



Model Responses to the BC Government’s Questions Regarding the
Cosmetic Use of Pesticides in British Columbia

With concern growing over the health and environmental effects of pesticides, the Government of British Columbia (the BC government) has committed to consulting British Columbians on the development of “new statutory protections to further safeguard the environment from cosmetic pesticides.”¹ The UVic Environmental Law Centre (ELC) welcomes this step and believes that this is an exciting opportunity for BC to reform its pesticide laws to better protect the environment and public health.

The BC Ministry of Environment is conducting the public consultation and has asked the public to answer a number of questions related to this topic. The ELC has developed the following model responses to the questions posed by the BC government as a public service and for the Canadian Cancer Society, BC and Yukon (CCSBCY) and Toxic Free Canada (TFC). The ELC has also drafted model legislation for CCSBCY and TFC, the *Cosmetic Pesticides Act* (hereinafter the “Model Act”), to provide further guidance as to what an effective ban on cosmetic pesticides might look like. The model responses below give British Columbians, and local and provincial coalitions, information related to the consultation questions – and may assist them in drafting their own responses. The responses refer at times to the Model Act, which is attached to this document as Appendix A.

¹ August 25, 2009 Speech from the Throne - From BC Government Consultation Paper, online: <http://www.elp.gov.bc.ca/epd/ipmp/regs/cosmetic-pesticides/pdf/consultation-paper.pdf>.

The model responses below address the following topics raised by the BC government's

Questions:

1. Ministry objectives in regulating the cosmetic use of pesticides
2. Potential regulatory restrictions on cosmetic use of pesticides
3. Creating classes of pesticides that may or may not be used for cosmetic purposes
4. Limiting use to qualified applicators and encouraging IPM
5. Notification and signage requirements
6. Conditions under which pesticides may be sold or purchased
7. Public awareness, education, compliance and enforcement
8. Additional comments

In order to help British Columbians who may not be answering the entire set of Questions, the response to each question may include all available information that the ELC has on that particular topic. As a result, the same information is sometimes repeated in more than one place.

Note that because of exigencies of time in this extremely time-constrained consultation process, the information below has not been fully vetted or explicitly authorized by the CCSBCY or TFC. The opinions and submissions below are those of the ELC and not those of the CCSBY or TFC.

Note, also, that the ELC's own final submission, which is a more coherent and integrated document, will be available shortly at www.elc.uvic.ca

The public is encouraged to participate in this consultation. Submissions are due by February 15, 2010.

1. Current ministry objectives in regulating the use of pesticides

In regulating pesticides and the cosmetic use of pesticides, the ministry currently considers:

- Protection of human health and the environment
- Having a science-based approach
- Supporting the practice of Integrated Pest Management (IPM)
- Being appropriate and effective

- Providing a foundation for understanding and adoption by the public, IPM practitioners and affected interests
- Cost-effective compliance and enforcement

Consultation Questions:

1.1 What are your thoughts about these objectives?

The objectives need to be enhanced and given more meaning by giving a far higher priority to protecting human health and the environment. We think that this objective should be paramount. A movement toward banning the use and sale of pesticides in Canada has been in the works for many years as evidenced by the 150 ordinances and bylaws in municipalities across Canada,² including approximately twenty-eight BC municipalities. In addition, provincial legislation has been enacted in Quebec, Ontario, New Brunswick and Prince Edward Island. Public consultation is expected to begin soon in Nova Scotia, and in Alberta the sale of ‘weed and feed’ products will no longer be legal as of spring 2010. It is time that BC join the growing momentum and better protect the citizens of this province from exposure to cosmetic chemical pesticides. Through new and better legislation restricting the use of cosmetic pesticides, the above objectives can be better addressed.

This new legislation should prioritize these objectives to make the protection of human health and the environment the foremost consideration. Pesticides have been linked with various cancers, including prostate, ovarian, brain, leukemia and non-Hodgkin’s lymphoma.³ They have also been linked to neurological diseases such as Parkinson’s disease.⁴

² Mike Christie, “Private Property Pesticide Bylaws in Canada,” Up-to-date as of April 15, 2009. Online: Flora.org, <http://www.flora.org/healthyottawa/BylawList.pdf>.

³ One study found higher than average rates for prostate and ovarian cancers in agricultural pesticide applicators (“Cancer incidence in the agricultural health study”, Alavanja MC et al., *Scand J Work Environ Health*. 2005;31 Suppl 1:39-45; discussion 5-7). Other studies concluded that occupational pesticide manufacturers and applicators have increased risks of leukemia (“A systematic review of myeloid leukemias and occupational pesticide exposure”, Genevieve Van Maele-Fabry, Sophie Duhayon, and Dominique Lison, *Cancer Causes Control* (2007) 18:457–478 at 457) and, again, prostate cancers (“Review and meta-analysis of risk estimates for prostate cancer in pesticide manufacturing workers”, Genevieve Van Maele-Fabry et al., *Cancer Causes Control* (2006) 17:353–373 at 369).

Developing children may be particularly susceptible to such effects,⁵ and childhood exposure has been linked with additional afflictions such as changes to the brain structure of children, autism, asthma, reduced intelligence, and Attention Deficit Disorder.⁶ Pesticide exposure may also later cause premature puberty or fertility problems.⁷

Furthermore, pesticides can cause environmental damage, affecting non-target species and even inadvertently harming human food supplies and sources of medical compounds. For example, pesticides have been shown to harm salmon by causing changes in their reproductive and sexual characteristics, weakening their immune systems, and changing their survival behaviours. Pesticides also contributed to the decline in bee populations by one third in the past few years as a result of increasing pesticide concentrations in honeycombs. This has severe implications for human food supplies, of which one third depends on pollination by bees.⁸

Given these serious ramifications, as well as the existing scientific inadequacies in fully understanding the impacts of pesticides,⁹ and the prudence of employing the commonly accepted

Also see “Occupation related pesticide exposure and cancer of the prostate: a meta-analysis” G Van Maele-Fabry, J L Willems, *Occup Environ Med* 2003;60:634–642, which suggests pesticide exposure is not an independent cause but may be a contributing factor. Pesticides have also been linked to childhood cancers, including leukemia, non-Hodgkin’s lymphoma, and brain, colorectal and testicular cancers (“Pesticides and childhood cancer” Zahm SH, Ward MH. *Environ Health Perspect.* 1998 Jun;106 Suppl 3:893-908).

⁴ “Why We Need Provincial Legislation Banning the Sale and Use of Pesticides: Background”, Toxic Free Canada, online: <http://www.toxicfreecanada.ca/articlefull.asp?uid=78>. See for example Sadie Costello et al., “Parkinson’s Disease and Residential Exposure to Maneb and Paraquat From Agricultural Applications in the Central Valley of California”, *American Journal of Epidemiology*, 2009; 169 (8): 919 DOI: [10.1093/aje/kwp006](https://doi.org/10.1093/aje/kwp006). This study found, among other things, that exposure to agricultural pesticides maneb and paraquat within 500m of one’s home increase that person’s risk of Parkinson’s disease by 75%.

⁵ The magnitude of the risk of cancer from pesticide exposure was observed to be higher in children than in adult populations, suggesting children are particularly vulnerable to the effects of pesticide exposure (“Pesticides and childhood cancer” Zahm SH, Ward MH. *Environ Health Perspect.* 1998 Jun;106 Suppl 3:893-908).

⁶ “Why We Need Provincial Legislation Banning the Sale and Use of Pesticides: Background”, Toxic Free Canada, online: <http://www.toxicfreecanada.ca/articlefull.asp?uid=78>.

⁷ “Why We Need Provincial Legislation Banning the Sale and Use of Pesticides: Background”, Toxic Free Canada, online: <http://www.toxicfreecanada.ca/articlefull.asp?uid=78>.

⁸ “Why We Need Provincial Legislation Banning the Sale and Use of Pesticides: Background”, Toxic Free Canada, online: <http://www.toxicfreecanada.ca/articlefull.asp?uid=78>.

⁹ “Pesticides and human cancers” Alavanja MC, Bonner MR, *Cancer Invest.* 2005;23(8):700-11.

legal doctrine of the Precautionary Principle,¹⁰ we believe that the protection of human health and the environment should be the primary objective in regulating pesticide use. After all, that is the underlying rationale for regulating such chemicals in the first place. Having the protection of human health and the environment as the governing principal will inform the implementation of other important principles such as using a science-based approach and facilitating public understanding and adoption.

1.2 How should these objectives be applied in developing policy and/or legislation to further safeguard the environment from cosmetic use of pesticides?

Objective: protection of human health and the environment

As discussed, the overriding objective should be the protection of human health and the environment. This should inform the implementation of all the other listed objectives. The cosmetic use of pesticides is of limited social utility, yet presents substantial health risks.

