 15.1, 19, 20 or 20.1 of the Ontario Water Resources Act;

(d) section 81, 82, 91, 92 or 93 of the Safe Drinking Water Act, 2002; or

(e) section 15, 20 or 21 of the Toxics Reduction Act, 2009. 2009, c. 19, s. 71 (4).

Note: On the day the Statutes of Ontario, 2009, chapter 19, section 65 comes into force, clause (e) is amended by striking out “section 15, 20 or 21” at the beginning and substituting “section 15, 15.1, 20, 20.1 or 21”. See: 2009, c. 19, ss. 71 (5), 73 (2).

Entry to dwellings

19.3 A person shall not exercise a power conferred by this Act to enter a room actually used as a dwelling without the consent of the occupier except under the authority of an order under section 20. 1998, c. 35, s. 80.

Identification

19.4 On request, a provincial officer who exercises a power under this Act shall identify himself or herself as a provincial officer either by the production of a copy of his or her designation or in some other manner and shall explain the purpose of the exercise of the power. 1998, c. 35, s. 81.

Entry, etc., may be prohibited

19.5 (1) A provincial officer may by order prohibit entry into all or part of any land or place or prohibit the use of, interference with, disruption of, or destruction of any thing in any of the following circumstances:

1. During an inspection under section 19, section 19.1 or 20.

2. During a search under section 23.

3. During the time required for the provincial officer to obtain an order under section 20 of this Act or a warrant under section 158 of the Provincial Offences Act.
4. During a search carried out under a warrant issued under section 158 of the Provincial Offences Act.

Requirements for order

(2) An order under subsection (1) shall not be issued unless the provincial officer reasonably believes that,

(a) in the case of an order prohibiting entry, there is on the land or in the place a thing that will afford evidence of an offence under this Act;

(b) in the case of an order prohibiting the use of, interference with, disruption of, or destruction of a thing, the thing will afford evidence of an offence under this Act; or

(c) in the case of an order prohibiting entry or an order prohibiting the use of, interference with, disruption of, or destruction of a thing, there is a discharge or a likelihood of discharge of a pesticide or a substance or thing containing a pesticide into the environment, out of the normal course of events, from the land, place or thing, that has resulted or is likely to result in an effect referred to in any of clauses 29 (a) to (f).

Notice of order

(3) The provincial officer shall give notice of the order in the manner that he or she considers appropriate in the circumstances.

Contents of notice

(4) Notice of the order shall include an explanation of the rights provided by subsections (6) and (7).

Order not effective where no notice

(5) An order under subsection (1) is not effective in any court proceeding against a person where the person satisfies the court that the person neither knew nor should have known of the order.

Request for rescission

(6) A person aggrieved by the order may make an oral or written request to the Director to rescind it and may make oral or written submissions to the Director in support of the request.

Powers of Director

(7) The Director shall give prompt consideration to any request or submissions made under subsection (6) and may rescind the order.

Same

(8) For the purposes of subsection (7), the Director may substitute his or her own opinion for that of the provincial officer.

Same

(9) A Director who rescinds an order under subsection (7) shall give such directions to a provincial officer as the Director considers appropriate to bring the rescission to the attention of persons affected.

No stay

(10) A request for rescission of an order under subsection (1) does not stay the order, unless the Director orders otherwise in writing.

Duration of order

(11) An order under subsection (1) shall,

(a) subject to clause (b), be effective for the shorter of the length of time necessary to complete the inspection or search referred to in that subsection or a period not exceeding two days excluding holidays; or
Order of justice: prohibiting entry, or use, etc., of things

19.6 (1) Where a justice is satisfied, on evidence under oath by a provincial officer, that there is reasonable ground for believing that it is appropriate for the administration of this Act or the regulations or necessary to protect human health or safety or to protect property, the justice may issue an order prohibiting entry into all or part of any land or place or prohibiting the use of, interference with, disruption of, or destruction of any thing. 1998, c. 35, s. 81.

Same

(2) The prohibition under the justice's order shall, subject to subsection (3), be for such period of time as is set out in the order. 1998, c. 35, s. 81.

Expiry

(3) Unless renewed, an order under this section expires on the earlier of the day specified for the purpose in the order or the day that is 30 days after the date on which the order is made. 1998, c. 35, s. 81; 2009, c. 33, Sched. 15, s. 9 (3).

Renewal

(4) An order under this section may be renewed for any reason set out in subsection (1), before or after expiry, for one or more periods each of which is not more than 30 days. 1998, c. 35, s. 81.

Notice of application

(5) An initial order under subsection (1) may be issued on application without notice. 1998, c. 35, s. 81.

Same

(6) A renewal order under subsection (4) may be issued on application made with such notice, if any, as is specified for the purpose under subsection (7). 1998, c. 35, s. 81.

Same

(7) In an order under subsection (1) or (4), a justice may specify notice requirements that must be met by a person applying for a renewal of the order or for a further renewal of the order, as the case may be. 1998, c. 35, s. 81.

Notice of order

(8) A provincial officer may give notice of an order under subsection (1) or (4) in the manner that he or she considers appropriate in the circumstances. 1998, c. 35, s. 81.

Order not effective where no notice

(9) An order under subsection (1) or (4) is not effective in any court proceeding against a person where the person satisfies the court that the person neither knew nor should have known of the order. 1998, c. 35, s. 81.

Securing of place

19.7 Where an order under section 19.5 or 19.6 is in effect, a provincial officer may take measures to secure the land, place or thing to which the order relates by means of locks, gates, fences, security guards or such other means as the provincial officer deems necessary to prevent entry into the land or place or to prevent the use of, interference with, disruption of, or destruction of the thing. 1998, c. 35, s. 81.
Order of justice: authorizing inspection

20. (1) A justice may issue an order authorizing a provincial officer to do anything set out in subsection 19 (1) or (2) or section 19.1 if the justice is satisfied, on evidence under oath by a provincial officer, that there is reasonable ground to believe that it is appropriate for the administration of this Act or the regulations for the provincial officer to do anything set out in subsection 19 (1) or (2) or section 19.1 and that the provincial officer may not be able to effectively carry out his or her duties without an order under this section because,

(a) no occupier is present to grant access to a place that is locked or otherwise inaccessible;
(b) a person has prevented the provincial officer from doing anything set out in subsection 19 (1) or (2) or section 19.1;
(c) there is reasonable ground to believe that a person may prevent a provincial officer from doing anything set out in subsection 19 (1) or (2) or section 19.1;
(d) it is impractical, because of the remoteness of the place to be inspected or because of any other reason, for the provincial officer to obtain an order under this section without delay if access is denied; or
(e) there is reasonable ground to believe that an attempt by the provincial officer to do anything set out in subsection 19 (1) or (2) or section 19.1 without the order,
   (i) might not achieve its purpose, or
   (ii) might endanger human health or safety, property or the natural environment. 1998, c. 35, s. 82.

Same

(2) Subsections 19 (3), (4) and (5) apply to an inspection under an order under this section. 1998, c. 35, s. 82.

Expiry

(3) Unless renewed, an order under this section expires on the earlier of the day specified for the purpose in the order and the day that is 30 days after the date on which the order is made. 1998, c. 35, s. 82; 2009, c. 33, Sched. 15, s. 9 (4).

Renewal

(4) An order under this section may be renewed in the circumstances in which an order may be made under subsection (1), before or after expiry, for one or more periods each of which is not more than 30 days. 1998, c. 35, s. 82.

When to be executed

(5) An order under this section shall be carried out between 6 a.m. and 9 p.m., unless the order otherwise authorizes. 1998, c. 35, s. 82.

Application without notice

(6) An order under this section may be issued or renewed on application without notice. 1998, c. 35, s. 82.

Samples and copies

21. A provincial officer may detain samples or copies obtained under section 19, 19.1 or 20 for any period and for any of the purposes of this Act and the regulations. 1998, c. 35, s. 83.

Seizure during inspection

22. During an inspection under section 19, 19.1 or 20, a provincial officer may, without a warrant or court order, seize any thing that is produced to the provincial officer or that is in plain view, if,

(a) the provincial officer reasonably believes that the thing will afford evidence of an offence under this Act;
(b) the provincial officer reasonably believes that the thing was used or is being used in connection with the commission of an offence under this Act and that the seizure is necessary to prevent the continuation or repetition of the offence; or
(c) the thing is discharging or is likely to discharge a pesticide, or a substance or thing containing a pesticide, into the environment out of the normal course of events and impairment of the environment has resulted or is likely to result. 1998, c. 35, s. 83.

Searches relating to offences
23. (1) In this section,
"offence" means an offence under section 4, 6, 7 or 7.1. R.S.O. 1990, c. P.11, s. 23 (1); 2008, c. 11, s. 3.

Search by provincial officer re actual pollution
(2) A provincial officer may, without a search warrant, search any place other than a room actually used as a dwelling if the provincial officer has reasonable ground to believe,
(a) that an offence has been committed;
(b) that there is in such place any thing that will afford evidence as to the commission of the offence; and
(c) that there are exigent circumstances that make it impractical to obtain a search warrant. R.S.O. 1990, c. P.11, s. 23 (2).

Seizure during search
(3) During a search under subsection (2), a provincial officer, without warrant or court order, may seize any thing if,
(a) the provincial officer reasonably believes that the thing will afford evidence of an offence; or
(b) the provincial officer reasonably believes that the thing was used or is being used in connection with the commission of an offence and that the seizure is necessary to prevent the continuation or repetition of the offence. 1998, c. 35, s. 84.
(4) Repealed: 1998, c. 35, s. 84.

Detention or removal
23.1 (1) A provincial officer who seizes any thing under section 22 or 23 may remove the thing or may detain it in the place where it is seized.

Receipt
(2) Where possible, the provincial officer shall inform the person from whom a thing is seized under section 22 or 23 as to the reason for the seizure and shall give the person a receipt for the thing seized. 1998, c. 35, s. 85.

Report to justice re: seizure
24. (1) A provincial officer who seizes any thing during an inspection or search under section 22 or 23 shall bring the thing seized before a justice or, if that is not reasonably possible, shall report the seizure to a justice. 1998, c. 35, s. 86.

Seizure
(2) Sections 159 and 160 of the Provincial Offences Act apply with necessary modifications in respect of a thing seized by a provincial officer during an inspection or search under section 22 or 23. R.S.O. 1990, c. P.11, s. 24 (2).

Disposition of certain things
24.1 (1) Where the Director believes that, given the nature of a thing seized under section 22 or 23, the thing may pose a risk to human health or safety or to property, the Director may direct the person having custody of the thing, to dispose of the thing in a manner satisfactory to the Director.

Disposition of seized perishables
(2) Where the person having custody of any thing seized under section 22 or 23 believes that the thing will rot, spoil or otherwise perish, the person may dispose of the thing.
Non-application of provision

(3) Section 24 does not apply to a thing disposed of in accordance with this section.

Forfeiture

(4) A thing disposed of in accordance with this section is forfeited to the Crown. 1998, c. 35, s. 87.

Notice of disposal

24.2 (1) Where a thing has been disposed of in accordance with section 24.1, the Director shall ensure that a provincial officer gives written notice of the seizure and disposal, within 15 days of the disposal,

(a) to every person whom the provincial officer knows or has reason to believe is an owner of the thing seized; and

(b) to every person who has a security interest in the thing that is perfected by registration under the Personal Property Security Act against the name of any person whom the provincial officer knows or has reason to believe is the owner. 1998, c. 35, s. 87.

Contents of notice

(2) Notice under subsection (1) shall include,

(a) a description of the thing seized sufficient to enable it to be identified;

(b) the location at which the thing was seized;

(c) the date of the seizure and disposal;

(d) the name and telephone number of the provincial officer who seized the thing or of his or her delegate;

(e) a statement of the reason for the seizure and disposal;

(f) a reference to the statutory provision authorizing the seizure and disposal; and

(g) a reference to the statutory provision permitting the person to apply to the Superior Court of Justice for relief against the forfeiture. 1998, c. 35, s. 87; 2001, c. 9, Sched. G, s. 7 (17).

Forfeiture may be ordered

24.3 (1) On the application of the Director, the Superior Court of Justice may order that a thing seized under section 22 or 23 or under a warrant issued under the Provincial Offences Act in connection with the commission or suspected commission of an offence under this Act be forfeited to the Crown. 1998, c. 35, s. 87; 2001, c. 9, Sched. G, s. 7 (17).

Where no order to be made

(2) No order shall be made under subsection (1) unless the court is satisfied that,

(a) the seizure was lawful; and

(b) no later than seven days before the hearing of the application, written notice has been provided by a provincial officer,

(i) to every person whom the provincial officer knows or has reason to believe is an owner of the thing seized,

(ii) to every person who has a security interest in the thing that is perfected by registration under the Personal Property Security Act against the name of any person whom the provincial officer knows or has reason to believe is the owner,

(iii) where the thing seized is a vehicle, to every person who has a security interest in the vehicle that is perfected by registration under the Personal Property Security Act against the vehicle identification number of the vehicle, and

(iv) where the thing seized is a vehicle and the vehicle is registered under the Highway Traffic Act, to the registered owner. 1998, c. 35, s. 87.

Contents of notice

(3) Notice under subsection (2) shall include,
(a) a description of the thing seized sufficient to enable it to be identified;
(b) the location at which the thing was seized;
(c) the date of the seizure;
(d) the name and telephone number of the provincial officer who seized the thing or of his or her delegate;
(e) a statement of the reason for the seizure;
(f) a reference to the statutory provision authorizing the seizure;
(g) a statement that an order for forfeiture of the thing is being sought under this section; and
(h) a statement that the person to whom the notice is provided may make submissions to the Superior Court of Justice with respect to the issuance of an order under this section. 1998, c. 35, s. 87; 2001, c. 9, Sched. G, s. 7 (17).

Disposition of things forfeited

(4) A thing forfeited under this section may be disposed of as the Director directs. 1998, c. 35, s. 87.

Relief against forfeiture

(5) A person who had an interest in a thing forfeited under section 24.1 or this section may apply to the Superior Court of Justice for relief against the forfeiture and the court may make an order providing for any relief that it considers appropriate, including, but not limited to, one or more of the following orders:

1. An order directing that the thing or any part of the thing be returned to the applicant.
2. An order directing that any interest in the thing be vested in the applicant.
3. An order directing that an amount be paid by the Crown to the applicant by way of compensation for the forfeiture. 1998, c. 35, s. 87; 2001, c. 9, Sched. G, s. 7 (17).

When relief not to be ordered

(6) The court shall not make an order for relief under subsection (5) in respect of a thing forfeited where the person applying for the relief,

(a) has been served with a notice under section 41.1 requiring the person to pay an administrative penalty in connection with a matter that was associated with the seizure of the thing, unless the requirement to pay the administrative penalty is rescinded under section 41.1; or
(b) has been charged with an offence that was associated with the seizure of the thing, unless the charge has been withdrawn or dismissed. 1998, c. 35, s. 87.

Use of force

25. (1) A provincial officer may use such force as is reasonably necessary,

(a) to carry out an order issued under this Act, other than an order issued by a provincial officer;
(b) to execute a warrant issued under the Provincial Offences Act; or
(c) to prevent the destruction of any thing that the provincial officer reasonably believes may afford evidence of an offence under this Act. R.S.O. 1990, c. P.11, s. 25; 1998, c. 35, s. 88 (1, 2).

Same

(2) For the purposes of clause (1) (a), an order issued by the Director that confirms or amends an order issued by a provincial officer is not an order issued by a provincial officer. 1998, c. 35, s. 88 (3).

Order for use of monitoring device, etc.
25.1 (1) In this section, “device” means a substance or tracking device that, when placed or installed in or on any place, land or thing, may be used to help ascertain, by electronic or other means, the origin, identity or location of anything.

Order may be issued

(2) On application without notice, a justice may issue an order in writing authorizing a provincial officer, subject to this section, to use any device, investigative technique or procedure or to do any thing described in the order if the justice is satisfied by evidence under oath that there are reasonable grounds to believe that an offence against this Act has been or will be committed and that information concerning the offence will be obtained through the use of the device, technique or procedure or the doing of the thing.

Limitation

(3) An order under this section shall not authorize the interception of any private communication.

Same

(4) No device, technique or procedure shall be used to intercept any private communication under an order issued under this section.

Terms and conditions of order

(5) An order issued under this section shall contain such terms and conditions as the justice considers advisable in the circumstances.

Activities under order

(6) An order issued under this section may authorize a provincial officer,

(a) to place, install, maintain or remove a device in or on any land, place or thing; and

(b) to monitor, or to have monitored, a device or information from a device placed or installed in or on any land, place or thing.

Duration of order

(7) An order issued under this section is valid for a period of 60 days or for such shorter period as may be specified in the order.

Further orders

(8) A justice may issue further orders under subsection (2). 1998, c. 35, s. 89.

Permit or licence condition, permission to inspect

26, It is a condition of every permit or licence under this Act that the holder must forthwith on request permit provincial officers to carry out inspections authorized by the following provisions of any place, other than any room actually used as a dwelling, to which the permit or licence relates:

1. Section 19, 19.1 or 20 of this Act.
2. Section 156, 156.1 or 158 of the Environmental Protection Act.
3. Section 13, 14 or 16 of the Nutrient Management Act, 2002.
4. Section 15, 15.1 or 17 of the Ontario Water Resources Act.
5. Section 81, 82 or 89 of the Safe Drinking Water Act, 2002.
6. Section 15 or 18 of the Toxics Reduction Act, 2009, 2009, c. 19, s. 71 (6).

