

Discussion Paper

on

Revisions to the
Pesticides Control Regulations

under the
Environmental Protection Act

February 2004



Government of Newfoundland and Labrador
Department of Environment and Conservation

TABLE OF CONTENTS

Introduction	1
Proposed changes to <i>Pesticides Control Regulations</i>	5
Section 4. Operator's licence	5
Section 6. Unlicensed assistants	6
Section 7. Vendor's licence	6
Section 8. Purchase of pesticides	7
Section 11. Storage apart from food and drink	8
Section 13. Storage requirements	9
Additional Section (A). Application and storage of pesticides on farms ..	9
Appendix	10

Discussion Paper
on
revisions to the *Pesticides Control Regulations*
under the *Environmental Protection Act*

Introduction

Both the federal (Health Canada) and provincial (Department of Environment and Conservation) governments are involved in pesticide testing and licensing in Newfoundland and Labrador. There is strict federal control on the manufacturing of pesticides. Any manufacturer who wishes to sell a pesticide in Canada must register that pesticide under the *Pest Control Products Act* and follow the registration process administered by the Pest Management Regulatory Agency (PMRA) of Health Canada. The manufacturer must complete extensive studies on the pesticide and must support its application by thoroughly documenting the pesticide's effects on users, bystanders and the environment.

Health Canada's evaluations include:

- long-term and short-term health effects for users and exposed bystanders
- residues in food
- water contamination
- effects on wildlife
- environmental fate

The federal government will grant registration if they find the pesticide's safety, merit and value are acceptable. All registered pesticides are subject to periodic re-evaluation and the federal government may suspend or cancel its approval if they note any concerns.

Following a registration decision, pesticide products are classified into one of the following classes: Domestic, Commercial, Restricted or Manufacturing. These designations are based on:

- a combination of hazard and risk
- pesticide application area (ex., products intended for direct application to bodies of water which are not contained or products intended for direct application to forests would be placed into a more restricted classification)
- intended market (ex., commercial, agriculture or domestic use).

The primary consideration in the classification is the intended use of the product as indicated by the registrant.

The Government of Newfoundland and Labrador regulates pesticide use through its *Environmental Protection Act*. The provincial government is responsible for:

- training
- certification and licensing of applicators
- spill response
- monitoring
- compliance and enforcement
- research
- public education

The Province, through the Department of Environment and Conservation, issues pesticide vendor and operator licences to companies, and pesticide applicator licences to individuals who have been certified to apply pesticides. The pesticide operator licence is subject to terms and conditions, including:

- ensuring buffer areas around water bodies and other sensitive areas
- spill response requirements
- public notification
- appropriate weather conditions under which to apply pesticides
- monitoring requirements

The federal registration and classification system, combined with the provincial licensing and regulatory system, ensures that the pesticides that are being used in Newfoundland and Labrador have passed comprehensive health and environmental evaluations with acceptable safety margins.

How do other jurisdictions in Canada regulate the use of pesticides?

Every province and territory in Canada is responsible for the sale, use and disposal of pesticides. This is achieved through provincial legislation. Depending upon the province, and the types of pesticide used, the legislation may be similar or slightly different to that of Newfoundland and Labrador. The proposed regulations changes for this province will bring the legislation even closer to that found throughout the rest of the country.

In Prince Edward Island, government and industry have created a set of terms and conditions under which farming practices will continue to be allowed. Prince Edward Island has also moved to fast-track the licensing of vendors of domestic class pesticides, and is in the process of establishing certification and licensing programs. Nova Scotia and New Brunswick are in different stages of developing domestic vendor training and certification programs.

Among the other provinces, British Columbia, Alberta, Ontario and Quebec currently have mandatory domestic vendor certification and licensing programs. As well, all provinces require

pesticide operators to follow set stipulations, which are similar to what currently exists in this province as well as what is being proposed. Of all the provinces, Quebec has the most stringent pesticide legislation in the country, in all aspects of the handling and use of pesticides.

The Pest Management Regulatory Agency (PMRA) has accepted a proposal for a new, nationally harmonized pesticide classification system, with minor revisions, that was developed by provincial, territorial and federal parties, with industry involvement. The PMRA has indicated that provincial commitment to domestic vendor certification and licensing are necessary components of this pesticide reclassification system.