Therefore, we recommend the following application of this objective to cosmetic use pesticides:

- To ensure a high degree of health and environmental protection, the scope and application of cosmetic pesticide restrictions should be broad, and any exceptions to those restrictions should be limited.
- Such restrictions should apply to both indoor and outdoor pesticides for use on industrial, commercial, public and residential properties.
- Restrictions should apply to pesticides with cosmetic and non-cosmetic uses.

¹⁰ Canada and other developed countries have adopted the Precautionary Principle that in various international agreements, including the *Rio Accord*. Principle 15 of the *Rio Accord* states:

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. (see “Rio Declaration on Environment and Development”, online: <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=78&ArticleID=1163>)

The Supreme Court of Canada has recognized this principle in the case of *Spraytech v. Town of Hudson*, [2001] 2 S.C.R. 241.

- No distinction should be drawn between garden and lawn pesticides.
- Exceptions should be limited to agricultural, forestry and health and safety uses only, confirmed through a non-onerous permitting process.
- Golf courses should also be subject to the ban following a three year grace period.
- Municipalities should not be pre-empted from maintaining or developing their own pesticide bylaws (as long as they do not undermine the new proposed provincial restrictions.)
- Where a vendor or applicator claims they are using a product for a non-cosmetic use, the onus should be on the vendor or applicator to prove on a balance of probabilities that their use is acceptable under the legislation, and/or regulation(s).

See questions 2.1-2.3 for further input on the issues of definition, scope and application.

Objective: having a science-based approach

To help promote the highest standards of safety, a science-based approach that is free from political interference should be used to determine what products are acceptable and unacceptable for cosmetic use. This will require BC to implement an additional classification of pesticides registered by the federal government -- to identify low-risk active ingredients appropriate for cosmetic applications.

For BC's classification of pesticides used for cosmetic purposes, we specifically recommend:

- Use a "white-list" approach, that is, a list of low-risk pesticides that are acceptable for cosmetic use, with all other unlisted pesticides prohibited.
- An independent multistakeholder body should be created to assist the Minister of Environment in determining which products are eligible for the white list. This

should add expertise and diverse community knowledge to the decision-making regarding products that should be listed.

- Consider establishing a second class of banned active ingredients and/or products that contain all active ingredients not included on the “white list” or all products containing active ingredients not on the “white list.”
- Consider a limited class of pesticides that may be sold under for the excepted use of protecting public health and safety.

The use of an effective science-based approach through white listing is discussed further under questions 3.1-3.2.

Objective: supporting the practice of Integrated Pest Management

- Cosmetic pesticide use should be banned. For those limited uses remaining (agriculture, forestry, and public health and safety uses), vendors and applicators should be subject to enhanced training requirements, while private residential users can be reached through education initiatives.
- New legislation should also build on existing labeling requirements under the *Integrated Pest Management Act*.¹¹ All pesticide products should be labeled to indicate hazards levels and applicable restrictions under the new legislation.

See questions 4.1 and 4.2 for further discussion regarding Integrated Pest Management.

Objective: being appropriate and effective

Being appropriate and effective is a somewhat vague objective, and should not be used as a rationale against banning cosmetic pesticides. Appropriateness of restrictions can be fostered by prohibiting cosmetic use of pesticides, with very limited necessary exceptions. These

¹¹ *Integrated Pest Management Act*, S.B.C 2003, c. 58.

exceptions should be limited to agricultural, forestry and public health and safety uses. Allowing cosmetic pesticides to be used in such contexts ensures the prohibition is not overbroad and legally questionable. Effectiveness is also pursued by ensuring that such exceptions are kept to a limited basis. Golf courses should be subject to cosmetic pesticide restrictions. We recommend a phase-in period of three years. After all, the idea is to reduce cosmetic pesticide use as much as possible. See questions 2.2 and 2.3 for more on excepted uses and permitting. Effectiveness also links to other issues addressed in subsequent questions, including public education (questions include 4.2, 6.3 and 7.1), adequate listing (questions include 3.1-3.2) and enforcement (questions include 7.2).

Objective: providing a foundation for understanding and adoption by the public, Integrated Pest Management practitioners and affected interests

The objective of providing a foundation for public and stakeholder acceptance and adoption is critical, and must be pursued to ensure effective legislation. Public education is a cost effective way to facilitate awareness, acceptance and compliance. We recommend that the BC government implement public education campaigns to address:

- the health and environmental impacts that have led to the pesticide restrictions,
- information on alternatives to restricted substances, including authorized white list ingredients and sustainable landscape management practices.

We also recommend that the BC government develop extensive education initiatives targeted at the three main streams of pesticide handlers: vendors / dispensers, applicators and residential users. See questions 4.1, 4.2, 6.3, 6.4 and 7.1 for further discussion of education initiatives.

Objective: cost-effective compliance and enforcement

In addition to education and awareness campaigns, the objective of cost-effective compliance and enforcement can be met through legislating public accountability measures such as reporting requirements, and through effective enforcement regimes. Enforcement regimes should create offence provisions with sufficiently large fines (so as to act as deterrents), appoint enforcement officers with investigatory powers, target points of sale more than points of use, and perhaps include citizen enforcement mechanisms. Regular government reporting on the effectiveness and enforcement of new cosmetic pesticide legislation should also be required and provided to the public. Robust enforcement will be critical to ensuring compliance and effectiveness of cosmetic use restrictions. See questions 3.3, 6.1 and 7.2 for further discussion of public accountability measures, questions 3.3, 3.4, 6.1 and 6.3 for point of sale restrictions, and question 7.2 for more recommendations on enforcement mechanisms.

2. Potential regulatory restrictions on cosmetic use of pesticides

In considering potential restrictions on the cosmetic use of pesticides, the ministry is taking the following questions into view:

- What is and what is not a cosmetic use of a pesticide? Can certain pests be considered cosmetic? Is there a point at which the management of a pest becomes not cosmetic? Is there a difference in using a pesticide to manage pests on a tree used for fruit production in a residential area and a fruit tree that is strictly ornamental?
- Should the term “cosmetic use of pesticides” apply strictly to outdoor situations (e.g., lawns and/or gardens)? Are there situations where the use of pesticides indoors would be considered to be cosmetic? How would this (indoor) use of pesticide for cosmetic purposes be defined?
- Should the regulation of cosmetic pesticides include uses on residential land, public municipal lands, and/or other private lands?

Consultation Questions:

2.1 Do you have any comments regarding new restrictions addressing the cosmetic use of pesticides?

Scope and Application of Restrictions:

Unlike municipal pesticide control bylaws, which only apply to the *use* of pesticides, provincial legislation can also restrict the *sale* of pesticides used for cosmetic purposes, and the use of pesticides on non-municipally owned or residential-owned property. Both the Quebec *Pesticides Management Code* and the Ontario *Pesticides Act* restrict the use and sale of such pesticides in their respective provinces.¹² We recommend new BC legislation also regulate at the point of sale. Restricting the sale, along with the use of such pesticides, has proven to be more effective in ensuring compliance with restrictions.¹³

Additional specifications can strengthen bans on the sale and use of cosmetic pesticides. For example, restrictions are most effective where they apply to all land under provincial jurisdiction, including industrial, residential, commercial, and public spaces. This ensures broad application of the ban, and recognizes the reality that pesticide drift does not respect property lines or certificate of title.

As well, despite differences in federal evaluation methods, it is recommended that no distinction be drawn between “outdoor” pesticides and “indoor pesticides” used to control such things as indoor plants. The reasons for this are threefold. First, if the province is concerned with health risks associated with use of cosmetic pesticides, then restricting the use and sale of both indoor and outdoor pesticides furthers the government’s aim of protecting its citizens. Second, many of the so-called “indoor” pesticides contain the same dangerous chemicals as outdoor pesticides – and indoor pesticides may lead to more intense human exposure because

¹² See *Pesticides Act*, R.S.O. 1990, c. P.11 and *Pesticides Management Code*, R.S.Q. 1987, c. P-9.3.

¹³ Kassirer et al., “The Impact of By-Laws and Public Education Programs on Reducing the Cosmetic / Non-Essential, Residential Use of Pesticides: A Best Practices Review”, The Canadian Centre for Pollution Prevention and Cullbridge Marketing and Communications, March 24, 2004. See also Simona Untara, Lisa Gue, and Lova Ramanitrarivo, “Pesticide Free? Oui!: An Analysis of Quebec’s Pesticide Management Code and Recommendations for Effective Provincial Policy”, David Suzuki Foundation and Equiterre (Revised April 2008), online: David Suzuki Foundation, http://www.davidsuzuki.org/Publications/Pesticide_Free_Oui.asp, at 16.

they are used in confined spaces. In addition, it is easy for products to be labeled “indoor” but it is hard to prevent consumers from buying the “indoor” product and using it outside. This would clearly undermine the purpose of the new legislative regime and put the health and safety of BC and its citizens at risk. Third, if a pesticide is needed indoors for things like cockroaches or termites, this is not a cosmetic use and would not be prohibited in any case.