Note: On the day the Statutes of Ontario, 2009, chapter 19, section 65 comes into force, paragraph 6 is amended by striking out “Section 15 or 18” at the beginning and substituting “Section 15, 15.1 or 18”. See: 2009, c. 19, ss. 71 (7), 73 (2).

Order by provincial officer: contraventions

http://www.ontario.ca/laws/statute90p11
26.1 (1) A provincial officer may issue an order to any person that the provincial officer reasonably believes is contravening or has contravened,

(a) a provision of this Act or the regulations;
(b) a provision of an order under this Act; or
(c) a term or condition of a licence or permit issued under this Act.

Information to be included in order

(2) The order shall,

(a) specify the provision, term or condition that the provincial officer believes is being or has been contravened;
(b) briefly describe the nature and, where applicable, the location of the contravention; and
(c) state that a review of the order may be requested in accordance with section 26.3.

What order may require

(3) The order may require the person to whom it is directed to comply with any directions set out in the order within the time specified relating to,

(a) achieving compliance with the provision, term or condition;
(b) preventing the continuation or repetition of the contravention;
(c) the securing, whether through locks, gates, fences, security guards or other means, of any land, place or thing;
(d) where the contravention has any of the effects mentioned in subsection 28 (1), doing all or any of the things specified in subsection 28 (2);
(e) the removal of a pesticide or a substance or thing contaminated by or containing a pesticide;
(f) where the contravention has caused damage to or endangered or is likely to cause damage to or endanger existing water supplies, providing alternate water supplies;
(g) submitting a plan for achieving compliance with the provision, term or condition, including the engagement of contractors or consultants satisfactory to a provincial officer;
(h) submitting an application for a licence or permit;
(i) monitoring and recording in relation to the environment and reporting on the monitoring and recording; and
(j) posting notice of the order. 1998, c. 35, s. 91.

Amendment or revocation of order under s. 26.1

26.2 (1) An order issued under section 26.1 may, by order, be amended or revoked by the provincial officer who issued it or by the Director.

Same

(2) A provincial officer or Director who amends or revokes an order shall give written notice of the amendment or revocation to the person to whom the order is directed. 1998, c. 35, s. 91.

Review, order under ss. 26.1 or 26.2

26.3 (1) A person to whom an order under section 26.1 or 26.2 is directed may, within seven days after being served with a copy of the order, request that the Director review the order. 1998, c. 35, s. 91.

Manner of making request

Contents of request for review

(3) A written request for review under subsection (1) or a written confirmation of an oral request under subsection (2) shall include,

(a) the portions of the order in respect of which the review is requested;

(b) any submissions that the applicant for the review wishes the Director to consider; and

(c) for the purpose of subsection (7), an address for service by mail or by facsimile transmission or by such other means of service as the regulations may prescribe. 1998, c. 35, s. 91.

No automatic stay

(4) The request for review does not stay the order, unless the Director orders otherwise in writing. 1998, c. 35, s. 91.

Decision of Director

(5) A Director who receives a request for review may,

(a) revoke the order of the provincial officer; or

(b) by order directed to the person requesting the review, confirm or amend the order of the provincial officer. 1998, c. 35, s. 91.

Same

(6) For the purposes of subsection (5), the Director may substitute his or her own opinion for that of the provincial officer. 1998, c. 35, s. 91.

Notice of decision

(7) The Director shall serve the person requesting the review with a copy of,

(a) a decision to revoke the order of the provincial officer; or

(b) an order to confirm or amend the order of the provincial officer, together with reasons. 1998, c. 35, s. 91.

Automatic confirmation of order

(8) If, within seven days of receiving a written request for review or a written confirmation of an oral request for review, the Director does not make a decision under subsection (5) and give oral or written notice of the decision to the person requesting the review, the order in respect of which the review is sought shall be deemed to have been confirmed by order of the Director. 1998, c. 35, s. 91.

Same

(9) For the purpose of an appeal to the Tribunal, a confirming order deemed to have been made by the Director under subsection (8),

(a) shall be deemed to be directed to each person to whom the order of the provincial officer was directed; and

(b) shall be deemed to have been served, on each person to whom the order of the provincial officer was directed, at the expiry of the time period referred to in subsection (8). 1998, c. 35, s. 91; 2000, c. 26, Sched. F, s. 14 (4).

Non-application of notice requirement under s. 13

Section 13 does not apply to orders under sections 26.1, 26.2 and 26.3. 1998, c. 35, s. 91.

Appeal to Tribunal, order under s. 26.3
25. Where the Director has made an order under section 26.3, any person to whom the order is directed may, by written notice served on the Director and the Tribunal within 15 days after service on the person of a copy of the order require a hearing by the Tribunal.


Extension of time for requiring hearing

(2) The Tribunal may extend the time for giving notice under subsection (1) where it is satisfied that there are reasonable grounds for the extension and that there are apparent grounds for granting relief. 1998, c. 35, s. 91; 2000, c. 26, Sched. F, s. 14 (4).

Same

(3) The Tribunal may give such directions as it considers proper consequent on the extension. 1998, c. 35, s. 91; 2000, c. 26, Sched. F, s. 14 (4).

Effect of Director's order

(4) Section 143 of the Environmental Protection Act applies with necessary modifications to orders made under section 26.3 of this Act. 1998, c. 35, s. 91.

Examination of documentary evidence

(5) The person requiring the hearing by the Tribunal shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing. 1998, c. 35, s. 91; 2000, c. 26, Sched. F, s. 14 (4).

Rules governing Tribunal hearings

(6) Subsections 14 (4) to (8) apply to hearings under this section. 1998, c. 35, s. 91.

Parties

(7) The Director, the person requiring the hearing and any other person specified by the Tribunal are parties to the hearing. 1998, c. 35, s. 91; 2000, c. 26, Sched. F, s. 14 (4).

Powers of Tribunal

(8) The Tribunal may by order confirm, alter or revoke the order of the Director and for the purpose the Tribunal may substitute its own opinion for that of the Director. 1998, c. 35, s. 91; 2000, c. 26, Sched. F, s. 14 (4).

Appeals from Tribunal hearings

(9) Section 15 applies to decisions of the Tribunal under this section. 1998, c. 35, s. 91; 2000, c. 26, Sched. F, s. 14 (4).

Stop order

27. Where the Director or a provincial officer is of the opinion, upon reasonable and probable grounds, that an emergency exists by reason of,

(a) danger to the health or safety of any person;

(b) impairment or immediate risk of impairment of the quality of the environment for any use that is being or is likely to be made of it;

(c) injury or damage or immediate risk of injury or damage to any property or to any plant or animal life; or

(d) the rendering or the immediate risk of rendering directly or indirectly any property or plant or animal life unfit for use by humans,
consequent upon the handling, storage, use, disposal, transportation or display of a pesticide or a substance or thing containing a pesticide, the Director or provincial officer, as the case may be, may make an oral or written stop order directed to the person responsible for the pesticide or the substance or thing containing the pesticide ordering such person to stop immediately the handling, storage, use, disposal, transportation or display of the pesticide or the substance or thing containing the pesticide either permanently or for a specific period of time. R.S.O. 1990, c. P.11, s. 27 (1).

Immediate appeal

(2) A person who is affected by a stop order made by a provincial officer under subsection (1) may appeal therefrom in person or by a person authorized under the Law Society Act to represent the person affected and by telephone or otherwise to the Director and the Director, after receiving the submissions of the person and of the provincial officer, shall vary, rescind or confirm the stop order of the provincial officer. R.S.O. 1990, c. P.11, s. 27 (2); 2006, c. 21, Sched. C, s. 129 (2).

Written reasons for order

(3) Where the Director makes a stop order or varies or confirms a stop order under subsection (2), the Director shall forthwith thereafter serve or cause to be served a written copy of the stop order or a written copy of the stop order as varied or confirmed, as the case requires, together with written reasons therefor, upon the person to whom the stop order or the stop order as varied or confirmed is directed. R.S.O. 1990, c. P.11, s. 27 (3).

Public notice

(4) The Director shall give notice of the stop order or the varied or confirmed stop order, together with written reasons therefor, to the municipality in which the emergency exists and to the public in such manner as the Director considers appropriate. R.S.O. 1990, c. P.11, s. 27 (4).

Notice

(5) A stop order, or a stop order as varied or confirmed under subsection (3) shall state that the person to whom it is directed is entitled to a hearing by the Tribunal if the person mails or delivers to the Director and the Tribunal, within fifteen days after a copy of the stop order, or the stop order as varied or confirmed, under subsection (3), is served on the person, notice in writing requiring a hearing. R.S.O. 1990, c. P.11, s. 27 (5); 2000, c. 26, Sched. F, s. 14 (4).

Effect of stop order

(6) Even if an appeal is taken against a stop order, the stop order is effective at and from the time it is communicated to the person to whom it is directed until confirmed, varied or rescinded on appeal and such person shall comply with the stop order immediately. R.S.O. 1990, c. P.11, s. 27 (6).

Appeal to Tribunal

(7) Where the Director has made a stop order or has varied or confirmed upon appeal to the Director a stop order made by a provincial officer, any person to whom the order is directed may, by written notice mailed to or served upon the Director and the Tribunal within fifteen days after service upon the person of a copy of the stop order or of the stop order as varied or confirmed, as the case requires, require a hearing by the Tribunal. R.S.O. 1990, c. P.11, s. 27 (7); 2000, c. 26, Sched. F, s. 14 (4).

Powers of Tribunal where hearing

(8) Where a person to whom a stop order is directed requires a hearing by the Tribunal in accordance with subsection (7), the Tribunal shall appoint a time and place for and hold the hearing and the Tribunal may by order confirm, alter or rescind the order of the Director and for such purposes the Tribunal may substitute its opinion for that of the Director. R.S.O. 1990, c. P.11, s. 27 (8); 2000, c. 26, Sched. F, s. 14 (4).

Parties

http://www.ontario.ca/laws/statute/90p11
The Director, the person who has required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section. R.S.O. 1990, c. P.11, s. 27 (9); 2000, c. 26, Sched. F, s. 14 (4).

Procedure

(10) Subsection 13 (5), subsections 14 (2), (3), (4), (6) and (8) and section 15 apply with necessary modifications to proceedings under this section. R.S.O. 1990, c. P.11, s. 27 (10); 2001, c. 9, Sched. G, s. 7 (5).

Revocation of stop order

(11) The Director, by an order, may rescind a stop order and in such case shall serve or cause to be served a copy of the rescinding order upon the person to whom the stop order was directed and shall give notice of the rescinding order to the municipality referred to in subsection (4) and to the public in such manner as the Director considers appropriate. R.S.O. 1990, c. P.11, s. 27 (11).

Control order

28. (1) Where the handling, storage, use, disposal, transportation or display of a pesticide or a substance or thing containing a pesticide,

(a) causes or is likely to cause impairment of the quality of the environment for any use that is being or is likely to be made of it;

(b) causes or is likely to cause injury or damage to property or to plant or animal life;

(c) causes or is likely to cause harm or material discomfort to any person;

(d) adversely affects or is likely to affect adversely the health of any person;

(e) impairs or is likely to impair the safety of any person;

(f) renders or is likely to render directly or indirectly any property or plant or animal life unfit for use by humans,

the Director, subject to section 13, may make a control order directed to the person responsible for the pesticide or the substance or thing containing the pesticide.

Content of control order

(2) The Director, in a control order, may order the person to whom the order is directed to,

(a) limit or control the rate of discharge of a pesticide or a substance or thing containing a pesticide into the environment in accordance with the directions set out in the order;

(b) stop the discharge of a pesticide or a substance or thing containing a pesticide into the environment,

(i) permanently,

(ii) for a specified period of time, or

(iii) in the circumstances set out in the order; and

(c) comply with any directions set out in the order relating to the manner in which a pesticide or a substance or thing containing a pesticide or the container of either of them may be handled, stored, used, disposed of, transported or displayed.

Amendment of control order

(3) The Director, under any of the circumstances set out in subsection (1) and in accordance with subsection (2), by a further order, may amend or vary a control order and sections 13, 14 and 15 apply with necessary modifications.

Revocation of control order

(4) The Director, by an order, may rescind a control order and in such case shall serve or cause to be served a copy of the rescinding order upon the person to whom the control order was directed. R.S.O. 1990, c. P.11, s. 28.
Discharge of pesticide, Director to be notified

29. Every person who discharges a pesticide or a substance or thing containing a pesticide in or into the environment out of the normal course of events that,

(a) causes or is likely to cause impairment of the quality of the environment for any use that can be made of it;
(b) causes or is likely to cause injury or damage to property or to plant or animal life;
(c) causes or is likely to cause harm or material discomfort to any person;
(d) adversely affects or is likely to adversely affect the health of any person;
(e) impairs or is likely to impair the safety of any person; or
(f) renders or is likely to render directly or indirectly any property or plant or animal life unfit for use by humans,

shall forthwith notify the Director. R.S.O. 1990, c. P.11, s. 29.

Damage repair, cleaning and decontamination

Minister may order repair of damage

30. (1) Where any person discharges or causes or permits the discharge of a pesticide or a substance or thing containing a pesticide that causes or is likely to cause injury or damage to or impairment of,

(a) the quality of the environment for any use that is being or is likely to be made of it;
(b) any property or water;
(c) plant or animal life; or
(d) a person,

the Minister, where he or she is of the opinion that it is in the public interest to do so, may order the person responsible for the pesticide or the substance or thing containing the pesticide to do all things and take all steps within such time or times as may be specified in the order for the purpose of preventing or repairing, as the case requires, such injury or damage or impairment or to restore such quality.

Cleaning and decontamination

(2) Every person responsible for a pesticide or a substance or thing containing a pesticide shall take such measures and do such things within such time or times with respect to the cleaning and decontamination of the environment, or any plant or animal life, substance or thing that has come into contact with a pesticide by any means other than in accordance with this Act and the regulations or a licence, permit or order thereunder as may be prescribed.

Idem

(3) No person shall use the environment or any plant or animal life, substance or thing that has come into contact with a pesticide by any means other than in accordance with this Act and the regulations or a licence, permit or order thereunder unless the cleaning and decontamination thereof has been completed in the prescribed manner or has been approved by the Director in writing. R.S.O. 1990, c. P.11, s. 30.

Orders, successors, etc., bound, records

Successors and assigns

31. (1) An order of a court, the Minister, the Director or a provincial officer under this Act is binding on the executor, administrator, administrator with the will annexed, guardian of property or attorney for property of the person to whom it was directed, and on any other successor or assignee of the person to whom it was directed. 2001, c. 17, s. 6 (3).

Limitation
(2) If, pursuant to subsection (1), an order is binding on an executor, administrator, administrator with the will annexed, guardian of property or attorney for property, their obligation to incur costs to comply with the order is limited to the value of the assets they hold or administer, less their reasonable costs of holding or administering the assets. 2001, c. 17, s. 6 (3).

Receivers and trustees

(3) An order of a court, the Minister, the Director or a provincial officer under this Act that relates to property is binding on a receiver or trustee that holds or administers the property. 2001, c. 17, s. 6 (3).

Limitation

(4) If, pursuant to subsection (3), an order is binding on a trustee, other than a trustee in bankruptcy, the trustee's obligation to incur costs to comply with the order is limited to the value of the assets held or administered by the trustee, less the trustee's reasonable costs of holding or administering the assets. 2001, c. 17, s. 6 (3).

Exception

(5) Subsection (3) does not apply to an order that relates to property held or administered by a receiver or trustee in bankruptcy if,

(a) within 10 days after taking or being appointed to take possession or control of the property, or within 10 days after the issuance of the order, the receiver or trustee in bankruptcy notifies the Director that they have abandoned, disposed of or otherwise released their interest in the property; or

(b) the order was stayed under Part I of the Bankruptcy and Insolvency Act (Canada) and the receiver or trustee in bankruptcy notified the Director, before the stay expired, that they abandoned, disposed of or otherwise released their interest in the property. 2001, c. 17, s. 6 (3).

Extension of period

(6) The Director may extend the 10-day period for giving notice under clause (5) (a), before or after it expires, on such terms and conditions as he or she considers appropriate. 2001, c. 17, s. 6 (3).

Notice under subs. (5)

(7) Notice under clause (5) (a) or (b) must be given in the manner prescribed by the regulations referred to in subsection 19 (7) of the Environmental Protection Act. 2001, c. 17, s. 6 (3).

Index record

(8) The Ministry shall maintain an alphabetical index record of the names of all persons to whom orders are directed under this Act. 2001, c. 17, s. 6 (3).

Expiry of order, etc.

(9) When an order has expired or is rescinded or set aside, the Ministry shall note that fact in the index record. 2001, c. 17, s. 6 (3).

Search of index record

(10) The Ministry shall, on the request of any person, make a search of the index record and inform the person making the request as to whether or not the name of a particular person appears in the index record and shall permit inspection of any order relating to that person. 2001, c. 17, s. 6 (3).