Proposal to change *Pesticides Control Regulations*

The Government of Newfoundland and Labrador proposes to revise the *Pesticides Control Regulations* so that sale and use of pesticides may be undertaken by appropriate individuals and under conditions which serve to protect people and the environment. The *Pesticides Control Regulations* have not been revised since 1996. Several of the proposed changes will bring the regulations more in line with today's expectations of how pesticides should be handled, including purchase, storage, application and disposal.

Government intends to improve the conditions under which licensed pesticide vendors, operators and agricultural producers are permitted to handle commercial and restricted class pesticides. As well, Government plans to improve the handling and management of domestic class pesticides (the pesticides that are available to homeowners) in Newfoundland and Labrador.

What will the consultations involve?

The Department of Environment and Conservation is undertaking a consultation process to receive input on the proposed changes from key stakeholders, including vendors of domestic, commercial and restricted class pesticides, lawn care companies, and the agricultural sector. As well, both the general public and municipalities are invited to provide comments.

The Department of Environment and Conservation will hold stakeholder meetings and give presentations to industry groups, such as the agriculture community, landscape managers, municipal parks managers and golf course superintendents through regularly scheduled meetings during the spring, 2004. Additional meetings with these groups will be undertaken, as needed.

This discussion paper will be posted on the Department of Environment and Conservation's website, at <http://www.gov.nf.ca/env/publications.asp> As well, copies of the discussion paper can be obtained by telephoning (709)729-2565, or toll-free, at 1-800-563-6181. The Department of Environment and Conservation will accept written submissions by mail, fax, or by email, at kryan@gov.nl.ca All comments should include the author's name, address and telephone number in the submission. Written submissions may be sent to:

Department of Environment and Conservation
Pesticides Control Section
P.O. Box 8700
St. John's, NL
A1B 4J6

The deadline for submissions is April 23, 2004.

Once the consultation exercise is completed, all comments will be reviewed and considered before a final proposal on the new *Pesticides Control Regulations* is presented to Cabinet in late 2004.

Proposed Changes to *Pesticides Control Regulations*

The following sections deal with each recommended change to the *Pesticides Control Regulations*. A description of the current situation, problems associated with this, and the rationale for the change are provided. The specific wording change being proposed for each item is available in the Appendix.

Section 4. Operator's licence

There are three levels of pesticide classification in Canada that can be handled by the end user, Domestic, Commercial and Restricted. A fourth level, Manufacturing, is used only by companies who take the Manufacturing class pesticides and create formulations of pesticides. There are no businesses using Manufacturing class pesticides in this province. In Newfoundland and Labrador, any person who uses a Commercial or Restricted class pesticide other than for agriculture or greenhouse use must have a pesticide operator licence and must hire a licenced pesticide applicator to apply the pesticide. Not only are these operators legislated under the *Environmental Protection Act* for the manner in which pesticides are used, but they are also given a set of stipulations and buffer zone requirements to which they must adhere. As well, the pesticide applicator would have to show, by examination, that he or she possesses a strong understanding of the proper and safe way to handle and use pesticides.

Domestic class pesticides are intended to be used by homeowners for use on their own property. They are formulated with lower concentrations of active ingredients, and are generally available in smaller size containers. Homeowners are not required to obtain a pesticide licence to either purchase or use Domestic class pesticides.

The Department of Environment and Conservation receives several complaints each year that apartment building superintendents and/or landlords are able to purchase and apply Domestic class pesticides for gain or reward. These superintendents and landlords may or may not know how to use these products safely, but because people who use Domestic class pesticides are exempt from any licensing requirements, the Department of Environment and Conservation learns of improper or unsafe application only after an incident has occurred.

The use of Domestic class pesticides for financial gain or reward has been seen in the lawn care sector as well. Complaints have been received concerning the activities of lawn care service providers who have chosen to apply Domestic class pesticides. Individuals have applied pesticides in high winds and under unsafe conditions. Because they are exempt from licensing requirements, there is no ability for Department of Environment and Conservation personnel to follow up with these companies and individuals to prevent recurrences of the problems.

The Department of Environment and Conservation recommends that the regulations be changed, so that anyone using Domestic class pesticides for gain or reward, including apartment building superintendents, landlords, and lawn care service providers, must be properly trained and certified, and must hold the appropriate licences for their activities.