In the same vein, a distinction between pesticides used for lawns and those used for gardens is not justified. Many lawn and garden products can be used interchangeably and such a distinction is impractical and impossible to enforce. Restricting all landscaping pesticides is clearer, more consistent, and easier to enforce.¹⁴

Municipal Bylaws:

Sections 8(3)(j) and 9(1)(b) of the *Community Charter* enable municipal governments to regulate pesticides concurrently with the Province.¹⁵ Under this authority, local governments have innovated, and led the way on this issue. Currently, there are approximately twenty-eight municipal bylaws restricting pesticide use in BC¹⁶ Municipal bylaws are important because they reflect local values with respect to cosmetic pesticide use and add an additional level of enforcement to pesticide bans. Municipal enforcement can be particularly effective in ensuring compliance in residential areas. However, not all municipalities have bylaws dealing with cosmetic pesticides, and municipal power to create these bylaws is limited (for example, municipalities can only deal with the use, not sale, of pesticides on residential and municipally-

¹⁴ This approach has been recommended by other sources, including the David Suzuki Foundation (see Simona Untara, Lisa Gue, and Lova Ramanitrarivo, “Pesticide Free? Oui!: An Analysis of Quebec’s Pesticide Management Code and Recommendations for Effective Provincial Policy”, David Suzuki Foundation and Equiterre (Revised April 2008), online: David Suzuki Foundation, http://www.davidsuzuki.org/Publications/Pesticide_Free_Oui.asp, at 18).

¹⁵ *Community Charter*, S.BC 2003, c. 26.

¹⁶ Cindy Bertram “Cosmetic Use of Pesticide in British Columbia Public Consultation Paper,” (December 2009) British Columbia Ministry of Environment, online: <http://www.env.gov.bc.ca/epd/ipmp/regs/cosmetic-pesticides/pdf/consultation-paper.pdf>, at 4.

owned properties). Provincial legislation will provide an underlying blanket protection for all municipalities throughout BC. It will also provide a level playing field for all industrial and commercial applicators, as well as effective restrictions targeting the *sale* of cosmetic pesticides.

Given the benefits of both municipal bylaws and provincial pesticide legislation, and given the importance of permitting and facilitating local innovation and solutions, it is important that any new legislation allow municipalities to continue to regulate cosmetic pesticide use where desired. One approach to doing this is to specifically grant municipalities the power to continue to pass bylaws dealing with “cosmetic pesticides”, and state that in a situation of conflict, the most restrictive law should prevail. This is the approach taken in the Model Act (see sections 3-4 of the Model Act, under Appendix A). Perhaps it would be less legally contentious to have the new legislation remain silent on the matter, thereby implicitly permitting regulation by municipalities. The most critical point on this issue is that BC should not take the short sighted approach used by Ontario in its *Pesticides Act*,¹⁷ which made municipal bylaws inoperative. Local bylaws provide the opportunity for important “pilot projects” in regulating pesticides to be tested. It is imperative that BC retain the capacity for local innovation and enforcement.

2.2 How would you define “cosmetic use of pesticides”?

Definitions play an important role in delineating the scope of pesticide legislation. In order to best promote the health and safety of British Columbians and the environment in which they live, a broad, inclusive definition is required for key terms like “cosmetic” and “pesticide”. Defining these two terms will define what the “cosmetic use of pesticides” is.

¹⁷ *Pesticides Act*, R.S.O. 1990, c. P.11.

Municipal pesticide use is dealt with under s.2(2) of the *Sphere of Concurrent Jurisdiction – Environment and Wildlife Regulation*,¹⁸ but no definition of “pesticide” is provided. An inclusive definition of “pesticide” is, however, provided in BC’s *Integrated Pest Management Act (IMPA)*,¹⁹ and could provide a basis for new legislation. Under the *IMPA* definitions:

“pesticide” means a micro-organism or material that is represented, sold used or intended to be used to prevent, destroy, repel or mitigate a pest, and includes

- a) a plant growth regulator, plant defoliator or plant desiccant,
- b) a control product as defined in the *Pest Control Products Act* (Canada), and
- c) a substance that is classified as a pesticide by regulation.²⁰

Other examples include definitions under Ontario’s *Pesticides Act*,²¹ and Quebec’s *Pesticides Management Code*.²²

“Cosmetic” may be defined in different ways, and a clear definition will assist all parties to understand to what the definition applies and how. In Ontario, “cosmetic” is defined as non-essential. Quebec’s regulation does not provide a definition, because it applies to lawn pesticides and does not use the term “cosmetic”. Our recommended definition for “cosmetic” is “non-essential, or an item used for the intention of improving or maintaining an esthetic quality”. This is the definition used in section 2 of the Model Act.

¹⁸ *Sphere of Concurrent Jurisdiction – Environment and Wildlife Regulation*, BC Reg. 144/2004.

¹⁹ *Integrated Pest Management Act*, S.BC 2003, c. 58, at s.1.

²⁰ *Integrated Pest Management Act*, S.BC 2003, c. 58, at s.1. Note (c) in original reads “a substance that is classified as a pesticide by regulation, but does not include micro-organisms, materials, substances or control products excluded from this definition by regulation” and has been modified to be more inclusive.

²¹ *Pesticides Act*, R.S.O. 1990, c. P.11, at s. 1. “Pesticide” is defined as:

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).

¹⁴ *Pesticides Management Code*, R.S.Q. 1987, c. P-9.3, at s. 1. “Pesticide” is defined as:

Any substance, matter or microorganism intended to directly or indirectly control, destroy, mitigate, attract or repel any organism that is injurious to or noxious or troublesome for humans, animal life, vegetation, crops or any other object, or intended for use as a plant growth regulator, except a vaccine or a medication other than a topical medication for external use on animals.

Although the term “cosmetic” has been used in an attempt to clarify the intent of this type of legislation, it is important that the purpose of the legislation does not get lost in suggestive language. Essentially, legislation should define the “cosmetic use of a pesticide” to be the non-essential application of *any* pesticide. Such use should be banned unless the pesticide appears on a “white list” (a list of low-risk pesticides that are acceptable for cosmetic use, with all other unlisted pesticides prohibited), or the use falls under one the following exceptions: (1) uses related to agriculture, (2) uses related to managing pests that impact forestry, and (3) uses related to the preservation and promotion of public health and safety (both the white list and the exceptions are discussed in more detail below).²³ No other permanent exceptions should apply. As a result, the “cosmetic use of pesticides” would be the non-essential use of pesticides that are not white listed for a purpose other than listed excepted uses.

2.3 Are there any business sectors or particular uses that you feel should not be subject to restrictions on the cosmetic use of pesticides? If yes, what is your rationale for recommending exclusion of these sectors or uses?

We accept an approach that would exclude agriculture, forestry and public health and safety uses from the ban. However, to ensure pesticides otherwise prohibited from cosmetic uses are actually only being used for these authorized excepted uses (agriculture, forestry, public health and safety), the BC government should consider implementing a non-onerous permitting process. A person claiming one of the exceptions noted above should be required to hold a permit and comply with the terms and conditions attached to that permit. The requirement of a permit will reduce the number of illegitimate exception claims; act as a reminder to users about the serious health, safety and environmental dangers posed by pesticide use; and, give clear direction and limitations on the use of pesticides under the exception. Additionally, in order to

²³ Some might argue that using the term “non-essential” implies that forestry and agricultural pesticide use is essential, a questionable premise.

encourage public transparency and foster a relationship of trust within the community, permit administrators should be required to disclose a copy of any permit to any person who requests it.

For those uses and industries not subject to such exceptions, the ban on the sale and use of pesticide products will motivate companies to find new ways to manage pest problems. Some industries will be affected more than others. An effective education program and a list of available alternatives as contemplated by a white list (again, this is discussed further in questions 3.1 and 3.2) should alleviate many of the difficulties in adjusting to new legislation.

However, transitional exceptions are recommended for certain industries to give them more time to adjust. We specifically recommend giving the golf course industry a three-year grace period in order to adjust to new legislation.²⁴ In considering rules for this transition period, government may wish to consider a submission to the Ontario Ministry of Environment from the Canadian Environmental Law Association, which made the following recommendations with respect to golf courses for improving cosmetic pesticides regulation in that province:

Require that continued use of pesticides by golf courses be limited to those areas where alternatives are not yet readily available. Hence, pesticide use by golf courses should be explicitly limited to putting greens while all other areas in a golf course property should be subject to the same cosmetic use restrictions as this new law and regulation applies to the province as a whole.²⁵

However, any transitional exceptions should be just that - transitional; in no case should they be longer than three years. Many Canadian jurisdictions already have cosmetic pesticide bans in place, and industries can draw on the experience of other jurisdictions where pesticides have been banned in order to reconfigure their landscaping practices to conform to the new restrictions.