Definitions, ss. 31.1 to 31.6

31.1 In this section and in sections 31.2 to 31.6, "fiduciary" means an executor, administrator, administrator with the will annexed, trustee, guardian of property or attorney for property, but does not include a trustee in bankruptcy or trustee in bankruptcy representative; ("représentant fiduciaire")
“fiduciary property” means property held or administered by a fiduciary in the capacity of fiduciary, or property in respect of which a fiduciary has powers or duties in the capacity of fiduciary; (“bien fiduciaire”)

“fiduciary representative” means, with respect to a fiduciary, an officer, director, employee or agent of the fiduciary, or a lawyer, consultant or other advisor of the fiduciary who is acting on behalf of the fiduciary; (“représentant d’un représentant fiduciaire”)

“municipality” includes a local board, as defined in the Municipal Affairs Act, and a board, commission or other local authority exercising any power with respect to municipal affairs or purposes, including school purposes, in an unorganised township or unsurveyed territory; (“municipalité”)

“municipal representative” means, with respect to a municipality, an officer, employee or agent of the municipality, or a lawyer, consultant or other advisor of the municipality who is acting on behalf of the municipality; (“représentant municipal”)

“non-municipal property” means, with respect to a municipality, property that is not owned, leased or occupied by the municipality; (“bien non municipal”)

“receiver representative” means, with respect to a receiver, an officer, director, employee or agent of the receiver, or a lawyer, consultant or other advisor of the receiver who is acting on behalf of the receiver; (“représentant d’un séquestre”)

“secured creditor representative” means, with respect to a secured creditor, an officer, director, employee or agent of the secured creditor, or a lawyer, consultant or other advisor of the secured creditor who is acting on behalf of the secured creditor; (“représentant d’un créancier garanti”)

“trustee in bankruptcy representative” means, with respect to a trustee in bankruptcy, an officer, director, employee or agent of the trustee in bankruptcy, or a lawyer, consultant or other advisor of the trustee in bankruptcy who is acting on behalf of the trustee in bankruptcy. (“représentant d’un syndic de faillite”) 2001, c. 17, s. 6 (3); 2002, c. 17, Sched. C, s. 22 (1).

Interpretation, ss. 31.3 to 31.6

31.2 Sections 31.3 to 31.6 shall not be construed as affecting any cause of action that a person would have in the absence of those sections. 2001, c. 17, s. 6 (3).

Actions taken by municipalities

31.3 (1) For the purposes of this Act, a municipality or a municipal representative who takes an action described in subsection (2) is not, for that reason alone,

(a) the person having the charge, management or control of the handling, storage, use, disposal, transportation or display of a pesticide, substance or thing; or

(b) the person having the charge, management or control of a pesticide, substance or thing. 2001, c. 17, s. 6 (3).

Actions

(2) The actions referred to in subsection (1) are the following:

1. Any action taken for the purpose of conducting, completing or confirming an investigation relating to non-municipal property.

2. Any action taken for the purpose of preserving or protecting non-municipal property, including action to,

   i. ensure the supply of water, sewage services, electricity, artificial or natural gas, steam, hot water, heat or maintenance,

   ii. secure the property by means of locks, gates, fences, security guards or other means, or

   iii. ensure that the property is insured under a contract of insurance.

3. Any action taken on non-municipal property for the purpose of responding to,

   i. any danger to the health or safety of any person that results from the presence or discharge of a pesticide, or any substance or thing containing a pesticide, on, in or under the property,
ii. any impairment or serious risk of impairment of the quality of the natural environment for any use that can be made of it that results from the presence or discharge of a pesticide, or any substance or thing containing a pesticide, on, in or under the property, or

iii. any injury or damage or serious risk of injury or damage to any property or to any plant or animal life that results from the presence or discharge of a pesticide, or any substance or thing containing a pesticide, on, in or under the property.

4. Any action taken with respect to non-municipal property to exercise a right under any Act to collect rent or levy by distress in relation to an unpaid amount.

5. Any action taken on non-municipal property under or for the purpose of Part XI of the Municipal Act, 2001 or Part XIV of the City of Toronto Act, 2006.

6. Any action taken on non-municipal property under or for the purpose of the Building Code Act, 1992, the Fire Protection and Prevention Act, 1997 or an Act prescribed by the regulations referred to in paragraph 6 of subsection 168.12 (2) of the Environmental Protection Act.

7. Any other action prescribed by the regulations referred to in paragraph 7 of subsection 168.12 (2) of the Environmental Protection Act. 2001, c. 17, s. 6 (3); 2002, c. 17, Sched. C, s. 22 (2); 2006, c. 32, Sched. C, s. 46.

Actions taken by secured creditors

31.4 (1) For the purposes of this Act, a secured creditor or a secured creditor representative who takes an action described in subsection (2) is not, for that reason alone,

(a) the person having the charge, management or control of the handling, storage, use, disposal, transportation or display of a pesticide, substance or thing; or

(b) the person having the charge, management or control of a pesticide, substance or thing. 2001, c. 17, s. 6 (3).

Actions

(2) The actions referred to in subsection (1) are the following:

1. Any action taken for the purpose of conducting, completing or confirming an investigation relating to the secured property.

2. Any action taken for the purpose of preserving or protecting the secured property, including action to,

   i. ensure the supply of water, sewage services, electricity, artificial or natural gas, steam, hot water, heat or maintenance,

   ii. secure the property by means of locks, gates, fences, security guards or other means,

   iii. ensure that the property is insured under a contract of insurance, or

   iv. pay taxes due or collect rents owing with respect to the property.

3. Any action taken on the secured property for the purpose of responding to,

   i. any danger to the health or safety of any person that results from the presence or discharge of a pesticide, or any substance or thing containing a pesticide, on, in or under the property.

   ii. any impairment or serious risk of impairment of the quality of the natural environment for any use that can be made of it that results from the presence or discharge of a pesticide, or any substance or thing containing a pesticide, on, in or under the property, or

   iii. any injury or damage or serious risk of injury or damage to any property or to any plant or animal life that results from the presence or discharge of a pesticide, or any substance or thing containing a pesticide, on, in or under the property.

4. Any other action prescribed by the regulations referred to in paragraph 4 of subsection 168.17 (2) of the Environmental Protection Act. 2001, c. 17, s. 6 (3).

Receivers and trustees in bankruptcy
31.5 (1) A receiver or trustee in bankruptcy is not required to comply with any order under this Act that is issued by the Minister, the Director or a provincial officer if the order did not arise from the gross negligence or willful misconduct of the receiver or trustee in bankruptcy, or of a receiver representative or trustee in bankruptcy representative, and,

(a) not later than 10 days after being served with the order, or within such longer period as may be specified by the Director in the order, the receiver or trustee in bankruptcy notifies the Director that they have abandoned, disposed of or otherwise released their interest in the property to which the order relates; or

(b) the order was stayed under Part I of the Bankruptcy and Insolvency Act (Canada) and the receiver or trustee in bankruptcy notified the Director, before the stay expired, that they abandoned, disposed of or otherwise released their interest in the property. 2001, c. 17, s. 6 (3).

Notice under subs. (1)
(2) Notice under clause (1) (a) or (b) must be given in the manner prescribed by the regulations referred to in subsection 188.20 (8) of the Environmental Protection Act. 2001, c. 17, s. 6 (3).

Obligations of fiduciaries
31.6 If the Minister, the Director or a provincial officer issues an order under any provision of this Act to a fiduciary or fiduciary representative with respect to fiduciary property, the obligation of the fiduciary or fiduciary representative to incur costs to comply with the order is limited to the value of the assets they hold or administer on the date they are served with the order, less their reasonable costs of holding or administering the assets, unless the order arose from the gross negligence or willful misconduct of the fiduciary or fiduciary representative. 2001, c. 17, s. 6 (3).

The Crown
32. This Act binds the Crown. R.S.O. 1990, c. P.11, s. 32.

Licences or permits not transferable
33. A licence or a permit under this Act is not transferable. R.S.O. 1990, c. P.11, s. 33.

Exemption from regulations, applicants for licence
34. (1) Where, in the opinion of the Director, it is in the public interest to do so, the Director may exempt an applicant for a licence issued by the Director under section 6 or the holder of such a licence from any provision of the regulations and issue a licence to the applicant or modify the licence of the licensee, as the case may be, upon such terms and conditions, or alter or revoke the terms and conditions, as the Director considers necessary. R.S.O. 1990, c. P.11, s. 34.

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. 2008, c. 11, s. 4.

Regulations
35. (1) The Lieutenant Governor in Council may make regulations,

1. prescribing classes of licences and the requirements for licences and renewals;
2. exempting any person or class of persons from this Act or the regulations or any provision thereof and prescribing terms and conditions attaching to any such exemption;
3. providing for the issue and renewal of licences and prescribing fees therefor;
4. prescribing expiry dates or the method of determining the expiry dates of licences or any class of licences;
5. providing for the issue of permits, prescribing fees therefor and the requirements therefor;

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6. prescribing terms and conditions with respect to sales, offers to sell, transfers or premises in, on or from which sales, offers to sell or transfers of a pesticide are or will be made that shall attach to any class of licence;

7. providing for the examination of applicants for permits and licences and renewals of licences, and prescribing fees for such examinations;

8. providing for the appointment of examiners for applicants for licences and permits, the period for which such appointments may be made and the remuneration of examiners;

9. requiring applicants for licences to undergo medical examinations;

10. prescribing the procedures, conditions and notices for exterminations and for the airing out of buildings, structures and vehicles;

11. fixing the amount and type of insurance or bond that shall be carried or furnished by operators and prescribing the form, requirements and terms thereof;

12. prescribing pesticides, classes of pesticides and conditions of use for the purpose of section 7;

13. prescribing that a type or class of structural extermination may be deemed a land extermination and prescribing that a type or class of land extermination may be deemed a structural extermination for the purpose of this Act and the regulations;

14. permitting any class of operator or exterminator to perform or to undertake to perform any extermination for which the members of the class are not licensed and prescribing the conditions that shall attach to the permission;

15. exempting any machine, apparatus, equipment, or class thereof, from this Act or the regulations, or any provision thereof;

16. exempting any type or class of building, vehicle or structure from this Act or the regulations or any provision thereof;

17. excluding any land or water from the operation of this Act or the regulations or any provision thereof;

18. regulating or prohibiting the installation, operation, maintenance and use of any machine, apparatus or equipment used for extermination;

19. governing the signs, marking or other identification of vehicles or machines used in exterminations;

20. regulating the construction of any enclosed space or vault in which movable property may be placed during the periods of extermination and airing out;

21. prescribing functions, practices and procedures, tenure of office and remuneration of the Committee;

22. prescribing forms and providing for their use for the purposes of this Act;

23. governing, regulating or prohibiting the use, handling, storage, display or disposal of pesticides;

24. prohibiting or regulating the sale, offering for sale or transfer of pesticides;

24.1 classifying pesticides or providing for the classification of pesticides by the Minister or a person designated by the Minister, or by another method of classification, and providing for a means of informing the public of the classifications;

25. prohibiting the holders of any class of licence from using any designated pesticide or class of pesticides;

26. regulating the type of containers and the labelling of containers for pesticides, other than the containers in which pesticides are sold or offered for sale;

27. regulating the disposal of containers of pesticides;

28. prescribing documents or data required to be created, stored and submitted by any person and the methods of creating, storing and submitting the documents and data;

28.1 prescribing the location at which documents or data must be created or stored;

28.2 providing for the inspection and examination of documents and data;

28.3 providing for the preparation and signing of documents by electronic means, the filing of documents by direct electronic transmission and the printing of documents filed by direct electronic transmission;
29. exempting any plant or animal life, organism, substance or thing or any class of any of them or any quantity or concentration of any organism or substance from this Act or the regulations or any provision thereof;

30. respecting premises on, in or from which any pesticide or class of pesticide is sold, offered for sale or transferred;

31. regulating and controlling, for the purpose of preventing or reducing the contamination by pesticides of the environment, property, plant or animal life, or of any person, the transportation of any designated pesticide or class of pesticides by any vehicle operated on any highway or road or the transportation of any designated pesticide or class of pesticides together with any commodity or class of commodities by a vehicle operated on any highway or road;

32. prohibiting the transportation of any designated pesticide or class of pesticides together with any commodity or class of commodity by a vehicle operated on any highway or road;

33. prescribing the records to be kept by persons responsible for the transportation of any designated pesticide or class of pesticides by a vehicle operated on a highway or road;

34. requiring, regulating or prohibiting the removal or disposal of any substance or thing that has come into contact with any pesticide by any means other than in accordance with this Act and the regulations or a licence, permit or order thereunder;

35. requiring and prescribing measures to be taken and things to be done with respect to the cleaning and decontamination of the environment or any plant or animal life, substance or thing that has come into contact with a pesticide by any means other than in accordance with this Act and the regulations or a licence, permit or order thereunder and the time or times within which such measures shall be taken and things done;

36. providing for the method of service of any document given, served or delivered under this Act;

37. deeming a person to be a person involved in carrying out a program of the Ministry for the purpose of subsection 17 (5);

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 or 5 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;

49. prescribing or respecting any matter that this Act refers to as a matter prescribed by the regulations or as otherwise dealt with by the regulations. R.S.O. 1990, c. P.11, s. 35; 1997, c. 37, s. 5 (6); 1998, c. 35, s. 92; 2001, c. 9, Sched. G, s. 7 (9); 2008, c. 11, s. 5 (1); 2009, c. 33, Sched. 15, s. 9 (5).

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. 2008, c. 11, s. 5 (2).

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. 2008, c. 11, s. 5 (2).

http://www.ontario.ca/laws/statutes/90p11
Scope of regulations

36. (1) Any regulation may be general or particular in its application and may be limited as to time or place or both. R.S.O. 1990, c. P.11, s. 36 (1).

Adoption of codes in regulations

(2) Any regulation may adopt by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code, formula, standard or procedure, and may require compliance with any code, formula, standard or procedure so adopted. R.S.O. 1990, c. P.11, s. 36 (2).

Amendments to adopted codes

(3) A code, formula, standard or procedure adopted by reference under subsection (2) may be adopted as amended from time to time. 2009, c. 33, Sched. 15, s. 9 (6).

When amendments effective

(4) The adoption of an amendment to a document that has been adopted by reference comes into effect upon the Ministry publishing notice of the amendment in The Ontario Gazette or in the environmental registry established under section 5 of the Environmental Bill of Rights, 1993. 2009, c. 33, Sched. 15, s. 9 (6).

Fees

37. The Minister may establish and require the payment of fees in respect of any matter under this Act, specify to whom the fees are paid, provide for the retention of all or part of the fees by the person to whom they are paid and provide for the refund of fees. 2001, c. 9, Sched. G, s. 7 (10).

Service

38. (1) Any document given, served or delivered under this Act is sufficiently given, served or delivered if it is,

(a) delivered personally;

(b) sent by mail addressed to the person to whom it is required to be given, served or delivered at the latest address for the person appearing on the records of the Ministry; or

(c) given or served in accordance with regulations respecting service.

When service deemed made

(2) Where service is made by mail, the service shall be deemed to be made on the fifth day after the day of mailing unless the person on whom service is being made establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control receive the document until a later date. 1998, c. 35, s. 93.

Enforcement of performance of things required to be done

39. Where the Minister or the Director has authority to order or require that any matter or thing be done, the Minister may order that, in default of its being done by the person ordered or required to do it, such matter or thing shall be done at the expense of such person, and the Minister may recover the cost of doing it, with costs, by action in a court of competent jurisdiction as a debt due to the Crown by such person. R.S.O. 1990, c. P.11, s. 39.

40. Repealed: 1998, c. 35, s. 94.

Presiding judge

41. The Crown, by notice to the clerk of the Ontario Court of Justice, may require that a provincial judge preside over a proceeding in respect of an offence under this Act. R.S.O. 1990, c. P.11, s. 41; 2001, c. 9, Sched. G, s. 7 (11); 2006, c. 21, Sched. C, s. 129 (3).
Offences

Contravention of Act or regulations
42. (1) Every person who contravenes this Act or a regulation is guilty of an offence. R.S.O. 1990, c. P.11, s. 42 (1).

Offence, orders
(2) Every person who fails to comply with an order under this Act is guilty of an offence. R.S.O. 1990, c. P.11, s. 42 (2).

Offence, licence or permit
(3) Every person who fails to comply with a term or condition of a licence or permit made or issued under this Act is guilty of an offence. R.S.O. 1990, c. P.11, s. 42 (3).

Offence re fees
(4) Every person who fails to pay a fee that the person is required to pay under section 37 is guilty of an offence. 2001, c. 9, Sched. G, s. 7 (14).

Penalties, general

Individuals
43. (1) Every individual convicted of an offence under this Act is liable,

(a) on a first conviction, for each day or part of a day on which the offence occurs or continues, to a fine of not more than $20,000; and

(b) on each subsequent conviction,

(i) for each day or part of a day on which the offence occurs or continues, to a fine of not more than $50,000,

(ii) to imprisonment for a term of not more than one year, or

(iii) to both such fine and imprisonment.

Corporations
(2) Every corporation convicted of an offence under this Act is liable,

(a) on a first conviction, for each day or part of a day on which the offence occurs or continues, to a fine of not more than $100,000; and

(b) on each subsequent conviction, for each day or part of a day on which the offence occurs or continues, to a fine of not more than $200,000. 1998, c. 35, s. 96.

Penalty re monetary benefit
44. The court that convicts a person of an offence under this Act, in addition to any other penalty imposed by the court, may increase a fine imposed upon the person by an amount equal to the amount of the monetary benefit acquired by or that accrued to the person as a result of the commission of the offence, despite any maximum fine elsewhere provided. R.S.O. 1990, c. P.11, s. 44.