Section 6. Unlicensed assistants

For several years, operators have been able to employ unlicensed assistants who would assist in the application of pesticides during a program. A licensed applicator would have to be present, and that licensed applicator would then assume all responsibility for the actions of the unlicensed assistant.

There have been complaints that operators have not complied with the existing regulations when they have employed unlicensed assistants. Closer inspection shows that not only is the licensed applicator not on the same site as the unlicensed assistant, in some cases, the licensed applicator is not even in the same community.

Many operators have indicated that if they have to have a licensed applicator on the same site as the unlicensed assistant, then there is no benefit to having the unlicensed assistant. Large operators such as Newfoundland and Labrador Hydro have written tenders for spray programs in which they require all applicators to be fully licensed.

Section 35 of the *Environmental Protection Act* has already limited the provision for unlicensed assistants to agricultural and greenhouse operations. If the regulations are changed to remove the unlicensed assistant provision, then the regulations will be easier to enforce. There will no longer be the potential for different interpretations by individuals as to what “direct supervision” means, according to the existing regulations. As well, the enforcement aspect of this provision is already being addressed this year, with increased compliance monitoring activities being conducted by Department of Environment and Conservation personnel.

It will still be necessary to allow provision for unlicensed assistants in agricultural and greenhouse operations. These activities are carried out on property owned or rented by the applicator or his or her employer. Unlicensed assistants of pesticide operators are usually applying pesticides to someone else’s property, or to Crown land.

The Department of Environment and Conservation recommends that the use of unlicensed assistants during the handling of pesticides be permitted, but limited to only those licensed pesticide applicators holding an Agriculture or Greenhouse category licence.

Section 7. Vendor’s licence

1. Attachment of stipulations to pesticide vendor licences.

Currently, there is no vehicle through which specific terms and conditions may be attached to a vendor licence. Conditions such as informing local fire departments of the contents of the storage, specific storage requirements, development of emergency contingency plans and other reporting mechanisms which are not currently covered in the regulations, may be covered by stipulations attached to the pesticide vendor licence.

The Department of Environment and Conservation is proposing that such terms and conditions may be attached to pesticide vendor licences.

2. Removal of exemption from *Pesticides Control Regulations* for vendors of domestic products.

In Newfoundland and Labrador, the market for Domestic class pesticides is very large. It is estimated that there are more Domestic class pesticides used in this province for the home and garden sector than commercial pesticides for agricultural production. There is no provincial regulation of any use or sale of Domestic class pesticides. Many customers look to the vendor for advice on how to use Domestic class pesticides properly. As well, questions regarding safety, storage and choosing alternatives to pesticides are often asked of vendors by their customers.

Storage and/or display of Domestic class pesticides at a retail vendor are not always adequate. In several instances, pesticides have been stored and/or displayed too close to food or feed, and there is a potential for accidental spills or cross contamination to other materials. Personnel who stock shelves with pesticides sometimes do so without wearing any protective clothing or equipment.

Vendors should be aware that their customers often assume the same level of respect for pesticides that they see when they purchase products. If customers see vendors with poor storage and display habits or vendors who cannot offer some level of assistance with proper pesticide selection and advice, then customers may also assume that the pesticides do not require special storage in the home or knowledge about safe and proper use.

The Department of Environment and Conservation is recommending that vendors of Domestic class pesticides be licenced, and that they have within their employ, personnel who are certified pesticide vendors.

Section 8. Purchase of pesticides

1. Purchase of pesticides from unlicensed vendors.

Currently, Commercial and Restricted class pesticides may be purchased from unlicensed vendors outside the province, if the licensed operator obtains a permit for such a purchase from the Department of Environment and Conservation. There have been many pesticide shipments into the province to both licensed and unlicensed operators, but no permits have ever been issued to allow this activity. The Department of Environment and Conservation is aware of some of the purchases that are being made, but it is not possible to determine how many purchases of pesticides from unlicensed vendors are being made.

Vendors outside the province have claimed not to be aware of the vendor/operator requirements

of the *Environmental Protection Act* and *Pesticides Control Regulations*. If they were licensed under the Act, then not only would they be aware of this province's legislative conditions for sale of pesticides, they would also be required to submit such data as annual sales statistics to the Department of Environment and Conservation. A much more accurate understanding of the amounts and types of pesticides being sold and used in this province would be possible. It would also be more difficult for unlicensed pesticide operators to obtain commercial and restricted pesticides.