²⁴ See section 7(c) of the Model Act, under Appendix A.

²⁵ Letter from Kathleen Cooper, Senior Researcher at the Canadian Environmental Law Association to Robert Bilyea, Senior Policy Advisor, Ministry of Environment (December 22, 2008) online: Canadian Environmental Law Association, http://s.cela.ca/files/635_EBR010_5080.pdf, at 4.

3. Creating classes of pesticides that may or may not be used for cosmetic purposes

Some Canadian provinces have introduced statutory provisions that create additional classes of pesticides, with accompanying rules governing their sale and use. Approaches could include creating a class of:

- Active ingredients to which restrictions do apply;
- Active ingredients to which restrictions do not apply;
- Product types to which restrictions do apply; and/or
- Product types to which restrictions do not apply

Consultation Questions:

3.1 Do you feel that creating additional classes of pesticides would be an effective way to regulate pesticides used for cosmetic purposes? Why or why not?

Creating classes of pesticide products or chemicals is useful because it allows for handling and use requirements to vary in accordance with the degree of product danger. For example, under the *BC Drug Schedules Regulation*,²⁶ pharmaceuticals are separated into various classes and listed on corresponding schedules. This allows for different point of sale requirements depending on the nature of the pharmaceutical in question. Some drugs require a prescription; others are restricted from public access, while others are available without any restrictions.²⁷

Pesticides are currently classified under the federal *Pest Control Products Regulation*, but only into four general categories: domestic, commercial, restricted, and manufacturing.²⁸ These are little more than categories of types of use, and are not sufficient to ensure health and safety. Additional classification is necessary to meet provincial government objectives. One example is Ontario's *Pesticides Act*, which combines the federal listing of manufacturing, commercial, residential, and restricted pesticides, with a hazardousness rating based on guidelines referenced

²⁶ *Drug Schedules Regulation*, BC Reg. 9/98.

²⁷ *Drug Schedules Regulation*, BC Reg. 9/98, at s.2(3).

²⁸ *Pest Control Products Regulations*, SOR/2006-124, at s.5.

in provincial regulations. The hazard ratings are: very hazardous, moderately hazardous, less or least hazardous.²⁹

While following such a hazard level classification system might be an improvement, we recommend that the optimum method of classification is creating a white list, that is, a list or class of acceptable pesticides, with all unlisted pesticides being restricted.³⁰ This will best meet the primary objective of protecting the health and safety of British Columbians and their environment by restricting the sale of all pesticides that do not meet established health and safety criteria for inclusion on the white list. The primary problem with the alternative approach of using a black list (i.e. a list of banned products) is that under that approach new products can be used until they are recognized as being so unsafe that the list is amended. The black-listing system is contrary to the precautionary principle and creates undue burdens on the government and individuals or organizations concerned with the health and environmental effects of substances used as pesticides. It would be onerous and unresponsive for individuals or organizations to have to generate administrative and scientific support to add each chemical to a black list, and the government would have to expend extra resources to modify the black list. An effective black list requires “an efficient process for adding new active ingredients and products to the ban.”³¹ For the process to be efficient, proper funding will be necessary. In the budgetary restraint needed to return BC to fiscal balance, it will be difficult to ensure proper funding for black list administration.

Our recommendation of a white list places the onus on applicants to prove that their

²⁹ These ratings derive from the description in s.4(5) of the “Pesticide Classification Guideline for Ontario”, which is published separately from the regulations.

³⁰ The list should feature ingredients. If products are listed instead, then an equivalency clause is needed to state that any equivalent products to those listed are subject to the same classification.

³¹ Comments on Proposed Legislative Amendments to the Pesticides Act to Ban the Use and Sale of Pesticides for Cosmetic Purposes, EBR Registry No. 010-3348, at 2.

product is benign before it can be used. This creates a robust ban consistent with the Precautionary Principle, and ensures that only the safest products are available for use. The reduced costs of administration and greater margin of safety weigh heavily in favour of utilizing a white list. Furthermore, a white list clearly communicates to the public what they *can* use, making the safe solutions available under the law focused and easier to understand. It will promote the widespread use of safe and effective pest control. This cost-effective and user-friendly approach should therefore garner public support and, by ensuring a high level of product safety, meet the purpose and goals of the legislation.

3.2 If you do recommend the establishment of new classes of pesticides for regulation, what criteria would you suggest for establishing categories and assigning pesticides to particular categories”?

As discussed above, “white lists” are the optimum method of classification. We recommend basing regulatory restrictions on a “white list” of inherently low-risk active ingredients to which restrictions do not apply, specifically low-risk biopesticides. The PMRA list of biopesticides is a useful reference. Cosmetic pesticides containing active ingredients *not* in this class are then banned. This approach is more robust than the alternatives, which can become quickly outdated as new chemical pesticides are introduced.

Two examples of classification systems that use white lists are the *Pesticides Management Code*,³² which uses a white list for child-centred areas, and the Ontario *Pesticides Act*,³³ which specifies prohibited substances in reference to a white list. White lists are also used in most of the existing pesticide bylaws in BC.

A white list approach was used by the ELC in the Model Act. The white list is to be set out in Schedule 1 of the Model Act. Sections 26-28 provide for the creation of an independent

³² *Pesticides Management Code*, R.S.Q. 1987, c. P-9.3.

³³ *Pesticides Act*, R.S.O. 1990, c. P.11.

multistakeholder body to assist the Minister of Environment in determining which products are eligible for the white list. This should add expertise and diverse community knowledge to the decision-making regarding products that should be listed. To promote transparency, the names and occupations of Committee members must be publicly disclosed. These model provisions provide a useful example of how a new classification or listing system could be legislated.

In addition to having a white list or “class” of low risk, naturally occurring, biopesticides acceptable for cosmetic use, it may also be useful to establish a second class of banned active ingredients and/or products that contain all active ingredients not included on the “white list” or all products containing active ingredients not on the “white list.” This will provide greater certainty.

Furthermore, if regulatory restrictions allow for the use of otherwise banned pesticides when necessary to protect public health and safety, it may be useful to set out a limited class of pesticides that can be used and sold under this exemption and establish conditions for their retail display and sale.

3.3 What rules would you recommend for the sale and use of pesticides in any new categories?

Only white listed products should be permitted for cosmetic use. Persons wishing to use unlisted products for cosmetic use must fall within one of the excepted categories (agriculture, forestry, or public health and safety) and comply with a simple permitting process. Excepted uses and permitting is discussed in greater detail under questions 2.2 and 2.3. All other cosmetic uses of unlisted products should be prohibited, and considered offences under the new legislation.

In the retail context, white listed products should be available for sale unrestricted. Unlisted cosmetic use pesticides should be prohibited, subject to permitted use under the exceptions for agriculture, forestry, and public health and safety. See further comments on point of sale access restrictions and education requirements in question 3.4.

3.4 What suggestions or recommendations do you have to address products or product types involving a pesticide that may have both cosmetic and non-cosmetic uses?

Pesticides that can be used for cosmetic and non-cosmetic purposes can be dealt with through the legislated exceptions (agriculture, forestry, and public health and safety) a permitting process discussed above, and access and education requirements.

Vendors selling pesticides with both cosmetic and non-cosmetic uses (“mixed-use” pesticides), and to those with permits (for agriculture, forestry and public health and safety uses), should be required to collect information from customers for the purposes of sales tracking, as well as to gather statistical data for government reports. This information should include, at minimum, the name and address of the purchaser and the name and quantity of product purchased, as well as the number of the permit which allows the purchaser to buy the controlled pesticide under the statutory exceptions. It is further recommended that the purchase of mixed use pesticides, and pesticides purchased with a permit, be combined with public education efforts. These include requiring customers to read and sign a clear, concise summary of the permitted uses and best practices of the pesticide they are purchasing. An employee should ensure that the customer has read and understood this information, and should also be able to answer further questions. This is to ensure that the customer is aware of the restrictions on that product’s use, and does not purchase it for another purpose but then use it in a prohibited manner. Another option is to have vendors provide educational brochures that outline the

product's accepted use and remind the consumer about the newly legislated restrictions, as well as the health and environmental dangers posed by the product.