Penalties, more serious offences
Application of subss. (2) and (3)
45. (1) Subsections (2) and (3) apply to the following offences:

1. An offence under subsection 42 (1) or 49 (2) that posed, poses or may pose a risk of an effect mentioned in subsection 49 (3).

2. An offence under subsection 42 (2), other than an offence of failing to comply with an order under section 27.

3. An offence of contravening section 17.
Corporations, subs. (1)

(2) Every corporation convicted of an offence described in subsection (1) is liable, in substitution for any penalty provided in section 43, for each day or part of a day on which the offence occurs or continues, to a fine of not more than $250,000 on a first conviction and not more than $500,000 on each subsequent conviction. 1998, c. 35, s. 97 (1).

Individuals, subs. (1)

(3) Every individual convicted of an offence described in subsection (1) is liable, in substitution for any penalty provided in section 43,

(a) for each day or part of a day on which the offence occurs or continues, to a fine of not more than $50,000 on a first conviction and not more than $100,000 on each subsequent conviction;

(b) to imprisonment for a term of not more than one year; or

(c) to both such fine and imprisonment. 1998, c. 35, s. 97 (1).

Application of subss. (3.1) and (3.2)

(3.0.1) Subsections (3.1) and (3.2) apply to the following offences:

1. An offence under this Act that causes an effect mentioned in subsection 49 (3).

2. An offence of failing to comply with an order under section 27. 2000, c. 22, s. 3 (4).

Corporations, subs. (3.0.1)

(3.1) Every corporation convicted of an offence described in subsection (3.0.1) is liable, in substitution for any penalty elsewhere provided, for each day or part of a day on which the offence occurs or continues, to a fine of not more than $6,000,000 on a first conviction and not more than $10,000,000 on each subsequent conviction. 1998, c. 35, s. 97 (1); 2000, c. 22, s. 3 (5).

Individuals, subs. (3.0.1)

(3.2) Every individual convicted of an offence described in subsection (3.0.1) is liable, in substitution for any penalty elsewhere provided,

(a) for each day or part of a day on which the offence occurs or continues, to a fine of not more than $4,000,000 on a first conviction and not more than $6,000,000 on each subsequent conviction;

(b) to imprisonment for a term of not more than five years less one day; or

(c) to both such fine and imprisonment. 1998, c. 35, s. 97 (1); 2000, c. 22, s. 3 (6).

Subsequent conviction

(4) For the purposes of determining the penalty to which a person is liable under section 43 or under this section, a conviction of the person for an offence under this Act is a subsequent conviction if the person has previously been convicted of an offence under,

(a) this Act;

(b) the Environmental Protection Act, other than for an offence related to Part IX of that Act;

(b.1) the Nutrient Management Act, 2002;

(c) the Ontario Water Resources Act;

(d) the Safe Drinking Water Act, 2002; or

(e) the Toxics Reduction Act, 2009. 1998, c. 35, s. 97 (2); 2002, c. 4, s. 66 (3); 2009, c. 19, s. 71 (8).

Order to prevent damage, etc.
46. (1) On its own initiative or on the request of the prosecutor, the court that convicts a person of an offence under this Act, in addition to any other penalty imposed by the court, may order the person,

(a) to take such action as the court directs, including but not limited to providing an alternate water supply, within the time specified in the order to prevent, eliminate or ameliorate damage that results from or is in any way connected to the commission of the offence; and

(b) to comply with any order that the Director has issued to the person in relation to damage that results from or is in any way connected to the commission of the offence. 1998, c. 35, s. 98 (1).

Other conditions

(2) An order under subsection (1) may contain such other conditions relating to the circumstances of the offence and of the person that contributed to the commission of the offence as the court considers appropriate to prevent similar unlawful conduct or to contribute to rehabilitation. R.S.O. 1990, c. P.11, s. 46 (2); 2006, c. 19, Sched. K, s. 4.

Variation of order

(3) The court that made an order under subsection (1) may make any changes in or additions to the conditions prescribed in the order that in the opinion of the court are rendered desirable by a change in circumstances,

(a) on its own initiative at any time; or

(b) on application by counsel for the prosecutor, by the person convicted or by the person authorized under the Law Society Act to represent the person convicted, with notice to the other party, after a hearing or, with the consent of the parties, without a hearing. 2006, c. 21, Sched. C, s. 129 (4).

Conflict

(4) Nothing in subsection (1) authorizes the making of an order that conflicts with an order previously made under this Act by the Minister or the Director, but an order may be made under subsection (1) supplementing the provisions of an order in respect of the prevention, decrease or elimination of harm to the environment and the restoration of the environment. R.S.O. 1990, c. P.11, s. 46 (4).

(5) Repealed: 1998, c. 35, s. 98 (2).

Continuation in force

(6) Where a person bound by an order under subsection (1) is imprisoned, the order continues in force except in so far as the imprisonment renders it impossible for the person to comply for the time being with the order. R.S.O. 1990, c. P.11, s. 46 (6).

Restitution orders

46.1 (1) On its own initiative or on the request of the prosecutor, the court that convicts a person of an offence under this Act, in addition to any other penalty imposed by the court, may make an order for restitution against the person convicted of the offence, requiring the person to pay another person for reasonable expenses actually incurred by the other person on account of damage to property in which the other person has an interest that results from or is in any way connected to the commission of the offence, in such amount and on such terms and conditions as the court considers just. 1998, c. 35, s. 99.

Expenses incurred, interpretation

(2) For the purposes of subsection (1), expenses are incurred on account of damage to property if they are incurred,

(a) to prevent, eliminate or ameliorate the damage;

(b) to replace the property that suffered the damage; or

(c) to restore the property to the state that it was in before the damage. 1998, c. 35, s. 99.

Same
(3) For greater certainty, for the purposes of clause (2) (a), expenses incurred to provide an alternate water supply may be expenses incurred to prevent, eliminate or ameliorate damage. 1998, c. 35, s. 99.

Amount of order
(4) The amount of the order for restitution shall not exceed the replacement value of the property as of the date the order is issued. 1998, c. 35, s. 99.

No restitution to person who committed offence
(5) The court shall not make an order for restitution in favour of any person on account of damage that is the result of,
(a) the commission of an offence by the person; or
(b) a contravention or failure in respect of which a notice under section 41.1 has been served on the person requiring the person to pay an administrative penalty, unless the requirement to pay the administrative penalty has been rescinded. 1998, c. 35, s. 99.

Notification of order
(6) Where a court makes an order for restitution, it shall cause a copy of the order or a notice of the content of the order to be given to the person to whom the restitution is ordered to be paid. 1998, c. 35, s. 99.

Filing of order in court
(7) An order for restitution may be filed with a local registrar of the Superior Court of Justice and the responsibility for filing shall be on the person to whom the restitution is ordered to be paid. 1998, c. 35, s. 99; 2001, c. 9, Sched. G, s. 7 (17).

Enforcement of order
(8) An order for restitution filed under subsection (7) may be enforced as if it were an order of the court. 1998, c. 35, s. 99.

Same
(9) Section 129 of the Courts of Justice Act applies in respect of an order for restitution filed under subsection (7) and, for the purpose, the date of filing shall be deemed to be the date of the order. 1998, c. 35, s. 99.

Civil remedy
(10) A civil remedy for an act or omission is not affected by reason only that an order for restitution under this section has been made in respect of that act or omission. 1998, c. 35, s. 99.

Forfeiture on conviction
46.2 (1) On its own initiative or on the request of the prosecutor, the court that convicts a person of an offence under this Act, in addition to any other penalty imposed by the court, may, if conviction is in relation to an offence in connection with which a thing has been seized under section 22 or 23 or under a warrant issued under the Provincial Offences Act, order that the thing be forfeited to the Crown. 1998, c. 35, s. 99.

Same
(2) The court shall not make an order under subsection (1) unless the court is satisfied that,
(a) the seizure of the thing was lawful; and
(b) no later than seven days before the hearing of the request, written notice was provided by a provincial officer,
   (i) to every person whom the provincial officer knows or has reason to believe is an owner of the thing seized,
   (ii) to every person who has a security interest in the thing that is perfected by registration under the Personal Property Security Act against the name of any person whom the provincial officer knows or has reason to believe is the owner,
(iii) where the thing seized is a vehicle, to every person who has a security interest in the vehicle that is perfected by registration under the Personal Property Security Act against the vehicle identification number of the vehicle, and

(iv) where the thing seized is a vehicle and the vehicle is registered under the Highway Traffic Act, to the registered owner. 1998, c. 35, s. 99.

Contents of notice

(3) Notice under subsection (2) shall include,

(a) a description of the thing seized sufficient to enable it to be identified;

(b) the location at which the thing was seized;

(c) the date of the seizure;

(d) the name and telephone number of the provincial officer who seized the thing or of his or her delegate;

(e) a statement of the reason for the seizure;

(f) a reference to the statutory provision authorizing the seizure;

(g) a statement that an order for forfeiture of the thing is being sought under this section; and

(h) a statement that the person to whom the notice is provided may make submissions to the court with respect to the issuance of an order under this section. 1998, c. 35, s. 99.

Disposition of things forfeited

(4) A thing forfeited under this section may be disposed of as the Director directs. 1998, c. 35, s. 99.

Relief against forfeiture

(5) A person who had an interest in a thing forfeited under this section may apply to the Superior Court of Justice for relief against the forfeiture and the court may make an order providing for any relief that it considers appropriate, including, but not limited to, one or more of the following orders:

1. An order directing that the thing or any part of the thing be returned to the applicant.

2. An order directing that any interest in the thing be vested in the applicant.

3. An order directing that an amount be paid by the Crown to the applicant by way of compensation for the forfeiture. 1998, c. 35, s. 99; 2001, c. 9, Sched. G, s. 7 (17).

When relief not to be ordered

(6) The court shall not make an order for relief under subsection (5) in respect of a thing forfeited where the person applying for the relief,

(a) has been served with a notice under section 41.1 requiring the person to pay an administrative penalty in connection with a matter that was associated with the seizure of the thing, unless the requirement to pay the administrative penalty is rescinded under section 41.1; or

(b) has been charged with an offence that was associated with the seizure of the thing, unless the charge has been withdrawn or dismissed. 1998, c. 35, s. 99.

Where fine not paid

46.3 (1) Where a person is convicted of an offence under this Act and a fine is imposed,

(a) a thing seized in connection with the offence and not forfeited to the Crown under section 24.1, 24.3 or 46.2 shall not be returned until the fine has been paid; and
(b) if payment of the fine is in default within the meaning of section 69 of the Provincial Offences Act, a justice may order that the thing be forfeited to the Crown.

Application of subss. 46.2 (2) to (6)

(2) Subsections 46.2 (2) to (6) apply with necessary modifications in relation to an order under clause (1) (b). 1998, c. 35, s. 99.

Costs of seizure, etc.

46.4 If a person is convicted of an offence under this Act, the justice may, in addition to any other penalty, order the person to pay all or part of the expenses incurred by the Ministry with respect to the seizure, storage or disposition of any thing seized in connection with the offence. 1998, c. 35, s. 99.

Suspension for default in payment of fine

47. (1) Where a person is in default of payment of a fine imposed upon conviction for an offence against this Act, the Environmental Protection Act, the Nutrient Management Act, 2002, the Ontario Water Resources Act, the Safe Drinking Water Act, 2002, the Toxics Reduction Act, 2009 or the regulations made under any of them, on the application of the Director, an order may be made under subsection 69 (2) of the Provincial Offences Act directing that,

(a) one or more of the person’s licences be suspended; and
(b) no licence be issued to the person,

until the fine is paid. R.S.O. 1990, c. P.11, s. 47 (1); 2002, c. 4, s. 66 (4); 2009, c. 19, s. 71 (9).

Duty of Director

(2) The Director shall,

(a) on being informed of an outstanding order referred to in subsection (1), suspend the person’s licence, if it is not already suspended under another order referred to in subsection (1); and
(b) on being informed that the fine and any applicable prescribed administrative fee for the reinstatement of the licence are paid, reinstate the licence, unless the Director has been informed that,

(i) there is another outstanding order referred to in subsection (1) directing that the licence be suspended, or
(ii) the licence is suspended under any other order or under another statute. R.S.O. 1990, c. P.11, s. 47 (2).

Regulations

(3) The Lieutenant Governor in Council may make regulations prescribing forms and procedures and respecting any matter considered necessary or advisable to carry out effectively the intent and purpose of this section. R.S.O. 1990, c. P.11, s. 47 (3).

Definition

(4) In this section,

“licence” means a licence or permit under this Act or the regulations. R.S.O. 1990, c. P.11, s. 47 (4).

Limitation

48. (1) Proceedings for an offence under this Act or the regulations shall not be commenced later than two years after the later of,

(a) the day on which the offence was committed; and
(b) the day on which evidence of the offence first came to the attention of a provincial officer or Director. 2009, c. 33, Sched. 15, s. 9 (7).

Same
Duty of director or officer of corporation

49. (1) Every director or officer of a corporation that engages in an activity that may cause an effect mentioned in subsection (3) contrary to this Act or the regulations has a duty to take all reasonable care to prevent the corporation from causing or permitting such unlawful effect.

Offence

(2) Every person who has a duty under subsection (1) and who fails to carry out that duty is guilty of an offence.

Effects

(3) The effect referred to in subsection (1) is any one or more of,

(a) impairment of the quality of the environment for any use that can be made of it;
(b) injury or damage to property or plant or animal life;
(c) harm or material discomfort to any person;
(d) an adverse effect on the health of any person;
(e) impairment of the safety of any person; or
(f) directly or indirectly rendering any property or plant or animal life unfit for human use,

from a pesticide or any substance or thing containing a pesticide to a greater degree than would necessarily result from the proper use or storage of the pesticide.

Liability to conviction

(4) A director or officer of a corporation is liable to conviction under this section whether or not the corporation has been prosecuted or convicted. R.S.O. 1990, c. P.11, s. 49.

Service of offence notice, etc., offences re: vehicles

50. (1) In this section,

"commercial motor vehicle" and "motor vehicle" have the same meanings as in the Highway Traffic Act; ("véhicule utilitaire", "véhicule automobile")

"offence notice or summons" means,

(a) an offence notice or summons under Part I of the Provincial Offences Act, or
(b) a summons under Part III of the Provincial Offences Act. ("avis d’infraction ou assignation") R.S.O. 1990, c. P.11, s. 50 (1); 1998, c. 35, s. 100 (1).

Service of offence notice or summons

(2) Delivery of an offence notice or summons to the operator of a commercial motor vehicle in respect of an offence under this Act related to the use of the vehicle shall be deemed to be personal service of the offence notice or summons on the owner or lessee of the vehicle who is named in the offence notice or summons. R.S.O. 1990, c. P.11, s. 50 (2).

Employer

(3) Delivery of an offence notice or summons to the operator of a motor vehicle in respect of an offence under this Act related to the use of the vehicle in the course of the operator’s employment shall be deemed to be personal service of the offence notice or summons on the employer of the operator of the vehicle. R.S.O. 1990, c. P.11, s. 50 (3).
(4) Repealed: 1998, c. 35, s. 100 (2).

Exception

(5) Subsection (2) does not apply if, at the time of the offence, the vehicle was in the possession of the operator without the consent of the owner or lessee of the vehicle, as the case may be, but the burden of proof of that shall be on the owner or lessee of the vehicle. R.S.O. 1990, c. P.11, s. 50 (5).

Permit holder deemed owner

(6) For the purposes of this section, the holder of a permit under Part II of the Highway Traffic Act shall be deemed to be the owner of the vehicle referred to in the permit if a number plate under that Part bearing a number that corresponds to the permit was displayed on the vehicle at the time the offence was committed. R.S.O. 1990, c. P.11, s. 50 (6).

Application of subs. (6)

(7) Subsection (6) does not apply if the number plate was displayed on the vehicle without the consent of the holder of the permit, but the burden of proof of that shall be on the holder of the permit. R.S.O. 1990, c. P.11, s. 50 (7).

Service of offence notice, etc., corporations, etc.

Service on municipal corporations

50.1 (1) Service of an offence notice or summons on a municipal corporation may be effected by delivering it personally to the mayor, warden, reeve or other chief officer of the municipal corporation or to the clerk of the municipal corporation.

Service on other corporations

(2) Service of an offence notice or summons on a corporation other than a municipal corporation may be effected by delivering it personally to the manager, secretary or other officer of the corporation or to a person apparently in charge of a branch office of the corporation.

Service on partnership

(3) Service of an offence notice or summons on a partnership may be effected by delivering it personally to a partner or to a person apparently in charge of an office of the partnership.

Service on a sole proprietorship

(4) Service of an offence notice or summons on a sole proprietorship may be effected by delivering it personally to the sole proprietor or to a person apparently in charge of an office of the sole proprietorship.

Substituted service

(5) On application without notice, a justice, on being satisfied that service cannot be made effectively in accordance with subsections (1) to (4), may by order authorize another method of service that has a reasonable likelihood of coming to the attention of the municipal corporation, other corporation, partnership or sole proprietorship. 1998, c. 35, s. 101.

Official documents, evidence

51. (1) In this section,

"official document" means,

(a) an approval, certificate, consent, licence, notice, permit, order or return under this Act or the regulations,

(b) a certificate as to service of a document mentioned in clause (a),

(c) a certificate or report as to the analysis, description, ingredients, quality, quantity or temperature of any solid, liquid or gas or any combination of any of them.
(d) a certificate or report as to the analysis, description, quality or quantity of any odour, heat, sound, vibration, radiation or any combination of any of them,

(e) a certificate or report as to the custody of any solid, liquid or gas or any combination of any of them,

(f) a certificate as to the custody of any book, record or report or as to the custody of any other document, or

(g) a certificate as to whether or not any document or notification was received or issued by the Minister or the Ministry under this Act or the regulations.