The Department of Environment and Conservation is recommending that all vendors of Commercial and Restricted class pesticides, including those which are located outside the province, be certified and licensed under the *Environmental Protection Act* and *Pesticides Control Regulations*.

2. Exemption from operator licence requirements for greenhouse operators.

In 1997, when it became mandatory for farmers who use pesticides to be licensed to purchase and apply them, the intent was to include greenhouse operators in this category as well. Under Section 8, farmers need to have an Agriculture category licence to purchase and use pesticides. Greenhouse operators would therefore need to obtain a Greenhouse category licence to apply pesticides within greenhouses, but they would also require an Agriculture category licence to purchase these pesticides.

The Department of Environment and Conservation is recommending that greenhouse operators be permitted to purchase and use Commercial and Restricted class pesticides as long as they have a valid pesticide applicator licence, Greenhouse category.

Section 11. Storage apart from food and drink

Currently, vendors of Domestic class pesticides are exempt from proper storage requirements, because they are exempt from licensing requirements. If they are to become licensed vendors, then the regulations for storage and display will have to apply. These proposed regulations include a minimum separation distance of 8 meters from food, drink or plant material, as well as being stored in a separate room.

The Department of Environment and Conservation recommends that Domestic class pesticides be stored and displayed in a manner that keeps them separated from food and drink.

Section 13. Storage requirements

In some instances, it has been reported that vendors or operators are storing Commercial or Restricted class pesticides within a residence. This is not an acceptable practice. There is a risk of spills, leaks or dispersal of fumes from the storage area to other parts of the dwelling.

In addition, there have been reports of pesticides being stored by an operator in an area of a municipality designated as residential. While municipal permitting procedures should be able to address the issue of pesticides being stored in close proximity to other residential properties, there should also be an ability to set specific storage requirements within the *Pesticides Control Regulations* of the *Environmental Protection Act*.

It may be necessary to set specific requirements concerning the building materials used to construct a pesticide storage within an area such as a residentially zoned part of a municipality. As well, minimum distances from other buildings inhabited by people or livestock should be determined.

The Department of Environment and Conservation recommends that the regulations set specific storage requirements for pesticide storage facilities, such as the type of building and materials used for construction, and restrictions of minimum distances from neighbours, if pesticides are being stored in a residential area.

Additional Section (A). Application and storage of pesticides on farms

In 1997, it became mandatory that farmers be licensed pesticide applicators, with an agricultural designator, if they wished to purchase and use Commercial or Restricted class pesticides for crop production. Most farmers have welcomed the mandatory licensing requirement. They have commented that pesticides need to be used properly by everyone who grows food or feed.

Currently, there are no regulations which govern how pesticides should be stored on farms, or how they should be applied in or near sensitive areas - areas with a greater potential for risk to human health or the environment.

Terms and conditions which could be attached to the applicator licence for farmers, include advice on proper pesticide storage, and weather conditions such as maximum wind speeds, temperatures, and potential rainfall events. As well, minimum buffer areas from water and neighbouring residential properties might also be addressed through terms and conditions of a pesticide applicator licence (Agriculture or Greenhouse category).

The Department of Environment and Conservation recommends that regulations be set which allow such terms and conditions to be placed on pesticide applicator licences (Agriculture and Greenhouse category).

February 2004

Appendix

Recommendations to revision of the *Pesticides Control Regulations*:

Section 4. Operator licence

1. The Department of Environment and Conservation recommends that Section 4.(9)(a) of the *Pesticides Control Regulations* be repealed. The intent is to have those who use domestic pesticides for gain or reward (ex., apartment building superintendents, landlords, lawn care service providers) hold valid pesticide operator licences when conducting such activities.
2. It is recommended that Section 5.(6)(a) be revised, from “a domestic pesticide” to “a domestic pesticide to be used on his or her own property, providing that the property is not rented for residential purposes.”
This would remove the general exemption for domestic pesticide use from the ‘applicator licence’ section of the regulations.

Section 6. Unlicensed assistants

3. The Department of Environment and Conservation recommends that Section 6 be revised to disallow the use of unlicensed assistants for programs carried out by pesticide operators.
4. The revised Section 6 would allow the use of unlicensed assistants only for agricultural and greenhouse applications. A licensed pesticide applicator (Agriculture or Greenhouse category) would still be responsible for the activities of the unlicensed assistant.