We also recommend implementing access and display restrictions that require mixed use pesticides and cosmetic pesticides for excepted uses be kept behind the counter out and of public sight, although this is a broader issue.³⁴

Finally, we recommend implementing data collection and reporting requirements for both vendors and applicators of these controlled pesticides. Pesticide vendors should maintain records of sales and transfers. The PMRA currently collects wholesale pesticide data available in an annual report.³⁵ However, wholesale data alone is insufficient for the purpose of monitoring the effectiveness of retail restrictions on cosmetic pesticides. Retailers should be required to record individual sales of prohibited pesticides to ensure that these products are only sold to licensed applicators for the purposes exempted under the legislation, as required in Ontario.³⁶

Data collection requirements should also apply to pesticide applicators, who should be required to maintain a record of pesticide use that includes what was used, how much, where it

³⁴ Examples of existing legal regimes with point of sale restrictions on display and access include: federal firearms regulations, which mandate a lock-and-key system for the display, transportation and storage of commercial firearms (see *Storage, Display and Transportation of Firearms and Other Weapons by Businesses Regulations*, S.O.R./98-210), BC regulation of the sale of pharmaceuticals, which places various levels of restrictions on access to pharmaceuticals depending on the class of drug (see *Drug Schedules Regulation*, B.C. Reg. 9/98); and Manitoba's regulation of the sale of bear and pepper sprays, which requires that such products be stored away from public access such that customers must speak with sales staff to access them, and an information form be read and signed by the customer (see *Pesticides and Fertilizers License Regulation*, Man. Reg. 216/87R).

In the context of pesticides, such restrictions may stray beyond the scope of a cosmetic pesticide ban because they would affect the display and access of mixed use products – that is, products with non-cosmetic uses. Issues of scope aside, in terms of effective regulation, we recommend that vendors be required to store controlled pesticides in an area which non-employees cannot readily access, and where said pesticides are not visible to the public. Vendors should arrange their businesses such that customers seeking to purchase controlled pesticides are required to ask for employee assistance. Such restrictions would ensure that some public education occurs at point of sale. In this way, the consumer is reminded of the serious nature of the product and retailers can help ensure that the product is not being used for a prohibited purpose.

³⁵ "Pest Management Regulatory Agency", Health Canada, online: <http://www.hc-sc.gc.ca/ahc-asc/branch-dirgen/pmra-arla/index-eng.php>.

³⁶ *Ontario Regulation made under the Pesticides Act*, O. Reg. 63/09, at s.102(1). Note that although these requirements do not apply to retail sales of cosmetic pesticides, they still provide a useful guideline of requirements that could be applied to all vendors in BC, including retail vendors.

was used, and other details as recommended by the Environmental Advisory Council of Prince Edward Island.³⁷ The Council arrived at their recommendation after extensive consultation with the public and industry stakeholders.

The data submitted by pesticide vendors and applicators should be made available to the public on a semi-annual or annual basis to provide information on pesticides use, improve transparency of enforcement activities and encourage public participation in the enforcement process.

4. Limiting use to qualified applicators and encouraging IPM

Consultation Questions:

4.1 If pesticides are to be used, do you feel that people who apply pesticides to their own property for cosmetic purposes require any special training? If so, what training do you think is needed?

First, to reiterate, we recommend that the cosmetic use of pesticides be prohibited. That is, pesticides never need to be used for a ‘cosmetic purpose’. In the case of excepted uses, such as public health and safety, specific training requirements should be in place for commercial applicators. See question 4.2 for further discussion of this.

For non-commercial applicators, we recommend education rather than training requirements. Education should be provided by both the BC government (discussed further in question 2.1) and at the point of sale. Pesticide vendors should be trained to advise customers on safer alternatives to pesticides. As suggested above, customers purchasing a pesticide for non-cosmetic use, or use under one of the legislated exceptions, should be required to read and sign a

³⁷ “Report of the FPT Committee on Pest Management and Pesticides Workshop on User Compliance”, Health Canada, September 29, 2005, online: <http://www.hc-sc.gc.ca/cps-spc/pest/part/fpt/fpt-workshop-atelier-eng.php#user>. The P.E.I. Environmental Advisory Council considered such applicator recording requirements to be necessary for addressing suspected human or livestock pesticide poisoning incidents, fish kill accidents, public complaints, and other personal or environmental concerns.

written statement that explains the risks of using such a pesticide. The sales clerk should also be required to verbally explain to the customer the legal prohibition attached to the product and any additional information on its application and safety.

4.2 Do you feel that pesticides should only be used if an Integrated Pest Management (IPM) program has been undertaken? Do you have any comments or suggestions for the ministry to improve the effectiveness of IPM training or requirements in relation to the cosmetic use of pesticides?

Again, a comprehensive ban on the sale and use of cosmetic pesticides should be imposed. For the limited, excepted uses of otherwise prohibited pesticides, training for vendors and applicators should be improved. Suggestions are as follows.

Training for Vendors:

[IPM requirements for pesticide vendors should be strengthened.](#) Currently in BC, certain pesticide vendors/dispenser must obtain a corresponding vendor/dispenser certificate under the *Integrated Pest Management Act* and Regulation.³⁸ Vendors can apply for a licence as long as the business employs at least one employee with a current pesticide Dispenser Certificate. Dispensers must pass a provincial dispenser exam to obtain a Dispenser Certificate. The certificates are valid for 1 year or 5 years, depending on exam marks. Applicants can study for the exam by ordering the study kits from the Ministry of Environment. There is no mandatory training course for obtaining either a Vendor Certificate or a Dispenser Certificate. Note that the *BC Integrated Pest Management Regulation* excludes certain products from vendor licensing

³⁸ Under the *Integrated Pest Management Act*, S.B.C. 2003, c. 58, stores that sell pesticide are called “vendors”; a person who is trained and certified to sell pesticide is called a “dispenser”.

requirements. As such, vendors selling only excluded products do not currently require licences.³⁹

With the proposed cosmetic pesticide ban, the best practice is to require *all* dispensers to complete a multi-day training course and pass an examination. A multi-day training format is necessary to provide sufficient time to address all aspects of pesticide safety and use. A dispenser will learn about:

- 1) The risks of using pesticides and the reasons behind prohibiting certain pesticides from cosmetic use;
- 2) The white list of pesticides allowed for cosmetic use under the new legislation;
- 3) The exceptions under the cosmetic pesticide ban and their application (i.e. a customer purchasing a prohibited pesticide for an excepted use must present a valid permit);
- 4) Interpretation of information on a pesticide label for proper handling at the vendor site and for advising customers;
- 5) How to legally and safely sell, handle and store pesticides to minimize risks.

The training course for dispensers should continue to use the National Standard (a standard developed by a federal-provincial body and used widely by the provinces to guide the development of provincial certification requirements⁴⁰) as a guideline in order to maintain

³⁹ Section 44(2) of the BC *Integrated Pest Management Regulation*, B.C. Reg. 604/2004, states that “a person must hold a pesticide vendor licence who (a) sells or offers to sell a pesticide, or (b) purchases, directly or indirectly, a pesticide for the purpose of selling the pesticide.” “Pesticide” is defined broadly in the BC *Integrated Pest Management Act* as any micro-organism or material that is used to “prevent, destroy, repel or mitigate a pest,” but a list of 46 ingredients are excluded from this definition by regulation. So currently, if a vendor only sells pesticides that are among the exclusions from the definition, then that vendor does not require a licence.

⁴⁰ The Federal, Provincial, Territorial Committee on Pest Management and Pesticides (FPT Committee) is responsible for creating the Standard for Pesticide Education, Training and Certification in Canada (referred to as the National Standard) (“Pesticide Education, Training and Safety”, *Health Canada*, online: <http://www.hc-sc.gc.ca/cps-spc/pest/part/fpt/educ-cert-eng.php>). The National Standard outlines the structure and criteria for provincial/territorial certification programs and is made up of three main parts: the Framework, the Applicator Basic

harmonization with the rest of Canada. Multi-day training courses are not a new phenomenon. Ontario implemented a two-day Pesticide Vendor Certification Course after its cosmetic pesticide ban came into effect in April 2009.⁴¹ A report by the Environmental Advisory Council on regulation of pesticides in Prince Edward Island similarly recommended a multi-day training course for vendor/dispenser certification.⁴² We urge BC to implement a similar requirement.

Training for Applicators:

A 2004 survey of federal, provincial and territorial regulators identified lack of understanding of label use instructions and precautionary measures as the primary cause for non-compliance with existing pesticide legislation.⁴³ This survey shows that the existing certification process clearly does not provide the necessary education applicators require to safely use pesticides. Yet only people applying Restricted Pesticides (which are not generally used for cosmetic purposes) are currently required to be certified by the BC Ministry of Environment.⁴⁴ Similar to the dispenser certification process, no training course is required; applicants can pass an exam by self-studying materials made available by the Ministry of Environment. The Applicator Certificate is available to both farmers and commercial pesticide applicators, such as landscaping professionals. Law reform measures should be considered to expand training requirements to those that apply cosmetic pesticides.

Knowledge Requirements and the Vendor/Dispenser Basic Knowledge Requirements. It is not a training manual itself but is used by provincial pesticide regulators for developing their own courses, training manuals and examinations. Most Canadian provinces, including BC, use the National Standard as guidance in developing their own pesticide certification requirements.

⁴¹ *Ontario Regulation made under the Pesticides Act*, O. Reg. 63/09, at s.99(2)(e).