Same

(2) An official document, other than an official document mentioned in clause (1) (c) or (d), that purports to be signed by the Minister or an employee in the Ministry shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the official document without proof of the signature or position of the person appearing to have signed the official document.

Idem

(3) An official document mentioned in clause (1) (c), (d) or (e) that purports to be signed by an analyst shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the official document without proof of the signature or position of the person appearing to have signed the official document. R.S.O. 1990, c. P.11, s. 51.

Proceedings to prohibit continuation or repetition of contravention

52. (1) Where any provision of this Act or the regulations or any direction, order, licence or permit made, served, delivered or issued by the Minister or the Director under this Act is contravened, despite any other remedy or any penalty imposed, the Minister may apply to a judge of the Superior Court of Justice for an order prohibiting the continuation or repetition of the contravention or the carrying on of any activity specified in the order that, in the opinion of the court, will or will likely result in the continuation or repetition of the contravention by the person committing the contravention, and the judge may make the order and it may be enforced in the same manner as any other order or judgment of the Superior Court of Justice. R.S.O. 1990, c. P.11, s. 52 (1); 2001, c. 9, Sched. G, s. 7 (17).

Appeal

(2) An appeal lies to the Divisional Court from an order made under subsection (1). R.S.O. 1990, c. P.11, s. 52 (2).

Power to restrain by order upon conviction

(3) Upon its own initiative or upon application by counsel for the prosecutor, the court that convicta a person of an offence under this Act, in addition to any other remedy and to any other penalty imposed by law, may make an order prohibiting the continuation or repetition by the person of the act or omission for which the person is convicted. R.S.O. 1990, c. P.11, s. 52 (3).

Administrative changes to control orders and permits

52.1 The Director may rescind or amend a control order, cancel a permit or alter a term or condition in a permit if the Director is satisfied that the rescission, amendment, cancellation or alteration is in the public interest and is desirable for administrative reasons to,

(a) reflect changes that have occurred with respect to the identity or description of any person or place; or

(b) eliminate provisions that are spent or obsolete. 2001, c. 9, Sched. G, s. 7 (18).

Conflict with other legislation

53. Where a conflict appears between this Act or the regulations and any other Act or regulation in a matter related to pesticides and the control of pests, this Act or the regulations shall prevail. R.S.O. 1990, c. P.11, s. 53.
17-9 Notification and posting of turf grass and landscape pesticide application.

(a) Policy. It is the policy of the city to take note of and respond to continuing concerns about health effects from toxic chemicals. Toxic chemicals classified as pesticides are designed to kill a variety of plants and animals; relatively little is known about their long-term effects upon humans and the environment. In light of this uncertainty, the city considers all pesticides detrimental to human health unless proven otherwise. In order to prevent unnecessary exposure to such chemicals, the city council, upon recommendation from the board of health, has enacted the following provisions.

(b) Definitions. As used in this section, the following terms are defined below:

Application of a pesticide: The placement for effect of any pesticide at or on the site where pest control or other response is desired.

Commercial applicator: Any person, certified or not, who uses or applies pesticides in the course of employment.

Landscape plants: Any ornamental and flowering shrubs and plants, shade trees, or plants designed and/or considered to add to the aesthetic environment.

Pesticide: Any substance produced or distributed for preventing, destroying or repelling any insects, weeds, rodents, fungi, nematodes, mites, spiders or other forms of plant or animal life or viruses (i.e., any herbicide, insecticide, fungicide, acaricide, nematicide or rodenticide) except viruses on or in living humans or other animals. This includes any fertilizer mixture which contains pesticides within it.

Resident: Any person who owns or manages the private property on which pesticides are applied.

Tributaries of Lake Champlain: Those streams and/or drainage systems that flow during the spring and early summer including the following:

1. Winooski River;
2. Centennial (Muddy Brook): being three (3) branches running north and east from the area of Bilodeau Court and the border with South Burlington,
joining below UVM's retention pond, and then under Grove Street to the Winooski River;

(3) Englesby Ravine: beginning east of UVM's Redstone Campus and running south and west through the "Hill Section," and then under Shelburne and Pine Streets to Lake Champlain;

(4) The stream running westerly from North Avenue, bordered on the south by Little Eagle Bay and on the north by Lakewood Estates, and into Lake Champlain;

(5) Appletree Point Stream: being two (2) branches running south from Appletree Point Lane into Lake Champlain;

(6) North Beach Stream: beginning south of Institute Road running south to Lake Champlain:

(7) Intervale: being the area bounded by the "Northern Connector," the Winooski River and the railroad right-of-way;

(8) Reeves Brook: beginning at Trinity College running north to Reeves Pond (at Riverwatch) then under Riverside Ave. to the Winooski River.

_Turf grass:_ A covering of mowed vegetation growing together with an upper soil stratum of intermingled roots and stems.

(c) _Commercial applicators contract requirements._ No outdoor application of pesticides to turf grass or landscape plants shall be made on single-or multifamily residential properties, nor on public or private nonresidential properties, including, but not limited to, athletic fields, schoolyards, university greens, corporate lawns, parks and cemeteries, without the following provisions having been met:

(1) Prior to initial application by a commercial applicator, the applicator or her/his employer must enter into a written contract with the customer specifying the approximate date(s) of application(s), the number of applications and the posting required by this section.
(2) With the written contract, the applicator or her/his employer must provide the customer with the following information, in writing:

a. A list of the pesticide(s) to be applied, including brand and chemical names;

b. Label warnings from all the listed pesticides;

c. Name, address and phone number of the company or non-commercial facility providing service;

d. EPA registration number(s) and if applicable applicator(s) certification number(s);

e. Current fact sheets approved by the Burlington Board of Health that include relevant information from the Environmental Protection Agency (EPA) and/or the Government Accounting Office (GAO) and/or Material Safety Data Sheet(s) (MSDS) that identify potential health and environmental hazards.

(d) Posting and notification:

(1) Before beginning each application, the applicator(s) shall post signs on the treated property at intervals no greater than one hundred (100) feet along all public and private rights-of-way. All properties, regardless of size, must post a minimum of two (2) signs at conspicuous points of access to the property. The specifications of the sign shall be as follows:

a. Shall be at least four (4) D—five (5) inches, of sturdy, weather-resistant material;

b. Shall be with contrasting colors using the indicated point type size;

c. Shall display the following warning on the front of the sign:

CAUTION

PESTICIDE APPLICATION
CAUTION

KEEP OFF

WHILE POSTED

CUSTOMER:

PLEASE REMOVE

AFTER 24 HOURS.

Both the fluorescent green symbol commonly known as "Mr. Yuk" and the international slash in a circle superimposed upon representational figures of an adult, child and dog as well as instructions that signs must remain posted for at least twenty-four (24) hours;

d. Shall be posted at least twelve (12) inches above the ground;

e. Shall contain the date and time of application on the back of the sign;

f. The back of the sign shall contain the emergency numbers for poison control and 911, the city health officer's number for complaints, the brand or chemical name and concentration, and the name of the applicator's company.

(2) All commercial outdoor pesticide applicators and all private outdoor applicators applying pesticides on an area greater than two hundred (200) square feet per property within the span of one year must give occupants of treated property and occupants of any adjacent property notice of any pesticide application(s). The notice may be distributed up to ten (10) days but not less than twenty-four (24) hours in advance of the application. The notice shall indicate when the pesticide shall be applied, which shall be within a five-business-day timeframe set forth in the notice. This written notice, approved by the board of health, must include the same information described in subsection (c)(2). The two hundred (200) square foot
exemption applies only to ground applications; any application to trees and shrubs requires both prenotification and posting as described. Any property with more than twenty (20) units, or any property required to notify residents of more than twenty (20) adjacent properties, has the option of proposing a notification plan, in lieu of individual notification, to the board of health for approval.

(3) Fenced, private nonresidential properties shall post written notices as described below in visitor reception areas and at all employee entrances.

a. The written notice shall contain information as specified under subsection (c)(2) as well as the specific location where each pesticide is to be applied.

b. The notices shall be posted at least twenty-four (24) hours prior to application and shall remain in place for at least twenty-four (24) hours after application.

c. Upon request, copies of any or all material listed under subsection (c)(2) shall be made available to any visitor or employee.

d. All adjacent property owners must be notified by the grounds superintendent or equivalent at least twenty-four (24) hours prior to pesticide application. Copies of all materials listed under subsection (c)(2) must be provided to all adjacent property owners.

(4) Pesticide applications made on golf course turf grass or landscape plants shall require posting of a written notice on the clubhouse bulletin board, in all locker rooms, and on the first and tenth tee. This notice shall be posted by the course superintendent or his/her designee.

a. The written notice shall contain information specified in subsection (c)(2) and shall include the specific location and number of each fairway, green, tee, driving area, etc., where pesticide is to be applied.
b. The notice shall be posted at least twenty-four (24) hours prior to application and must remain posted at all designated places for at least twenty-four (24) hours after application. Copies of the posted material shall be made available to any individual using or employed by the facility.

c. The golf course superintendent shall notify all adjacent property owners of her/his intent to apply pesticides at least twenty-four (24) hours prior to application. The superintendent shall provide all materials listed in subsection (c)(2) to all adjacent property owners.

(5) This regulation requires that those responsible for rights-of-way and utility applications of pesticides post described signs or submit an alternative posting plan to the board of health for its approval.

(6) No pesticides may be applied outdoors within five hundred (500) feet of Lake Champlain or any of its tributaries without specific approval from the board of health. Criteria for this approval are defined by the board of health’s statutory authority to protect public health.

(7) No licensed child care center, registered day care home, preschool, primary or secondary school (K—12) may use any turf grass or landscape pesticide on its grounds without specific approval from the board of health.

(e) Records. Each applicator shall keep written records of the parties who have been notified pursuant to subsections (c) and (d) of this section. Such records shall be made available to the board of health upon request by the board or by the office of the city attorney.

(f) Sign requirements and enforcement:

(1) The department of public works (DPW) shall have signs available to applicators that meet the notification and posting requirements of this section. DPW may charge a fee for the issuance of the signs to cover its administrative costs. No fee shall be assessed against any city department.
(2) The applicator shall be the individual responsible for correctly posting the signs in accordance with the requirements of subsection (d) of this section.

(3) a. First offense. A first offense of any provision of this section during any twenty-four-month period shall be a civil ordinance violation punishable by a penalty of a minimum fine of two hundred dollars ($200.00) to a maximum fine of five hundred dollars ($500.00). The waiver penalty for a first offense shall be a fine of two hundred dollars ($200.00).

b. Second offenses. A second offense during a twenty-four (24) month period shall be a civil offense and shall be punishable by a fine of five hundred dollars ($500.00). The waiver penalty shall be a fine of three hundred dollars ($300.00).

c. The third and any subsequent offense within a twenty-four (24) month period shall be a criminal offense punishable by a fine of five hundred dollars ($500.00).

d. Any law enforcement or code enforcement officer may issue a municipal complaint ticket or criminal citation for offenses of this section.

(Ord. of 6-22-82; Ord. of 2-20-96; Ord. of 2-19-08(2), eff. 4-9-08)

Charter reference—Authority of city council to regulate peddling of meat, § 48(I); authority to compel owners to keep premises clean, § 48(VIII); authority to regulate exposure of food for sale and prevent its contamination, § 48(XLVIII); board of health established, § 121 et seq.; duties of board, § 277 et seq.

Cross reference—General cleanliness of premises where animals are kept, § 5-2; placing certain substances in public places prohibited, §§ 14-5, 14-6; vehicles and containers to be covered to prevent dropping of refuse, §§ 14-7, 20-8; minimum standards for housing, § 18-70 et seq.
State law reference—Local health officers generally, 20 V.S.A. § 601 et seq.; authority of municipality to compel the cleaning or repair of any premises, 24 V.S.A. § 2291(13); authority of municipality to define public nuisances and provide for their abatement, 24 V.S.A. § 2291(14).
City of Takoma Park, Maryland

Ordinance No 2012-XX

The “Safe Grow Zone Act of 2013”

Amending the Takoma Park Code Title 14, Health and Safety, to add restrictions on the use of cosmetic pesticides on public and private property in Takoma Park.

WHEREAS, Title 14 Health and Safety protects the public health, safety, comfort, and general welfare of the residents and businesses of the City;

WHEREAS, Takoma Park’s Strategic Plan for FY2010-15, adopted May 18, 2009, articulates concern for clean water and safe neighborhoods and working environments and calls for “use of alternative, less environmentally damaging products”;

WHEREAS, The State of Maryland is one of only 9 states, and the District of Columbia, that uphold the rights of localities to restrict pesticides, and this should be seen as an opportunity to affect positive change. Preemption laws in the remaining 41 states undermine local authority regarding pesticide regulations;

WHEREAS, The City of Takoma Park can and should implement the Precautionary Principle, as outlined in the Wingspread Statement of 1998, when regulating the use of cosmetic lawn pesticides or any issue that affects human and ecological health;

WHEREAS, it is the 50th anniversary of the publication of Rachel Carson’s Silent Spring, which in 1962 decried the indiscriminatn use of pesticides in the environment;

WHEREAS, in 2004, the City Council of Takoma Park proclaimed May 27 as Rachel Carson Day, a day in which residents are encouraged to consider the dangers from pesticides, and to refrain from pesticide use;

WHEREAS, the EPA, the Committee on Environmental Health of the American Academy of Pediatrics, the National Academy of Sciences, and the 2010 President’s Cancer Panel have concluded that pesticide exposure is linked to reproductive disorders, birth defects, learning disabilities, neurological disease, endocrine disorders, and cancer;

WHEREAS, the EPA acknowledges, along with esteemed Mt. Sinai Children’s Environmental Health Center, that children, with their developing bodies and brains, are especially vulnerable to the harmful effects of lawn pesticides. Children’s behavior, (hand to mouth interactions,) proximity to the ground, walking or running through lawns instead of in the street, (especially where there are no sidewalks), dispose children to far more contact with lawn pesticides than adults;

WHEREAS, The Journal of the National Cancer Institute finds that home and garden pesticide use can increase the risk of childhood leukemia by up to seven times. Dr. Philip Landrigan, the Director of Mt.
Sinai Children’s Environmental Health Center states, “Case-control epidemiologic studies have found consistent, modest associations between pesticide exposures in utero and in early childhood and acute lymphocytic leukemia, childhood brain cancer and childhood non-Hodgkin's lymphoma. Rates of childhood leukemia are consistently elevated among children who grow up on farms, among children whose parents used pesticides in the home or garden, and among children of pesticide applicators.”

WHEREAS, The EPA states pesticides are chemical irritants that can trigger asthma attacks in sufferers. 1 in 10 children suffer from asthma, more in urban areas, where building managers routinely contract with lawn pesticide applicators;

WHEREAS, The National Institute of Environmental Health Sciences at NIH, and the Harvard School of Public Health have confirmed that exposure to pesticides raises the risk of Parkinson’s Disease;

WHEREAS, lawn pesticides have sub-lethal effects on animal life, including pets, aquatic organisms, and wildlife. A 2012 study by biologists at Harvard University concludes that pesticides are lethal to many pollinators and have been linked to Colony Collapse Disorder in honeybees;

WHEREAS, the Maryland Department of Natural Resources since 2004 have given Sligo Creek a rating of Poor; and the local advocacy group, Friends of Sligo Creek, on their website, ask people not to overuse pesticides and herbicides and also to “Encourage civic leaders to implement policies that reduce stormwater volumes, sewer leaks, nutrients, toxic chemicals, and other impediments to water quality,” and;

WHEREAS, the Chesapeake Bay Foundation’s 2010 State of the Bay Report observes that non-point source pollution from residential and commercial lawn pesticides in surrounding towns pollute the watershed and ultimately Chesapeake Bay;

WHEREAS, Most provinces in Canada have banned the use of cosmetic lawn chemicals, and subsequent studies show a dramatic increase in stream health; Washington DC has enacted the Pesticide Education and Control Amendment Act of 2012; and Greenbelt, MD, strictly prohibits the use of synthetic chemical pesticides on all city-owned land with their Sustainable Land Care Policy of 2011;

WHEREAS, non-toxic lawn care products are affordable and available to purchase in Takoma Park, and several local landscaping businesses offer pesticide-free lawn care.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND:

SECTION 1. Title 14, Health and Safety, Chapter 14, Cosmetic Lawn Pesticide Regulation, of the *Takoma Park Code* (2004 edition) is amended as follows:

14.28.010 Declaration of policy
The Council of the City finds that the use of pesticides for the cosmetic purposes of maintaining the aesthetic condition of lawns and gardens creates health risks to residents, especially children, and affects the quality of our environment and Chesapeake Bay. The intent of this ordinance is to clarify
what is meant by the cosmetic use of a pesticide, immediately prohibit the use of cosmetic pesticides on city property, and phase in a public education campaign and restrictions on the use of cosmetic lawn pesticides on private property within the City.

14.28.20 Definitions
As used in this chapter, subject to such extensions as may be given to any of these definitions under Section XXX of this chapter:

“Pesticide” refers to any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest. Though often misunderstood to refer only to insecticides, the term also applies to herbicides, fungicides, and various other substances used to control pests.