Section 7. Vendor’s licence

5. The Department of Environment and Conservation recommends that Section 7 should be revised, to add a subsection allowing for the addition of terms and conditions to a pesticide vendor licence.
The revised subsection may be:

7(11). The minister or a person designated by the minister may direct that a licence be subject to specified provisions or conditions which shall be indicated on the licence and the holder of a vendor’s licence shall abide by provisions or conditions indicated on that licence.
6. The Department of Environment and Conservation recommends that Section 7(4) be revised, removing the exemption for domestic class pesticides from the requirements for a pesticide vendor licence:

7(4) Pesticide vendors are exempt from the requirement for a vendor’s licence in respect to the sale of [domestic pesticides and - to be removed] a commercial or

industrial class pesticide designated for the following purposes:

- (a) bactericides used in cutting oils and aviation and marine fuels;*
- (b) cleansers, deodorizers, disinfectants and soaps;*
- (c) dust control agents;*
- (d) fabric softeners;*
- (e) chemical formulations intended as bactericides or algaecides for use in swimming pools, domestic water supplies, industrial cooling systems, home aquaria or ornamental pools; and*
- (f) surfactants, preservatives, adjuvants and growth regulators.*

Section 8. Purchase of pesticides

7. The Department of Environment and Conservation recommends that Section 8(3) be repealed:

8(3). Notwithstanding subsection (1), a commercial or restricted pesticide may be purchased from a vendor located outside the province and who is unlicensed, if the licensed operator obtains a permit for such a purchase from the minister or a person designated by the minister.

8. The Department of Environment and Conservation recommends that Section 8(5) be revised, such that:

8(5) Notwithstanding subsections (1) , (2) and 7(2), a vendor may sell a commercial or restricted pesticide to an unlicensed operator if the pesticide sold is designated on the label for agricultural [or greenhouse use - to be added] and the purchaser is a licensed applicator with an agricultural [or greenhouse designator - to be added] and if the vendor maintains records of the sales in the manner and form required by the minister.

Section 11. Storage apart from food and drink

9. The Department of Environment and Conservation recommends that Section 11(5) be repealed, so that Domestic class pesticides may be stored and displayed in a manner considered suitable by the minister or a person designated by the minister:

11(5). Paragraphs (1)(a) and (b) shall not apply to a domestic pesticide. - to be repealed.

Paragraphs (1) (a) and (b) [to be kept]:

11.(1) Subject to sections 9 and 13 of the Act, a pesticide or material mixed or treated with a pesticide or a container that holds or has been used to hold a pesticide shall be kept and stored separately from food and drink destined for human or animal consumption and from living plants by

(a) being kept in a separate room;

(b) being separated from the nearest food, drink and plants by a direct distance of not less than 8 metres;

Note: For Domestic class pesticides, the distance from food, drink and plants will be determined. As well, the necessity of having to keep Domestic class pesticides in a separate room will be considered. At this time, the intent is more to ensure that they are kept at least 8 meters from food, drink and plants.

Commercial and Restricted class pesticides will continue to be required to be kept in a separate room, and at a distance of no less than 8 meters.

Section 13. Storage requirements

10. The Department of Environment and Conservation recommends that Section 13 be revised to address the conditions under which Commercial or Restricted class pesticides should be allowed to be stored by a licensed vendor or operator within a residential area of a municipality.
11. It is recommended that Section 13 be revised to not permit the storage of Commercial or Restricted class pesticides by a licensed vendor or operator within a residence.
12. It is recommended that Section 13 be revised to allow the establishment of buffers from neighbouring residential properties, and to set the types of materials that could be used for construction of pesticide storages within residentially zoned areas of a municipality.

Additional Section (A). Application and storage of pesticides on farms

13. The Department of Environment and Conservation recommends that regulations be set which allow terms and conditions to be placed on pesticide applicator licences with agriculture and greenhouse designators. Section 5(7) of the *Pesticides Control Regulations* would be set, such that:

5(7) *The minister or a person designated by the minister may direct that a licence be subject to specified provisions or conditions which shall be indicated on that licence and the holder of a pesticide applicator's licence with an agriculture or greenhouse category shall abide by provisions or conditions indicated on that licence.*