⁴² “Recommendations for the Regulation of Pesticides in Prince Edward Island”, Environmental Advisory Council, Ministry of Environment and Energy, Prince Edward Island (2004), online: http://www.gov.pe.ca/photos/original/ee_pesticides04.pdf.

⁴³ “Report of the FPT Committee on Pest Management and Pesticides Workshop on User Compliance”, Health Canada, September 29, 2005, online: <http://www.hc-sc.gc.ca/cps-spc/pest/part/fpt/fpt-workshop-atelier-eng.php#user>.

⁴⁴ *Integrated Pest Management Act*, S.B.C. 2003, c. 58. “Restricted Pesticides” are a defined class of pesticides under the federal *Pest Control Products Act*, S.C. 2002, c. 28.

There should also be a voluntary multi-day training course available to applicators. The course would emphasize the human and environmental issues involved with pesticide use. Regulators should aim to reduce the use of all pesticides through training and education and a comprehensive ban on the use and sale of cosmetic pesticides.

Labeling:

BC should implement hazard labelling for pesticides prohibited for cosmetic use. Currently, federal legislation does not require labelling to fully reveal chronic health hazards. Provinces have jurisdiction to regulate pesticide labels. For example, section 35(1) of the Ontario *Pesticide Act* and sections 22(g) and (n) of the PEI *Pesticides Control Act*⁴⁵ empower regulation of pesticide labels, but both provinces chose to simply impose the same labelling requirements as the federal *PCPA*.

Currently, the BC *Integrated Pest Management Regulation* only requires a label to display the trade name of the pesticide, the name and the concentration of the active ingredient in the pesticide, and the pesticide's registration number under the *PCPA*.⁴⁶ If a pesticide contains an active ingredient that is prohibited for cosmetic use under the new legislation, the pesticide label should clearly indicate the prohibition. Pesticide labels should clearly indicate prohibitions and state chronic health hazards.

5. Notification and signage requirements

Consultation Questions:

5.1 Do you have any comments or suggestions regarding appropriate notification and/or signage when a pesticide has been used (for cosmetic purposes)?

⁴⁵ *Pesticides Control Act*, R.S.P.E.I. 1988, c. P-4.

⁴⁶ *Integrated Pest Management Regulation*, B.C. Reg. 604/2004, at s. 65.

Neighbours should simply not be allowed to use pesticides for cosmetic purposes, unless they are using them with permits for excepted uses, namely farming, forestry, or dealing with public health and safety issues. Where pesticides are being applied for such excepted uses, there should be strict notification and signage requirements.

5.2 Would you want to be informed if a neighbour is intending to use a pesticide (for cosmetic purposes)? If yes, how and when should notification be required?

See above (question 5.1).

6. Conditions under which pesticides may be sold or purchased

Consultation Questions:

6.1 Do you have any comments or recommendations regarding existing or new requirements governing the sale of pesticides that could be used for cosmetic purposes?

Product display, access and information:

In general, the sale of cosmetic pesticides should be banned. There should be stringent restrictions on access (and display) of pesticides that may still be sold for non-cosmetic or exempted uses. There should also be requirements for vendors to provide information to prospective users. This can be facilitated through the point of sale restrictions. Specific recommendations for display and access restrictions are discussed under question 6.2. Vendor provision of product information is discussed under question 6.3.

Vendors Records:

In addition to implementing display and access restrictions, and requiring vendors to provide information, we also recommend that vendors be required to collect and report sales information. This will facilitate the collection of information on pesticide usage rates and

prohibition enforcement (and by implication the effectiveness of the prohibition in curbing pesticide use)

Pesticide vendors should maintain records of sales and transfers. The federal Pest Management Regulatory Agency currently collects wholesale pesticide data available in an annual report.⁴⁷ However, wholesale data alone is insufficient for the purpose of monitoring the effectiveness of the proposed new measures in reducing cosmetic pesticide use in BC. Retailers should be required to record individual sales of prohibited pesticides to ensure that these products are only sold to licensed applicators for the purposes exempted under the legislation. This encourages vendor compliance and allows government to evaluate the effectiveness of the ban in reducing cosmetic pesticide sales (and by extension, use) and improve the policy over time.

An example of such vendor requirements are the Ontario regulations under the *Pesticides Act*.⁴⁸ A similar regulation should be implemented in BC to control and monitor the individual sales of those pesticides affected by cosmetic pesticide restrictions. Vendors should be required to collect, at minimum, the name and address of the purchaser and the name and quantity of product purchased, as well as the number of the permit which allows the purchaser to buy the partially banned product under the statutory exceptions. The recording requirement will restrict

⁴⁷ “Pest Management Regulatory Agency”, Health Canada, online: <http://www.hc-sc.gc.ca/ahc-asc/branch-dirgen/pmra-arla/index-eng.php>.

⁴⁸ Although these requirements do not currently apply to retail sales of cosmetic pesticides in Ontario, they provide a useful guideline for vendor requirements, which BC could in turn apply generally to all vendors. The Ontario regulations require vendors to collect data including:

- 1) A description of the pesticide sold or transferred, including the pesticide’s name, the pesticide’s registration number assigned to it under the federal *PCPA* or *Fertilizers Act* (Canada), the class into which the pesticide has been classified, the pesticide’s container size and the quantity of containers sold or transferred;
- 2) The name and address of the purchaser or transferee;
- 3) The date of the sale or transfer;
- 4) The type, class, number and expiry date of the licence held by the purchaser;
- 5) If the purchaser or transferee is a farmer, the number and expiry date of the farmer’s grower’s licence.

See *Ontario Regulation made under the Pesticides Act*, O. Reg. 63/09.

the purchase of such pesticides to appropriately trained and certified individuals. The data submitted by pesticide vendors should be made available to the public on a semi-annual basis to provide information on pesticides use, improve transparency of enforcement activities and encourage public participation in the enforcement process.

6.2 Do you feel that public access to all or specified classes of pesticides should be restricted or controlled? If yes, in what ways should access be restricted?

Overview:

A system should be put in place that restricts public display and access and requires interaction with sales staff. All products that are not white listed, including pesticides that may in limited circumstances be used for non-cosmetic purposes, should be subject to point of sale restrictions. Having comprehensive restrictions will ensure that the objectives of the new legislation are met. If too many products are available without restrictions, the effectiveness of the legislation will be limited.

Recommendations:

White listed products should be available for sale unrestricted. In general, the sale of unlisted cosmetic use pesticide products should be banned, except in the case of pesticides that may also be used for non-cosmetic or exempted purposes (“controlled pesticides”). These controlled pesticides should be subject to point of sale restrictions, including restricted public access and information collection and provision requirements.

Point of sale restrictions are an effective way of regulating pesticide use. Vendors should be required to collect information from customers who purchase controlled pesticides, for the purposes of sales tracking, as well as to gather statistical data for government reports. This information should include, at minimum, the name and address of the purchaser and the name

and quantity of product purchased, as well as the number of the permit which allows the purchaser to buy the controlled pesticide under the statutory exceptions. It is further recommended that the purchase of controlled pesticides be combined with public education efforts. These include requiring customers to read and sign a clear, concise summary of the permitted uses and best practices of the pesticide they are purchasing. An employee should ensure that the customer has read and understood this information, and should also be able to answer further questions. This is to ensure that the customer is aware of the restrictions on that product's use, and does not purchase it for another purpose but then use it in a prohibited manner. Vendors should provide educational brochures that outline a product's accepted use and remind the consumer about the newly legislated restrictions, as well as the health and environmental dangers posed by the product.

Access and display restrictions requiring controlled pesticides be kept behind the counter out and of public sight are also recommended, although this is a broader issue.⁴⁹

6.3 Should vendors be required to provide information to prospective purchasers of a pesticide prior to sale? If yes, what information should be provided and how?

⁴⁹ Examples of existing legal regimes with point of sale restrictions on display and access include: federal firearms regulations, which mandate a lock-and-key system for the display, transportation and storage of commercial firearms (see *Storage, Display and Transportation of Firearms and Other Weapons by Businesses Regulations*, S.O.R./98-210), BC regulation of the sale of pharmaceuticals, which places various levels of restrictions on access to pharmaceuticals depending on the class of drug (see *Drug Schedules Regulation*, BC Reg. 9/98); and Manitoba's regulation of the sale of bear and pepper sprays, which requires that such products be stored away from public access such that customers must speak with sales staff to access them, and an information form be read and signed by the customer (see *Pesticides and Fertilizers License Regulation*, Man. Reg. 216/87R).

In the context of pesticides, such restrictions may stray beyond the scope of a cosmetic pesticide ban because they would affect the display and access of mixed use products – that is, products with non-cosmetic uses. Issues of scope aside, in terms of effective regulation, we recommend that vendors be required to store controlled pesticides in an area which non-employees cannot readily access, and where said pesticides are not visible to the public. Vendors should arrange their businesses such that customers seeking to purchase controlled pesticides are required to ask for employee assistance. Such restrictions would ensure that some public education occurs at point of sale. In this way, the consumer is reminded of the serious nature of the product and retailers can help ensure that the product is not being used for a prohibited purpose.