“Cosmetic use” means a pesticide applied for aesthetic purposes, e.g., to achieve a homogenous appearance, in the maintenance of lawn, turf, flowers, and ornamental plants, trees, or shrubs; unnecessary. An infestation of pests, (such as clover, grubs, black spot,) in these areas does not merit the use of pesticides. Exceptions include pesticides used for the purposes of controlling noxious weeds or to protect human health (see exceptions).

“Noxious weeds” shall include those described in Section 12.08.040 of Takoma Park Code.

“Health Risks” in this case, refers to the potential to suffer injury from chemical factors, such as exposure to cosmetic lawn pesticides

“Quality” means the state that is optimal for soil, water, air, flora, and fauna to thrive in Takoma Park and in all the connected environments where our activity has lasting impact

“Precautionary Principle” is the tool governments can employ when there is indication of potential harm to people or the environment, rather than proof of harm, as a result of human activity. It is clearly defined for use by American governments in the Wingspread Statement of 1998.

http://www.sehn.org/wing.html

14.28.30 Register
The City Manager shall create and issue, by April 1, 2013, and shall thereafter maintain a register of restricted pesticides and uses and administrative regulations necessary for enforcement of this ordinance. The initial register shall include the following pesticides and their associated products:

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<thead>
<tr>
<th>Pesticide</th>
<th>Product</th>
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<tr>
<td>2, 4-D</td>
<td>Ortho Max and Weed N' Feed</td>
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<tr>
<td>Bifenthrin</td>
<td>Ortho Bug B Gone Max</td>
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<tr>
<td>Dicamba</td>
<td>Ortho Max and Weed N' Feed</td>
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<tr>
<td>Dichlorprop-p Dimethylamine Salt</td>
<td>Scott’s Turf Builder</td>
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<tr>
<td>Diquat Dibromide</td>
<td>Spectracide and Roundup</td>
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<td>Glyphosate</td>
<td>Roundup</td>
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<td>Imazethapyr</td>
<td>Ortho Ground Clear</td>
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<tr>
<td>Imazapic</td>
<td>Round Up Extended Control</td>
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<tr>
<td>Imazapyr</td>
<td>Ortho Ground Clear</td>
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</tbody>
</table>
• Imidacloprid  
  Bayer Rose and Flower Care, Bayer Advantage Complete Insect Killer Turf and Soil (Banned in parts of New York State)
• Isoxaben  
  Bayer Weed Control
• Lambda-cyhalothrin  
  Terro Ant Killer and Ace Insect
• Mecoprop (MCPP)  
  Ortho Max, Weed N Feed, Ace Green Turf, many
• Metaldehyde  
  Ortho Bug Geta Snail and Slug Killer
• Permethrin  
  Ace, Bayer, many brands
• Propiconazole  
  Bayer Fungus Control
• Quinoxyfen, Quinchorac  
  Ortho Crab Grass
• Sulfentrazone  
  Spectracide Weed Stop for Lawns
• Tebuconazole  
  Bayer Rose and Flower
• Trichlorfon, Trichloro  
  Ortho Weed B Gone
• Triclopyr  
  Ortho Chickweed, Clover, Oxalis and Ortho Poison Ivy

14.28.40    Prohibited Applications

A. Use on City-owned Property: It shall be unlawful for any City employee or contractor to apply or cause to be applied any pesticide use on City-owned property or in a City right-of-way.

B. Use on Other Public Property: The City of Takoma Park shall inform governmental entities that own or control land within the city, and whose use of pesticides the city does not have power to restrict, of city restrictions on the use of pesticides within the city, in order to encourage and achieve compliance.

C. Use on Private Property: Starting July 1, 2013, it shall be illegal to apply restricted pesticides on private property in the city, whether by the property owner or a tenant, service provider, or other agent.

D. Notice Requirement: From the date of adoption of this ordinance until June 31, 2013, any party applying a pesticide that will be restricted by this ordinance must post public notice, readable and visible from the public right-of-way at the point closest to the area of application, stating the substance applied and the date of application.

14.28.xx    Exceptions

Exceptions to the Safe Grow Zone Act include:

Public Health or Safety: Pesticides can be used to control plants that are poisonous to the touch, such as poison ivy; insects that bite, sting, are venomous or are disease carrying, like mosquitoes; and animals,
insects or plants that may cause damage to a structure or infrastructure, such as termites. Cultural, physical, biological, and mechanical methods of control are also effective, and encouraged. (Education about alternative methods of mosquito control would be very useful for residents of Takoma Park, where in recent years, the Tiger Mosquito, Aedes albopictus, has become an extreme pest.)

Noxious Weeds: Maryland law requires landowners to control the noxious weeds Johnson grass, shattercane, and thistles on all types of land. Cultural, physical, biological, and mechanical methods of control are effective and encouraged.

Natural resources: The City of Takoma Park or Montgomery County may issue a license to control an invasive species that may be detrimental to the environment, or to protect a native plant, animal or a rare ecosystem.

Trees: Since trees are so important to protecting our climate, licensed professionals can use otherwise restricted pesticides with the written opinion of an arborist that states the use of pesticide is necessary to protect the health of the tree.

Where no feasible alternatives exist, or use is mandated by the State of Maryland or another governing entity.
A. City Use: Should the City of Takoma Park seek to apply restricted pesticides to public or private land, the City Manager shall issue a public attestation stating the location(s) and timing of use, the substance(s) to be applied, the date(s) of application, and the unavailability of acceptable alternatives, for any use of restricted pesticides.
B. Waiver for Private Use: The City of Takoma Park will accept and review appeals from individuals or groups who have exhausted acceptable alternatives to cosmetic pesticides. An application is a public record, stating the proposed location(s) and timing(s) of use, substance(s) to be applied, the date(s) of application, and the unavailability of acceptable alternatives. Applications shall be published by the city, online and in other forms, and shall be posted by the property owner or the owner’s agent, in a form readable and visible from the public right-of-way at the point(s) closest to the area(s) of application, at least seven days prior to the date(s) of application. The City Manager shall accept and weigh public comment in deciding whether to issue a waiver, which shall be of limited duration.

14.28.xx Outreach and education
The City Manager shall publish notice of this ordinance, including lists of banned pesticides and of alternative, less environmentally damaging products and cultural practices or methods of pest control, to customary outlets, and shall provide periodic notice regarding this ordinance, to identified retailers and lawn, garden, and tree-care providers serving Takoma Park and to churches, schools, and other institutions in the city, upon adoption of administrative regulations and subsequently every two years or more frequently.
The City Manager shall prepare and publish materials designed to educate the community about the role of pesticides in our local environment, such as the Sligo Creek Watershed, and about earth-friendly alternatives to cosmetic lawn pesticides.

14.28.xx **Enforcements and penalties**
A. Each act of illegal application of a restricted pesticide shall be a Class B misdemeanor.
B. Failure to provide and post notice of an allowed application of a restricted pesticide shall be a Class C misdemeanor.

ADOPTED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, THIS XX DAY OF XX, 2013, BY ROLL-CALL VOTE AS FOLLOWS:

AYE:
NAY:
ABSENT:
ABSTAIN:

Attest:

_________________________
Jessie Carpenter, CMC
City Clerk
# State Preemption Laws

A Beyond Pesticides Factsheet

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<tr>
<th>State</th>
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<td>Kentucky</td>
<td>Yes</td>
<td>Oregon</td>
<td>Yes</td>
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<tr>
<td>Louisiana</td>
<td>Yes</td>
<td>Pennsylvania</td>
<td>Yes</td>
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<tr>
<td>Maine</td>
<td>No</td>
<td>Rhode Island</td>
<td>Yes</td>
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</tr>
</tbody>
</table>

¹ Local ordinances must be submitted for approval to the New Jersey Department of Environment.

² Local ordinances must go to the Washington Office of the Attorney General for interpretation and approval. Generally, use restricted ordinances are not approved.
Proposed Safe Grow Zone Ordinance

Residents have drafted an ordinance that would amend the City Code to clarify what is meant by the cosmetic use of a pesticide, immediately prohibit the use of cosmetic pesticides on City property, and phase in a public education campaign and restrictions on the use of cosmetic lawn pesticides on private property within the City.

The draft ordinance is available for review: Safe Grow Zone Proposed Ordinance (PDF)

Other background materials provided by Safe Grow Zone proponents are also available for review.

- District of Columbia Pesticide Education and Control Amendment Act of 2012 (PDF)
- Beyond Pesticides blog entry, October 12, 2012, Pesticide Poisonings Spur Legislation Proposal in Utah
- New York Times Article, September 24, 2009, The Grass is Greener at Harvard
- State Preemption Laws: A Beyond Pesticides Factsheet (PDF)

What is a Cosmetic Lawn and Garden Pesticide?

As defined in the draft ordinance, “pesticide refers to any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest. Though often misunderstood to refer only to insecticides, the term also applies to herbicides, fungicides, and various other substances used to control pests.”

The ordinance defines cosmetic use as “a pesticide applied for aesthetic purposes, e.g., to achieve a homogenous appearance in the maintenance of lawn, turf, flowers, and ornamental plants, trees, or shrubs; unnecessary. An infestation of pests (such as clover, grubs, black spot) in these areas does not merit the use of pesticides. Exceptions include pesticides used for the purposes of controlling noxious weeds or to protect human health.”

Register of Restricted Pesticides

Proponents have developed an initial register of restricted pesticides and their associated products. A sampling of these is below. The full list is included in the draft ordinance online.
<table>
<thead>
<tr>
<th>Pesticide</th>
<th>Product</th>
</tr>
</thead>
<tbody>
<tr>
<td>2, 4-D</td>
<td>Ortho Max and Weed N’ Feed</td>
</tr>
<tr>
<td>Bifenthrin</td>
<td>Ortho Bug B Gone Max</td>
</tr>
<tr>
<td>Dicamba</td>
<td>Ortho Max and Weed N’ Feed</td>
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<tr>
<td>Dichlorprop-p Dimethylamine Salt</td>
<td>Scott’s Turf Builder</td>
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<tr>
<td>Diquat Dibromide</td>
<td>Spectracide and Roundup</td>
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<tr>
<td>Fenoxycarb</td>
<td>Bayer Weed Control</td>
</tr>
<tr>
<td>Imazethapyr</td>
<td>Ortho Ground Clear</td>
</tr>
<tr>
<td>Imazicpic</td>
<td>Round Up Extended Control</td>
</tr>
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<td>Imazipyr</td>
<td>Ortho Ground Clear</td>
</tr>
<tr>
<td>Propiconazole</td>
<td>Bayer Fungus Control</td>
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<tr>
<td>Quinoxyfen, Quinchorac</td>
<td>Ortho Crab Grass</td>
</tr>
<tr>
<td>Tebuconazole</td>
<td>Bayer Rose and Flower</td>
</tr>
<tr>
<td>Trichlorfon, Trichloro</td>
<td>Ortho Weed B Gone</td>
</tr>
</tbody>
</table>

**Limits on Use of Pesticides**

The proposed ordinance would prohibit the use of cosmetic lawn and garden pesticides by the City. Initially, private property owners would need to provide a specific type of notice if applying pesticides. Eventually, the restrictions would take effect.

**Exceptions**

The ordinance includes a number of exceptions: for public health or safety; control of noxious weeds; and protection of natural resources, including trees, from invasive species.

Where no alternative exists, other methods of pest control have failed, or when application is mandated by another level of government, the ordinance requires public notice and, in the case of private property owners, a waiver from the City.

**Education**
Finally, the ordinance would mandate periodic notice of the ordinance as well as a program of education and outreach.

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- Permits & Licenses
- Public Notices
- Ward Map & Street Directory

Contact Us

City Clerk

Phone:
Main: 301-891-7267
Fax: 301-270-4568

Email:
JessieC@takomaparkmd.gov
Address:
City Clerk
City of Takoma Park
7500 Maple Avenue
Takoma Park, MD 20912

Hours & Location:
8:30 am - 5:00 pm
Monday - Friday
Community Center
3rd Floor
MEMORANDUM

October 24, 2014

TO: County Council

FROM: Josh Hamlin, Legislative Attorney

SUBJECT: Introduction: Bill 52-14, Pesticides – Notice Requirements – Non-Essential Pesticides – Prohibitions

Bill 52-14, Pesticides – Notice Requirements – Non-Essential Pesticides – Prohibitions, sponsored by Council Vice President Leventhal and Councilmember Elrich, is scheduled to be introduced on October 28. A public hearing will be scheduled at a later date.

Bill 52-14 would:
(1) require posting of notice for certain lawn applications of pesticide;
(2) prohibit the use of certain pesticides on lawns;
(3) prohibit the use of certain pesticides on certain County-owned property;
(4) require the County to adopt an integrated pest management program for certain County-owned property; and
(5) generally amendment County law regarding pesticides.

Council Vice President Leventhal has explained the purpose of this Bill in his October 22, 2014 memorandum to Councilmembers (See ©14-17).

Background

The Regulatory Framework

The regulation of pesticides is the shared responsibility of federal, state, and local governments. This shared approach, known as “environmental federalism,” is consistently applied among several federal environmental protection laws,¹ and has evolved largely over the last 50 years.

At the national level, the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”) is the primary vehicle for pesticide regulation. FIFRA was enacted in 1947, and has evolved

¹ The 1972 Federal Water Pollution Control Act, the 1986 amendments to the Safe Drinking Water Act, the Toxic Substances Control Act, the Resource Conservation and Recovery Act, and the Oil Pollution Control Act of 1990 all provide for state and local regulatory roles.
from being primarily a labeling statute to become a somewhat more broad regulation. In 1972, administration of FIFRA was transferred to the newly created Environmental Protection Agency ("EPA"), which is responsible for classifying pesticides based on a review of the scientific evidence of their safety and impact on the health of individuals and the environment. FIFRA also requires EPA to maintain a registry of all but "minimum risk" pesticides. In addition to the classification and registry of pesticides, FIFRA provides a uniform national standard for labeling pesticides. FIFRA does not comprehensively regulate pesticides, however, and does not include public notice or permit requirements for the use of pesticides.

Under FIFRA, the states are the primary enforcers of pesticide use regulations, and FIFRA expressly authorizes states to enact their own regulatory measures concerning the sale or use of any federally registered pesticides in the state, provided the state regulation is at least as restrictive as FIFRA itself. In Maryland, pesticides are regulated by the Maryland Department of Agriculture, through the enforcement of Subtitles 1 and 2 of Title 5 of the Agriculture Article of the Maryland Code. Maryland law and regulations generally create a pesticide registration and labeling regime at the state level, and a licensing program for the application of certain pesticides. Title 5 does not include any express preemption language, and does not appear to generally regulate pesticides so comprehensively that preemption can be implied. As a general matter, therefore, the County may regulate pesticides, at least as restrictive as, and consistent with, federal and State law.

The authority of local governments to regulate pesticides was the subject of significant litigation in the 1980s, with a County law struck down as preempted by FIFRA. In Maryland Pest Control Assn. v. Montgomery County, Maryland, 646 F. Supp. 109 (D. Md. 1986), the U.S. District Court held that FIFRA preempted the County's local law imposing pesticide posting and notice requirements. The Court held that if Congress had wanted to include local governments in the regulation of pesticides, it would have expressly done so. However, in Wisconsin Public Intervenor v. Mortier, 111 S. Ct. 2476 (1991), the U.S. Supreme Court held, contrary to the Maryland Pest Control Assn. decision, that a unit of local government has the power, under FIFRA, to regulate pesticides within its own jurisdiction, provided that the local regulation is at least as restrictive as, and consistent with, FIFRA and any applicable state law. Since Mortier was decided, many states have expressly preempted local jurisdictions from regulating pesticides, but Maryland is one of seven states which do not preempt local regulation of pesticides.4 The County currently imposes certain notice, storage, handling, and consumer information requirements in Chapter 33B of the County Code.

Health Concerns and Pesticides

There is growing evidence of harmful effects associated with long-term use of or exposure to chemical pesticides.5 While there is not at present a consensus on causation,

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2 Minimum risk pesticides are a special class of pesticides that are not subject to federal registration requirements because their ingredients, both active and inert, are demonstrably safe for the intended use. Information about EPA’s treatment of minimum risk pesticides can be found at: http://www.epa.gov/oppbppd1/biopesticides/registools/25b/25b-faq.htm
3 Subtitle 1 is entitled the “Maryland Pesticide Registration and Labeling Law.” Subtitle 2 is the “Pesticide Applicator’s Law.”
5 http://www.nrdc.org/health/kids/ocar/chap5.asp
pesticide exposure has been linked to the following health problems: birth defects; numerous cancers, including non-Hodgkins lymphoma; Parkinson’s disease and other neurological disorders; immune system problems; and male infertility. In addition to potential links to human health problems, neonicotinoids, a class of insecticide chemically related to nicotine, have been linked to population declines in bees, which serve an important function in pollination.

Council Vice President Leventhal has discussed many of the health issues surrounding pesticide use in his memorandum at ©14-17.

**Laws in Other Jurisdictions**

Due to the fact that the vast majority of states have preempted local jurisdictions from regulating pesticides, there are only two examples of local jurisdictions that have banned pesticide use on public and private property: Takoma Park, Maryland, and Ogunquit, Maine. Several local jurisdictions have enacted legislation or adopted administrative policies related to pesticide reduction on public property, integrated pest management, and pesticide free parks.