Information on product restrictions and hazardousness should be provided. Requiring vendors to restrict access to products (and potentially display as well) will in turn require customers to interact with sales staff. This approach ensures vendors have the opportunity to provide information verbally.

Requirements for how information is provided should be specific to ensure information is provided in the most effective way possible. For example, under Ontario legislation vendors must provide written notice of usage restrictions to purchasers of Controlled Sales pesticides.⁵⁰ In practice such notice is usually only provided through printing on the customer's receipt. This is rarely read, and therefore not very effective.

In addition to verbal interaction with sales staff (prompted by restricted access), another way of providing information is by having customers purchasing exempted or non-cosmetic pesticides read and sign an information form at the point of sale. We recommend that such customers be required to read and sign a clear, concise summary of the permitted uses and best practices of the pesticide they are purchasing. An employee should ensure that the customer has read and understood this information and is indeed permitted or addressing a non-cosmetic use, and should also be able to answer further questions. Another option is to have vendors provide educational brochures that outline the product's accepted use and remind the consumer about the newly legislated restrictions, as well as the health and environmental dangers posed by the products. Brochures could also be produced for those customers who are subject to the ban and do not fall within an excepted use. Such brochures could inform consumers of ecologically-sound alternative pest control approaches, and resources available to help them maintain their yards with those alternative strategies.

⁵⁰ *Ontario Regulation made under the Pesticides Act*, O. Reg. 63/09, at s.101.

6.4 Do you feel that sales of pesticides intended to be used for cosmetic purposes should be restricted to buyers who hold special authorization or training? If yes, what authorization (e.g., licensing) and/or training would you recommend?

Authorization and licensing:

As discussed, a comprehensive ban should be put in place that prohibits cosmetic pesticide use. However, we recommend the allowance of certain excepted uses – specifically agriculture, forestry and public health and safety. Pesticides should only be sold to persons using them for excepted or non-cosmetic uses.

To ensure pesticides otherwise prohibited from cosmetic uses are actually only being used for the authorized excepted uses (agriculture, forestry, public health and safety), the BC government should consider implementing a non-onerous permitting process. A person claiming one of the exceptions noted above should be required to hold a permit and comply with the terms and conditions attached to that permit. The requirement of a permit will reduce the number of illegitimate exception claims, act as a reminder to users about the serious health, safety and environmental dangers posed by pesticide use, and give clear direction and limitations on the use of pesticides under the exception. Additionally, in order to encourage public transparency and accountability within the community, permit administrators should be required to disclose a copy of any permit to any person who requests it.

For recommendations on applicator training, see above at question 4.2.

7. Public awareness, education, compliance and enforcement

The ministry is seeking advice and examples of awareness, education and enforcement programs addressing the cosmetic use of pesticides that are cost-effective.

Consultation Questions:

7.1 Do you have any comments or suggestions regarding public awareness and/or education programs addressing the cosmetic use of pesticides (e.g., examples, target audiences, media campaigns)?

Legislated prohibitions will not succeed without an effective public education campaign that shows citizens that there is a better way to deal with cosmetic problems in their yards. The regulation of cosmetic use of pesticides must include a robust public education program about what the law is, why the public should obey the law, how to act in accordance with the law – and how to have attractive and healthy yards without using toxins. Furthermore, application of pesticides on private property is difficult to monitor or enforce. Public education efforts aimed at deterring the public from applying restricted pesticides and encouraging use of safer alternatives is a more cost-effective method of ensuring compliance. Topics that should be addressed include the reasons for pesticide restrictions, including health and environmental impacts, and information on alternatives to restricted substances, including authorized white list ingredients and sustainable landscape management practices.

To develop an effective campaign, we recommend that public education occur in three forms: training for pesticide vendors and dispensers, vocational training for commercial applicators, and education for residential users. For discussion on training for vendors / dispensers and applicators, refer to question 4.2 above.

Education for Residential Users:

Enforcing regulations by invoking penalty provisions at diffuse points of pesticide use is costly and inefficient. This is why we need strong public education campaigns and a comprehensive ban on the retail sale of prohibited products.

An education campaign would provide information on:

- 1) The health and environmental risks of using pesticides;
- 2) The particular vulnerability of children to toxic chemicals;
- 3) The pesticides that are allowed through the white list;
- 4) Any safer alternatives; and
- 5) The beauty of a natural lawn.

The education campaign may be carried out through television advertising, fact sheets/brochures, and new media such as advertisements on Facebook. Demonstration sites that showcase beautiful yards maintained without pesticides may also be a useful tool. Neighbourhood-based workshops are also beneficial and can further teach people hands-on skills on how to maintain a beautiful yard naturally. To ensure this information reaches BC's diverse population, such educational initiatives should be provided in a variety of languages where possible.

Public education should also occur at the point of sale. Education methods at the point of sale should be designed carefully so as to ensure maximum effectiveness. One of the criticisms of regulations under the Ontario *Pesticide Act* is that when a customer purchases a Controlled Sales Pesticide, only a written notice of restrictions needs to be given at the time of purchase.⁵¹ In practice, this written notice is generally on the bottom of the sales receipt and is seldom read. The result is that customers purchasing a Controlled Sales Pesticide are often not even aware that the product is only allowed for certain uses. BC should try to be as specific and strategic as possible in its point of sale requirements so as to avoid these weaknesses.

Pesticide vendors should be trained to advise customers on safer alternatives to pesticides. As suggested under questions 3.3, 3.4 and 6.2, customers purchasing a pesticide for non-cosmetic use, or use under one of the legislated exceptions, should be required to read and

⁵¹ Ontario Regulation made under the *Pesticides Act*, O. Reg. 63/09, at s.101

sign a written statement that explains the risks of using such a pesticide. The sales clerk should also be required to verbally explain to the customer the legal prohibition attached to the product and any additional information on its application and safety. At time of sale, brochures about safe alternatives should be provided. Note that similar steps were also suggested above for purchasers of mixed-use pesticides.

Labeling:

BC should implement hazard labelling for pesticides prohibited for cosmetic use. Currently, federal legislation does not require labelling to fully reveal chronic health hazards. Provinces have jurisdiction to regulate pesticide labels. For example, section 35(1) of the Ontario *Pesticide Act* and sections 22(g) and (n) of the PEI *Pesticides Control Act*⁵² empower regulation of pesticide labels, but both provinces chose to simply impose the same labelling requirements as the federal *PCPA*.

Currently, the BC *Integrated Pest Management Regulation* only requires a label to display the trade name of the pesticide, the name and the concentration of the active ingredient in the pesticide, and the pesticide's registration number under the *PCPA*.⁵³ If a pesticide contains an active ingredient that is prohibited for cosmetic use under the new legislation, the pesticide label should clearly indicate the prohibition. Pesticide labels should also state chronic health hazards.

Landscaping:

Finally, public education can address landscaping practices that encourage or deter the growth of weeds and other plants or organisms for which pesticides are used. Municipalities can play a role in changing current landscaping practices. A lawn requires at least four inches of

⁵² *Pesticides Control Act*, R.S.P.E.I. 1988, c. P-4.

⁵³ *Integrated Pest Management Regulation*, B.C. Reg. 604/2004, at s. 65.

topsoil to remain healthy without pesticide application.⁵⁴ Soil contains a variety of beneficial organisms that naturally create conditions for a healthy lawn. The more topsoil there is, the less chance for a serious weed infestation. Under section 909 of the *Local Government Act*, a municipality may, through bylaw, establish landscaping standards to preserve, protect, restore or enhance the natural environment.⁵⁵ Municipalities should be encouraged to pass bylaws that require at least four inches of topsoil underneath new lawn installations.

7.2 Do you have any comments or suggestions for supporting compliance and cost-effective enforcement of any new restrictions on the cosmetic use of pesticides?

Overview:

A robust education program for vendors, applicators and residential property owners should greatly increase compliance. However, effective enforcement is also critical. According to a 2003 OECD report,⁵⁶ enforcement schemes that are underfunded, inconsistent or otherwise ineffective become one of the primary factors leading to non-compliance with pesticide regulations.⁵⁷ For this reason, it is important to design enforcement strategies that take a realistic view of the resources available, and focus them where they will have the most impact.

We recommend the creation of offence provisions under the new legislation, the appointment of enforcement officers with broad investigatory powers, and enforcement focused on the point of sale. We also recommend the provision of citizen enforcement mechanisms *if* citizen complaints will be properly addressed and followed up on. Finally, regular public

⁵⁴ “Let’s Curb Pesticides”, Waterloo Region Public Education Initiative, online:

<http://www.letscurbpesticides.ca/en/qa/index.asp>.