Perhaps the most comprehensive pesticide restriction law in North America took effect in the Canadian province of Ontario in 2009. The Ontario law contains several classifications of pesticides, and generally bans the cosmetic use of over 100 pesticides. Six other provinces, have followed Ontario in restricting cosmetic use of pesticides.

**Bill 52-14**

Bill 52-14 includes provisions related to the application of pesticides on County-owned and private property, and requires the County to adopt an Integrated Pest Management (IPM) plan. IPM is a method of pest control which minimizes the use of chemical pesticides by focusing on pest identification, monitoring and assessing pest numbers and damage, and using a combination of biological, cultural, physical/mechanical and, when necessary, chemical management tools.

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7 http://www.cfp.ca/content/52/10/1704.short
9 http://www.wri.org/publication/pesticides-and-immune-system
13 http://www.takomaparkmd.gov/safegrow
14 http://ogunquitconservation.org/ogunquitconservation.org/Pesticide_Ordinance_Overview.html
15 http://www.beyondpesticides.org/lawn/activities/
17 https://www.ontario.ca/environment-and-energy/pesticides-home-lawns-and-gardens
19 http://www.epa.gov/oppp00001/factsheets/ipm.htm
Bill 52-14 will:

1) Require the posting of notice when a property owner applies a pesticide to an area of lawn more than 100 square feet, consistent with the notice requirements for when a landscaping business treats a lawn with a pesticide;

2) Require the Executive to designate a list of “non-essential” pesticides including:
   - all pesticides classified as “Carcinogenic to Humans” or “Likely to Be Carcinogenic to Humans” by the U.S. EPA;
   - all pesticides classified by the U.S. EPA as “Restricted Use Products;”
   - all pesticides classified as “Class 9” pesticides by the Ontario, Canada, Ministry of the Environment;
   - all pesticides classified as “Category 1 Endocrine Disruptors” by the European Commission; and
   - any other pesticides which the Executive determines are not critical to pest management in the County.

3) Generally prohibit the application of non-essential pesticides to lawns, with exceptions for noxious weed and invasive species control, agriculture and gardens, and golf courses;

4) Require the Executive to conduct a public outreach and education campaign before and during the implementation of the Bill;

5) Generally prohibit the application of non-essential and neonicotinoid pesticides to County-owned property; and

6) Require the County to adopt an Integrated Pest Management program.

Bill 52-14 has an expiration date of January 1, 2019.

This packet contains:

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Bill 52-14</td>
<td>1</td>
</tr>
<tr>
<td>Legislative Request Report</td>
<td>13</td>
</tr>
<tr>
<td>Council Vice President Leventhal Memo</td>
<td>14</td>
</tr>
</tbody>
</table>
AN ACT to:

(1) require posting of notice for certain lawn applications of pesticide;
(2) prohibit the use of certain pesticides on lawns;
(3) prohibit the use of certain pesticides on certain County-owned property
(4) require the County to adopt an integrated pest management program for certain County-
owned property; and
(5) generally amend County law regarding pesticides.

By amending
Montgomery County Code
Chapter 33B, Pesticides
Sections 33B-1, 33B-2, 33B-3, 33B-4, 33B-5, 33B-6, and 33B-7

By adding
Montgomery County Code
Chapter 33B, Pesticides
Articles 2, 3, 4, and 5
Sections 33B-8, 33B-9, 33B-10, 33B-11, 33B-12, and 33B-13

The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Sections 33B-1, 33B-2, 33B4, 33B-5, 33B-6 and 33B-7 are amended, and Sections 33B-8, 33B-9, 33B-10, 33B-11, 33B-12, and 33B-13 are added as follows:

**ARTICLE 1. General Provisions**

**33B-1. Definitions.**

In this [chapter] Chapter:

*Agriculture* means the business, science, and art of cultivating and managing the soil, composting, growing, harvesting, and selling sod, crops and livestock, and the products of forestry, horticulture and hydroponics; breeding, raising, or managing livestock, including horses, poultry, fish, game and fur-bearing animals, dairying, beekeeping and similar activities, and equestrian events and activities.

*Custom applicator* means a person engaged in the business of applying pesticides.

*Department* means the Department of Environmental Protection.

*Director* means Director of the Department of Environmental Protection[,] or the Director's designee.

*Integrated pest management* means a process for managing pests that:

1. uses monitoring to determine pest injury levels;
2. combines biological, cultural, mechanical, physical, and chemical tools and other management practices to control pests in a safe, cost effective, and environmentally sound manner that contributes to the protection of public health and sustainability;
3. uses knowledge about pests, such as infestations, thresholds, life histories, environmental requirements, and natural control of pests; and
(4) uses non-chemical pest-control methods and the careful use of least-toxic chemical methods when non-chemical methods have been exhausted or are not feasible.

Larvicide means a pesticide designed to kill larval pests.

Lawn means an area of land, except agricultural land, that is:

(1) [Mostly] mostly covered by grass, other similar herbaceous plants, shrubs, or trees; and

(2) [Kept] kept trim by mowing or cutting.

Lawn includes an athletic playing field other than a golf course. Lawn does not include a garden.

Neonicotinoid means a class of neuro-active pesticides chemically related to nicotine. Neonicotinoid includes acetamiprid, clothianidin, dinofuran, imidacloprid, nitenpyram, nithiazine, thiialoprid, and thiamethoxam.

Non-essential pesticide means a pesticide designated as a non-essential pesticide under Section 33B-4.

Pest means an insect, snail, slug, rodent, nematode, fungus, weed, or other form of plant or animal life or microorganism (except a microorganism on or in a living human or animal) that is normally considered to be a pest or defined as a pest by applicable state regulations.

Pesticide means a substance or mixture of substances intended or used to:

(1) prevent, destroy, repel, or mitigate any pest;

(2) be used as a plant regulator, defoliant, or desiccant; or

(3) be used as a spray adjuvant, such as a wetting agent or adhesive.

However, pesticide does not include an antimicrobial agent, such as a disinfectant, sanitizer, or deodorizer, used for cleaning that is not considered a pesticide under any federal or state law or regulation.
Private lawn application means the application of a pesticide to a lawn on property owned by or leased to the person applying the pesticide. Private lawn application does not include:

(1) applying a pesticide for the purpose of engaging in agriculture;
(2) applying a pesticide around or near the foundation of a building for purpose of indoor pest control;
(3) applying a pesticide to a golf course or turf farm.

Vector means an animal, insect, or microorganism that carries and transmits an infectious pathogen into another organism.

[33B-4.]

33B-2. Signs with retail purchase of pesticide.

A person who sells at retail a pesticide or material that contains a pesticide must make available to a person who buys the pesticide or material that contains a pesticide:

(a) [Notice] notice signs and supporting information that are approved by the [department] Department; and
(b) [The] the product label or other information that the federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) [, 7 U.S.C. 136 et seq.,] requires for sale of the pesticide.

The Department must enforce this Section and must annually inspect each person who sells at retail a pesticide or material that contains a pesticide.

[33B-5]

33B-3. Storage and handling of pesticides.

* * *

[33B-6]

33B-4. Regulations.

(a) The [County] Executive must adopt regulations to carry out this Chapter under method (2).
(b) The Executive must include in the regulations adopted under this [section] Section the minimum size or quantity of pesticide subject to [section 33B-4] Section 33B-2.

(c) The Executive must include in the regulations adopted under this Section a list of non-essential pesticides. The list of non-essential pesticides must include:

(1) all pesticides classified as “Carcinogenic to Humans” or “Likely to Be Carcinogenic to Humans” by the U.S. Environmental Protection Agency;

(2) all pesticides classified by the U.S. Environmental Protection Agency as a “Restricted Use Product”;

(3) all pesticides classified as a “Class 9” pesticide by the Ontario, Canada, Ministry of the Environment;

(4) all pesticides classified as a “Category 1 Endocrine Disruptor” by the European Commission; and

(5) any other pesticides which the Executive determines are not critical to pest management in the County.

(d) The Executive must include in the regulations adopted under this Section a list of invasive species that may be detrimental to the environment in the County.

(e) The Executive must review and update the lists of non-essential pesticides and invasive species designated under subsections (c) and (d) by July 1 of each year.


(a) Any violation of this Chapter is a class C violation.

(b) Each day a violation continues is a separate offense.

ARTICLE 2. Notice Requirements.

(a) In this [section] Section:

(1) Customer means a person who makes a contract with a custom applicator to have the custom applicator apply a pesticide to a lawn.

(2) New customer includes a customer who renews a contract with a custom applicator.

(b) A custom applicator must give to a new customer:

(1) [Before] before application, a list of:

[a.](A) [The] the trade name of each pesticide that might be used;

[b.](B) [The] the generic name of each pesticide that might be used; and

[c.](C) [Specific] specific customer safety precautions for each pesticide that might be used; and

(2) [After] after application, a list of:

[a.](A) [The] the trade name of each pesticide actually used;

and

[b.](B) [The] the generic name of each pesticide actually used; and

(3) [A] a written notice about pesticides prepared by the [department] Department under subsection (c) [of this section].

(c) The [department] Department must prepare, keep current, and provide to a custom applicator a written notice about pesticides for the custom applicator to give to a customer under subsection (b) [of this section].

(d) The notice prepared by the [department] Department under subsection (c) [of this section] must include:
(1) [Government] government agency phone numbers to call to:
   [a.] (A) [Make] make a consumer complaint;
   [b.] (B) [Receive] receive technical information on pesticides; and
   [c.] (C) [Get] get assistance in the case of a medical emergency;

(2) [A] a list of general safety precautions a customer should take when a lawn is treated with a pesticide;

(3) [A] a statement that a custom applicator must:
   [a.] (A) [Be] be licensed by the Maryland Department of Agriculture; and
   [b.] (B) [Follow] follow safety precautions; and

(4) [A] a statement that the customer has the right to require the custom applicator to notify the customer before each treatment of the lawn of the customer with a pesticide.

[33B-3] 33B-7. Posting signs after application by custom applicator.

(a) Immediately after a custom applicator treats a lawn with a pesticide, the custom applicator must [post a sign on the lawn] place markers within or along the perimeter of the area where pesticides will be applied.

(b) A [sign posted] marker required under this [section] Section must:
   (1) [Be] be clearly visible [from the principal place of access to] to persons immediately outside the perimeter of the property;
   (2) [Be] be a size, form, and color approved by the [department] Department;
   (3) [Be] be made of material approved by the [department] Department; [and]
(4) [Have] have wording with content and dimensions approved by the [department] Department[,]; and

(5) be in place on the day that the pesticide is applied.

33B-8. Posting signs after application by property owner or tenant.

(a) A person who performs a private lawn application treating an area more than 100 square feet must place markers within or along the perimeter of the area where pesticides will be applied.

(b) A marker required under this Section must:

(1) be clearly visible to persons immediately outside the perimeter of the property;

(2) be a size, form, and color approved by the Department;

(3) be made of material approved by the Department; and

(4) have wording with content and dimensions approved by the Department; and

(5) be in place on the day that the pesticide is applied.

ARTICLE 3. Application restrictions.

33B-9. Prohibited application.

A person must not apply a non-essential pesticide to a lawn.

33B-10. Exceptions and Exemptions.

(a) A person may apply a non-essential pesticide for the following purposes:

(1) for the control of weeds as defined in Chapter 58, Weeds;

(2) for the control of invasive species listed in a regulation adopted under Subsection 33B-4(d);

(3) for pest control while engaged in agriculture; and

(4) for the maintenance of a golf course.
(b) A person may apply to the Director for an exemption from the prohibition of Section 33B-9 for a non-essential pesticide. The Director may grant an exemption to apply a non-essential pesticide on property where application is prohibited under Section 33B-9 if the applicant shows that:

1. effective alternatives are unavailable;
2. granting an exemption will not violate State or federal law; and
3. use of the non-essential pesticide is necessary to protect human health or prevent significant economic damage.

(d) A person may apply to the Director for an emergency exemption from the prohibition in Section 33B-9 if a pest outbreak poses an imminent threat to public health or if significant economic damage would result from the inability to use a pesticide prohibited by Section 33B-9. The Director may impose specific conditions for the granting of emergency exemptions.

33B-11. Outreach and Education Campaign.

The Executive must implement a public outreach and education campaign before and during implementation of the provisions of this Article. This campaign should include:

(a) informational mailers to County households;
(b) distribution of information through County internet and web-based resources;
(c) radio and television public service announcements;
(d) news releases and news events;
(e) information translated into Spanish, French, Chinese, Korean, Vietnamese, and other languages, as needed;
extensive use of County Cable Montgomery and other Public, Educational, and Government channels funded by the County; and

posters and brochures made available at County events, on Ride-On buses and through Regional Service Centers, libraries, recreation facilities, senior centers, public schools, Montgomery College, health care providers, hospitals, clinics, and other venues.

ARTICLE 4. County Property

33B-12. Prohibition on County-owned property.

(a) Prohibition. Except as provided in subsection (b), a person must not apply to any property owned by the County:

(1) a non-essential pesticide; or

(2) a nonicotinoid.

(b) Exceptions.

(1) A person may use any larvicide or rodenticide on property owned by the County as a public health measure to reduce the spread of disease vectors under recommendations and guidance provided by the Centers for Disease Control and Prevention, the United States Environmental Protection Agency, or the State Department of Agriculture. Any rodenticide used must be in a tamper-proof product, unless the rodenticide is designed and registered for a specific environment inaccessible to humans and pets.

(2) A person may use a non-essential pesticide or neonicotinoid for the purposes set forth in Subsection 33B-10(a).

(3) A person may use a non-essential pesticide or neonicotinoid on property owned by the County if the Director determines, after consulting the Directors of General Services and Health and Human Services, that the use of pesticide is necessary to protect
human health or prevent imminent and significant economic
damage, and that no reasonable alternative is available. If a
pesticide is used under this paragraph, the Director must, within
30 days after using the pesticide, report to the Council on the
reasons for the use of the pesticide.

33B-13. Integrated pest management.

(a) Adoption of program. The Department must adopt, by a method (2)
regulation, an integrated pest management program for property owned
by the County.

(b) Requirements. Any program adopted under subsection (a) must require:

(1) monitoring the turf or landscape;
(2) accurate record-keeping documenting any potential pest problem;
(3) evaluating the site for any injury caused by a pest and
determining the appropriate treatment;
(4) using a treatment that is the least damaging to the general
environment and best preserves the natural ecosystem;
(5) using a treatment that will be the most likely to produce long-
term reductions in pest control requirements and is operationally
feasible and cost effective in the short and long term;
(6) using a treatment that minimizes negative impacts to non-target
organisms;
(7) using a treatment that is the least disruptive of natural controls;
(8) using a treatment that is the least hazardous to human health; and
(9) exhausting the list of all non-chemical and organic treatments
available for the targeted pest before using any synthetic
chemical treatments.
(c) The Department must provide training in integrated pest management for each employee who is responsible for pest management.

Sec. 2. Initial Lists of Non-Essential Pesticides and Invasive Species. The Executive must submit the lists of non-essential pesticides and invasive species required by Subsections 33B-4(c) and (d) to the Council for approval by October 1, 2015.

Sec. 3. Effective Date. The prohibitions on use of non-essential pesticides contained in Section 33B-9 and the prohibitions on use of non-essential pesticides and neonicotinoids contained in Section 33B-12 take effect on January 1, 2016.

Sec. 4. Expiration. This Act and any regulation adopted under it expires on January 1, 2019.

Approved:

Craig L. Rice, President, County Council

Approved:

Isiah Leggett, County Executive

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council
LEGISLATIVE REQUEST REPORT

Bill 52-14
Pesticides – Notice Requirements – Non-Essential Pesticides - Prohibitions

DESCRIPTION: This Bill would require posting of notice for certain lawn applications of pesticide, prohibit the use of certain pesticides on lawns, prohibit the use of certain pesticides on certain County-owned property and require the County to adopt an integrated pest management program for certain County-owned property.

PROBLEM: Long term use of and exposure to certain chemical pesticides has been linked to several health problems, including birth defects, cancer, neurological problems, immune system problems, and male infertility.

GOALS AND OBJECTIVES: To protect the health of families, especially children, from the unnecessary risks associated with the use of certain pesticides that have been linked to a wide-range of diseases.

COORDINATION: Department of Environmental Protection

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Josh Hamlin, Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: Class C violation
MEMORANDUM

October 22, 2014

TO: Councilmembers

FROM: George Leventhal, Council Vice President

SUBJECT: Pesticide Legislation

This coming Tuesday, October 28, I will be introducing legislation aimed at protecting the health of families — and especially children — from the unnecessary risks associated with the use of certain cosmetic pesticides that have been linked to a wide-range of diseases, and which provide no health benefits.

As you know, for the better part of the last year, I have been working towards introducing legislation on this matter. Since the September 2013 meeting of the T&E committee, I have met with countless stakeholders, on both sides of the issue, to learn more about how pesticides are being applied in the county, what other governments are doing to ensure that the public’s health is being protected, and what the latest research tells us about their risks. The legislation that I am introducing on Tuesday incorporates feedback I received from proponents and opponents on the previous draft of the bill, which I shared with your offices back in May. The result is a bill that balances the rights of homeowners to maintain a beautiful lawn with the rights of residents who prefer not to be exposed to chemicals that have known health effects; I view this bill as a starting point in our discussion which can be tweaked along the way.

I want to preface my concerns by affirming the value of pesticides when they are used to protect public health, the environment, our food or our water supply, but when pesticides are used solely to improve the appearance of landscapes, they can cause more harm than good. In my view, cosmetic pesticides present a substantial threat to the health of today’s children. The American Academy of Pediatrics states that children face the greatest risk from the chemicals they contain, and that epidemiologic evidence demonstrates associations between early life exposure to pesticides and pediatric cancers, decreased cognitive function and behavioral problems such as ADHD. Certain toxic chemicals can cause permanent brain damage in children even at low levels of exposure that would have little to no adverse effect in an adult. A child doesn’t even

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have to be directly exposed to a pesticide to suffer negative health outcomes. During pregnancy, chemicals in women can cross the placenta and result in higher fetal exposure than the mother has been exposed to. Prenatal exposure to certain chemicals has been documented to increase the risk of cancer in childhood.\textsuperscript{3} Virtually every pregnant woman in the United States is exposed to multiple chemicals during a sensitive period of fetal development that have been linked to adverse reproductive and developmental outcomes.\textsuperscript{4}

Adults are also at risk of developing serious health problems due to pesticide exposure. Researchers at the National Institutes of Health have linked pesticide use to a wide range of diseases and conditions. Exposure to certain pesticides has been linked to Parkinson's disease, diabetes, leukemia, lymphoma, lupus, rheumatoid arthritis, dementia, reproductive dysfunction, Alzheimer's disease, and variety of cancers including breast, colon, prostate and lung cancer.\textsuperscript{5}

In addition to the adverse health effects to humans, pesticides can also affect animals, both pets and wildlife, and our waterways. A recent study by the United States Geological Survey has found that 90% of urban area waterways now have pesticide levels high enough to harm aquatic life, and moreover, the USGS said the harm to aquatic life was likely understated in their report.\textsuperscript{6} Terrestrial wildlife is also being harmed by the use of certain pesticides. The most concerning example involves honeybees, which pollinate nearly one-third of the food we eat, and a particular class of pesticides called neonicotinoids. Neonicotinoids have been repeatedly and strongly linked with the collapse of honey bee colonies. In just the last year, Maryland lost nearly 50 percent of its honeybee population, an increase over previous years, which averaged about a one-third loss annually.\textsuperscript{7}

Before I describe what this bill does, let me describe what this bill does not do. This bill does not ban the use of all pesticides; it would, however, restrict the use of certain toxic chemicals that are most dangerous to human health. This bill does not prohibit the use of any pesticide for gardens. And this bill would not prohibit the use of any pesticide for agricultural use. What this bill does is seek to limit children's exposure to harmful pesticides in places where children are most likely to be exposed to them. That being said, the major provisions of the bill are:

1) Require the posting of notice when a property owner applies a pesticide to an area of lawn more than 100 square feet, consistent with the notice requirements for when a landscaping business treats a lawn with a pesticide;

2) Require the Executive to designate a list of "non-essential" pesticides including:
   • all pesticides classified as "Carcinogenic to Humans" or "Likely to Be Carcinogenic to Humans" by the U.S. EPA;
   • all pesticides classified by the U.S. EPA as "Restricted Use Products;"

\textsuperscript{3} American College of Obstetricians & Gynecologists, Committee Opinion No. 575. American College of Obstetricians and Gynecologists. 931-5, October 2013


all pesticides classified as “Class 9” pesticides by the Ontario, Canada, Ministry of the Environment; and
3) Generally prohibit the application of non-essential pesticides to lawns, with exceptions for noxious weed and invasive species control, agriculture and gardens, and golf courses;
4) Require the Executive to conduct a public outreach and education campaign before and during the implementation of the Bill;
5) Generally prohibit the application of a non-essential or neonicotinoid pesticide to County-owned property; and
6) Require the County to adopt an Integrated Pest Management program.
7) Sunset the act and any regulation adopted under it on January 1, 2019

The pesticide industry will respond to this legislation by saying “the science isn’t there” and that “all pesticides are extensively tested and approved as safe by the EPA,” but while both statements sound believable, they belie the truth. In response to the charge that the science isn’t there to legislate, the absence of incontrovertible evidence does not justify inaction. As evidenced by this memo, the number of studies from respected institutions of science linking pesticides to a variety of cancers, neurodevelopmental disorders and diseases is abundant and persuasive. Furthermore, due to the inestimable number of chemical combinations possible from the thousands of products on the market and the complex interactions with the human body, the research that opponents to this legislation will demand will never be possible within the ethical confines of research. The real danger lies not in being exposed to one chemical, but a mixture of chemicals. The EPA risk assessment fails to look at the synergistic effects of multiple chemicals, even though studies show that exposure to multiple chemicals that act on the same adverse outcome can have a greater effect than exposure to an individual chemical.8

And to the charge that a pesticide must be safe if it has been approved by the EPA, the Government Accountability Office (GAO) has found that many pesticides are currently being approved for consumer use by the EPA without receipt and review of data that the manufacturer is required to provide on the safety of the chemicals.9 Alarmingly, in some cases the manufacturer was given two years to submit studies on the effects of a pesticide, and ten years later no studies had been received or reviewed by the EPA.10 What’s more, the EPA itself publishes an entire manual – Recognition and Management of Pesticide Poisonings - for healthcare professionals that acknowledges the toxic nature and effects of many pesticides. As an educated populace, we like to think that we have a high bar for pesticide safety in this country, but sadly, when a pesticide has been approved by the EPA, it connotes little about its safety.

Lawn care does not have to be poisonous to people, pets, wildlife, or our waterways. It is simply false to say that you can’t have a lush, green lawn - free of weeds - without the use of toxic pesticides. Through proper management of the soil, along with the use of natural, organic alternatives to synthetic pesticides, a high quality landscape can be achieved. And under my

legislation, residents will still be free to hire any lawn care professional to treat their lawn or to manage their own lawn care.

Much like the public debate that occurred in the 1950's before cigarettes were found to be cancer-causing, I believe we are approaching a similar turning point in the discourse on pesticides as the public is made more aware of the known health effects. In a poll taken earlier this year, more than three-quarters of Marylanders expressed concern about the risk that pesticides pose to them or their families, and when respondents learned of the adverse health effects that pesticides are linked to, 90% of Marylanders expressed concern.11

America lags behind by the rest of the developed world in recognizing the serious risks that certain pesticides pose to health and life. The GAO’s report confirms that the regulatory approach taken by the EPA is broken and failing the public. In the face of mounting scientific evidence, and in the absence of action on the federal level, I find it impossible not to act now to protect the health of our children. In Montgomery County, we regularly take a precautionary approach to public health and environmental issues, such as with the forthcoming legislation on e-cigarettes and the Council’s action on Ten Mile Creek. Our approach to pesticides should be no different.

I have attached all of the studies that I have cited in this memo for your reference, but I hope you will take time to review research beyond what I have provided. If, after reviewing the research, you feel compelled to act as I do, I would welcome your co-sponsorship on this bill.

This issue is among the most technically complex which the Council has ever faced. Therefore, it is critical that we approach this in a thoughtful manner and that we consult with a variety of experts who are knowledgeable in the field so we can make a well-informed decision regarding this important public health issue.

TOWN OF MARBLEHEAD
BOARD OF HEALTH

ORGANIC PEST MANAGEMENT
REGULATIONS

Adopted: December 7, 2005
Effective: December 22, 2005

Carl D. Goodman, Esq., Chairman
David B. Becker, D.M.D., M.P.H.
Helaine R. Hazlett

Wayne O. Attridge, Director of Public Health

TOWN OF MARBLEHEAD
BOARD OF HEALTH
ORGANIC PEST MANAGEMENT REGULATIONS

SECTION I – FINDINGS & PURPOSE

The Board of Health does hereby find that:

All pesticides are toxic to some degree and the commonplace, widespread use of pesticides is both a major environmental problem and a public health issue; and

All citizens, and in particular children, as well as other inhabitants of our natural environment, have a right to protection from exposure to hazardous chemicals and pesticides in particular; and

A balanced and healthy ecosystem is vital to the health of the town and its citizens; and as such is also in need of protection from exposure to hazardous chemicals and pesticides; and

When an activity raises threats of harm to the environment or human health, precautionary measures should be taken, even if some cause and effect relationships are not yet fully established; and

It is in the best interest of public health to eliminate the use of toxic pesticides on Town-owned land, ponds and waterways; to encourage the reduction and elimination of the use of toxic pesticides on private property; and to introduce and promote natural, organic cultural and management practices to prevent and, when necessary, control pest problems on Town-owned land.

Accordingly, the Board of Health finds and declares that the purposes of these Organic Pest Management Regulations are (1) to protect the public health by restricting the use of hazardous chemicals and pesticides on Town-owned land (2) to guarantee the right of the residents of the town of Marblehead the safe use of public land, (3) to encourage the reduction and elimination of the use of toxic pesticides on private property.

SECTION II – AUTHORITY

These Organic Pest Management Regulations are promulgated under the authority granted to the Marblehead Board of Health under Massachusetts General Laws Chapter 111, Section 31 providing that Boards of Health may make reasonable health regulations and under the authority granted to the Marblehead Board of Health under Massachusetts General Laws Chapter 111, Section 122 to make regulations for the public health and safety relative nuisances and causes of sickness.
SECTION III – DEFINITIONS

The following words and phrases, whenever used in these Organic Pest Management Regulations, shall be construed as defined in this section:

**OPM** shall mean Organic Pest Management.

**Pests** are and may be known as undesirable plants, insects, fungi, bacteria, and rodents, birds and other animals. Common examples in turf grass and the landscape can be, but are not limited to, crabgrass, knotweed, poison ivy, chinch bugs, grubs, and a variety of plant pathogens.

**Pesticides** are defined by the Massachusetts Department of Food and Agriculture Pesticide Bureau as “substances or mixtures of substances that prevent, destroy, repel, or mitigate pests, or defoliate, desiccate, or regulate plants.” Pesticides are poisonous substances that can have an adverse effect on the environment or impair human health. Herbicides, fungicides, insecticides, miticides, avicides and rodenticides are all considered pesticides. Pesticides that are classified as known, likely, or probable human carcinogens or probable endocrine disruptors, or those pesticides that meet the criteria for Toxicity Category I or Toxicity Category II, as defined by the United States Environmental Protection Act (EPA) in section 156.10 of Part 156 of Title 40 of the Code of Federal Regulations, are subject to these Regulations. A list of the pesticides in the EPA’s Toxicity Categories I and II will be periodically updated and maintained at the offices of the Town of Marblehead Board of Health.

**Organic Pest Management** is a problem-solving strategy that prioritizes a natural, organic approach to turf grass and landscape management without the use of toxic pesticides. It mandates the use of natural, organic cultural practices that promote healthy soil and plant life as a preventative measure against the onset of turf and landscape pest problems.

Essential OPM practices include, but are not limited to:

- regular soil testing;
- addition of approved soil amendments as necessitated by soil test results, following, but not limited to, the recommendations of NOFA/Mass (Northeast Organic Farmers’ Association/Mass) and/or the Organic Material Review Institute of Eugene, OR;
- selection of plantings using criteria of hardiness; suitability to native conditions; drought, disease and pest-resistance; and ease of maintenance;
- modification of outdoor management practices to comply with organic horticultural science, including scouting, monitoring, watering, mowing, pruning, proper spacing, and mulching;
- the use of physical controls, including hand-weeding and over-seeding;
- the use of biological controls, including the introduction of natural predators, and enhancement of the environment of a pest’s natural enemies;
- through observation, determining the most effective treatment time, based on pest biology and other variables, such as weather and local conditions; and
• eliminating pest habitats and conditions supportive of pest population increases.

SECTION IV – PROHIBITION

The use and application of toxic chemical pesticides, by Town of Marblehead employees and/or by private contractors, is prohibited on all Town-owned lands.

SECTION V – CONTROL OF POTENTIAL PEST PROBLEMS

Organic Pest Management practices, i.e. natural, organic turf and landscape cultural practices and maintenance, shall be the method of choice to understand, prevent, and control potential pest problems;

Control products used under the terms of this Regulation shall be those products on the approved list of NOFA/Mass. (Northeast Organic Farmers’ Association/Mass.) and/or the Organic Materials Review Institute of Eugene, Oregon, or such other lists or products as may be approved by the Director or by the Board of Health from time to time;

SECTION VI – ADVISORY COMMITTEE

An OPM Advisory Committee shall be formed which shall advise the Board of Health as to all matters arising out of or in connection with these Regulations. Whenever practical, the Director and/or the Board of Health shall consult with the Advisory Committee prior to the granting of any waivers under Section VIII. The Advisory Committee shall have such additional responsibilities as may be granted to it by the Board of Health. The OPM Advisory Committee shall be composed of representatives of the general public, elected town officials, appointed town officials, and town employees as the Board of Health may determine from time to time. Membership on the OPM Advisory Committee shall be at the pleasure of the Board of Health.

SECTION VII – INVENTORY OF PESTICIDES

A registry of all pesticides currently stored in or on Town-owned premises shall be compiled by the Director of Public Health who shall have authority to order the disposal of any such products that the Director deems unnecessary to be stored within the Town, such disposal to be through the Town’s Hazardous Wastes Collection program or otherwise.

SECTION VIII – EXEMPTIONS

All outdoor pest management activities taking place on Town of Marblehead-owned land shall be subject to these Regulations, except as follows:
1. Pesticides otherwise lawfully used for the purpose of maintaining a safe
   drinking water supply at drinking water treatment plants and at wastewater
   treatment plants and related collection, distribution, and treatment facilities.
2. Pesticides in contained baits or traps for the purpose of rodent control.
3. Pesticides classified by the United States Environmental Protection Agency as
   exempt materials under 40CRF 152.25, or those pesticides of a character not
   requiring FIFRA regulation.
4. The use of chemical controls as approved in advance and in writing by the
   Director of Public Health or by the Board of Health in the event of a public
   emergency as determined by the Director or by the Board of Health; provided,
   however, that such authority to grant a temporary waiver shall be limited to a
   period of thirty days. Any waiver in excess of thirty days as to any one
   emergency may be extended for an additional period not to exceed six months
   but only by a vote of the Board of Health. All waivers granted by the
   Director shall be reported to all members of the Board of Health no later than
   one business day following the issuance of the waiver. Notice of all such
   waivers shall be posted, in the manner provided for notice of public meetings,
   within two business days following the issuance of the waiver. Any waiver
   granting the use of pesticides on Town land shall require the use of Integrated
   Pest Management protocol and shall specify the use of a specific pesticide(s)
   determined to be the least toxic material for the specific application. The
   Board of Health shall determine if such a waiver is warranted based on the
   following criteria: a) the pest situation poses a threat to human or animal
   health and/or environmental quality; b) reasonable OPM efforts, if any, have
   been attempted; and c) viable alternatives consistent with this Regulation do
   not exist.

Any Town department or contractor granted a waiver hereunder shall comply with all
applicable laws, rules and regulations of the Commonwealth of Massachusetts including,
but not limited to those requiring notification to site users, abutters, and the proper
method for storage, application, and posting.

SECTION IX: TRAINING AND EDUCATION

All Town of Marblehead personnel involved in the evaluation, approval, or
implementation of organic turf and landscape maintenance and/or outdoor pest control
should receive training and education in natural, organic cultural and technical methods.

SECTION X: COMPLAINTS

A. The Director of Public Health shall investigate complaints received about
   any practices or acts that may violate any provision of these Regulations.

B. If the Director finds that an investigation is not required because the
   alleged act or practice is not in violation of these Regulations, the Director shall notify
the complainant of such finding and the reasons upon which it is based. The Director shall provide a report to the Board of Health of all such complaints and findings.

C. If the Director finds that an investigation is warranted, the Director shall investigate and if the Director finds that there has been a violation of these Regulations, then the Director and/or Board of Health shall be authorized to take such action and institute such proceedings as are provided by law.

SECTION XI – VIOLATIONS AND PENALTIES

A. It shall be unlawful for any person to use or apply any toxic chemical pesticides on any town owned land except as specifically authorized in these Regulations.

B. Any person who violates any provision of these Organic Pest Management Regulations shall be subject to a fine of five hundred ($500.00) dollars for a first offense and one thousand ($1000.00) dollars for second and subsequent offenses.

C. Each application of a prohibited product shall be deemed to be a separate offense.

D. Citations for violations of these Organic Pest Management Regulations may be in such form as the Board of Health may determine.

E. In addition to the penalties provided for hereunder, the Board of Health shall have the authority to file a civil suit for damages to compensate the Town for all costs incurred as a result of violations of these regulations.

SECTION XII – OTHER APPLICABLE LAWS

These Organic Pest Management Regulations shall not be interpreted or construed to permit the application or use of pesticides or other hazardous materials where such use or application is restricted by other applicable health, environmental, safety or fire codes, regulations or statutes.

SECTION XIII – SEVERABILITY

If any provision, clause, sentence or paragraph of these Organic Pest Management Regulations or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions of these Organic Pest Management Regulations that can be given effect without the invalid provision, clause, sentence, or paragraph, and to this end the provisions are declared to be severable.
SECTION XIV: EFFECTIVE DATE

These regulations shall be effective upon publication.

Adopted: December 7, 2005

By the Board of Health of the Town of Marblehead
Carl D. Goodman, Esq., Chairman
David B. Becker, D.M.D., M.P.H.
Helaine R. Hazlett, Secretary
Wayne O. Attridge, Director of Public Health