⁵⁵ *Local Government Act*, R.S.B.C. 1996, c. 323, at s.9.

⁵⁶ *Report of the OECD Pesticide Risk Reduction Steering Group Seminar on Compliance and Risk Reduction*, Organization for Economic Co-Operation and Development (OECD), online: OECD, <http://www.oecd.org/dataoecd/11/55/33659404.pdf>, at 11.

⁵⁷ *Report of the OECD Pesticide Risk Reduction Steering Group Seminar on Compliance and Risk Reduction*, Organization for Economic Co-Operation and Development (OECD), online: OECD, <http://www.oecd.org/dataoecd/11/55/33659404.pdf>, at 11.

reporting by the Minister of Environment should be required. A detailed discussion on these enforcement features follows.

Create offence provisions

Cosmetic pesticide legislation should provide for fines to be issued where persons sell or use pesticides in contravention to the act. Fines should increase with subsequent offences. We recommend issuing a fine not exceeding \$500 for persons selling or transferring pesticides in contravention of the act. That should increase to a fine not exceeding \$10,000 for subsequent offences. We recommend issuing a fine of \$1,000 for persons using pesticides in contravention to the act. That amount should increase up to \$20,000 for subsequent contraventions. We also recommend including provisions for increased fines where pesticides are used in a child-centered area such as a daycare or school yard. To further increase its effectiveness, legislation should allow the Attorney General to apply for a court injunction to stop the sale, transfer or use of pesticides in contravention of the Act. Finally, it should provide for the compliance provisions in BC's *Integrated Pest Management Act* to apply.⁵⁸

Appoint Enforcement Officers

New cosmetic pesticide legislation should provide for the designation of enforcement officers for the purposes of the act. Officer enforcement powers should include those provided under the compliance provisions of the *Integrated Pest Management Act* (currently sections 15-25).⁵⁹ Officers should be given broad investigatory powers to facilitate effective enforcement. Inspectors should be empowered to conduct unscheduled inspections, without court order or warrant, particularly with respect to vendors and lawn care companies.

⁵⁸ *Integrated Pest Management Act*, S.B.C. 2003, c. 58

⁵⁹ *Integrated Pest Management Act*, S.B.C. 2003, c. 58.

It is also vital that inspectors receive adequate training in effectively enforcing the cosmetic pesticide ban, particularly regarding the legal requirements for sample collection. In Quebec, many cases have been thrown out as a result of inconsistent sampling.⁶⁰

Focus on Point of Sale

Banning the sale of pesticides has been shown to be more effective than merely banning their use because it sends a more consistent message to consumers,⁶¹ and offers the opportunity for enforcement at point of sale. Enforcing sale regulations is often less resource-intensive than the inspections and testing required to establish that a violation has occurred at the point where a pesticide is used. It also creates an opportunity to promote good consumer habits through in-store public education, and through the replacement of harmful pesticides with friendlier alternatives on store shelves.⁶²

We recommend that an enforcement regime focus primarily on comprehensive point-of-sale enforcement. A point-of-sale enforcement regime is to be preferred over one focusing on enforcement at the point of use owing to the inherent difficulty, time and expense involved in monitoring the use of pesticides by non-professionals. Another distinct advantage of point-of-sale regulations is the opportunity to coordinate with public education initiatives.

Specifically, it is recommended that the enforcement scheme have the following features:

⁶⁰ Simona Untara, Lisa Gue, and Lova Ramanitarivo, “Pesticide Free? Oui!: An Analysis of Quebec’s Pesticide Management Code and Recommendations for Effective Provincial Policy”, David Suzuki Foundation and Equiterre (Revised April 2008), online: David Suzuki Foundation, http://www.davidsuzuki.org/Publications/Pesticide_Free_Oui.asp, at 28.

⁶¹ Simona Untara, Lisa Gue, and Lova Ramanitarivo, “Pesticide Free? Oui!: An Analysis of Quebec’s Pesticide Management Code and Recommendations for Effective Provincial Policy”, David Suzuki Foundation and Equiterre (Revised April 2008), online: David Suzuki Foundation, http://www.davidsuzuki.org/Publications/Pesticide_Free_Oui.asp, at 16.

⁶² Simona Untara, Lisa Gue, and Lova Ramanitarivo, “Pesticide Free? Oui!: An Analysis of Quebec’s Pesticide Management Code and Recommendations for Effective Provincial Policy”, David Suzuki Foundation and Equiterre (Revised April 2008), online: David Suzuki Foundation, http://www.davidsuzuki.org/Publications/Pesticide_Free_Oui.asp, at 17.

- In general, the sale of prohibited cosmetic pesticides should be banned.
- Vendors should be required to collect information from customers who purchase excepted pesticides (i.e. cosmetic pesticides, used with a permit, for agriculture, forestry and public health and safety uses) and mixed use pesticides (i.e. pesticides with both cosmetic and non-cosmetic uses), for the purposes of sales tracking, as well as to gather statistical data for government reports. This information should include, at minimum, the name and address of the purchaser and the name and quantity of product purchased, as well as the number of the permit which allows the purchaser to buy the controlled pesticide under the statutory exceptions.
- Access and display restrictions requiring these controlled pesticides be kept behind the counter out and of public sight are also recommended, although this is a broader issue.⁶³
- The purchase of pesticides for excepted uses or mixed use pesticides should coincide with public education efforts. Customers should be required to read and sign a clear, concise summary of the permitted uses and best practices of the pesticide they are purchasing. An employee should ensure that the customer has read and understood this information, and should also be able to answer further questions. This is to ensure that the customer is aware of the restrictions on that product's use, and does not purchase it for another purpose but then use it in a prohibited manner.

⁶³ In the context of pesticides, such restrictions may stray beyond the scope of a cosmetic pesticide ban because they would affect the display and access of mixed use products – that is, products that also have non-cosmetic uses. Issues of scope aside, in terms of effective regulation, we recommend that vendors be required to store controlled pesticides in an area which non-employees cannot readily access, and where said pesticides are not visible to the public. Vendors should arrange their businesses such that customers seeking to purchase controlled pesticides are required to ask for employee assistance. Such restrictions would ensure that some public education occurs at point of sale. In this way, the consumer is reminded of the serious nature of the product and retailers can help ensure that the product is not being used for a prohibited purpose.

- Vendors should provide educational brochures that outline the pesticide’s accepted and unacceptable uses and remind the consumer about the newly legislated restrictions, as well as the health and environmental dangers posed by the products.

Consider citizen enforcement

Another alternative to government monitoring of pesticide use is to allow citizens to participate in the monitoring and enforcement process. This may reduce costs and allows those closest to and most directly affected by pesticide use to play a cooperative role in ensuring compliance. An example of this sort of public participation scheme is found in the *Canadian Environmental Protection Act (“CEPA”)*.⁶⁴

Key features of *CEPA* include:

- Citizens may make voluntary reports to enforcement officers regarding offences that have occurred or are likely to occur.⁶⁵
- Citizens making reports may request that their identity remain confidential.⁶⁶
- Employees who make voluntary reports are protected by *CEPA* against dismissal, harassment, or other forms of retaliation.⁶⁷
- Citizens may also apply to the Minister of Environment for investigation of offences.⁶⁸ The citizen must make a solemn affirmation or declaration as to the nature of the offence, the identity of the offender, and the evidence supporting these allegations.⁶⁹

⁶⁴ *Canadian Environmental Protection Act*, R.S.C. 1999, c. 33 (“*CEPA*”).

⁶⁵ *CEPA*, at s.16(1).

⁶⁶ *CEPA*, at s.16(2) and (3).

⁶⁷ *CEPA*, at s.16(4).

⁶⁸ *CEPA*, at s.17(1).

⁶⁹ *CEPA*, at s.17(2).

- The Minister is required to acknowledge receipt of an application for investigation within 20 days.⁷⁰ The minister is also required to investigate “...all matters that the Minister considers necessary to determine the facts relating to the alleged offence”.⁷¹

CEPA therefore facilitates citizen enforcement by providing two avenues for concerned citizens to report offences, and by offering protections to those citizens.

Another way of encouraging citizen enforcement is by the creation of financial incentives. An example of such incentives is section 62 of the *Fishery (General) Regulations*,⁷² under the federal *Fisheries Act*.⁷³ This section provides that where a citizen commences a private prosecution (i.e. lays an information) for an offence under the *Fisheries Act*, the proceeds from any resulting fines and / or sale of forfeited goods will be split equally between the government and the citizen who commenced the prosecution. A further example is s.40 of *CEPA*, which allows citizens to sue a person who breaches the Act for damages in civil court.⁷⁴

A citizen enforcement regime similar to that under *CEPA*, and perhaps featuring financial incentives, may facilitate enforcement and take some of the pressure off of inspectors, but only if citizen complaints can be realistically expected to lead to investigation and enforcement. Otherwise such provisions may simply frustrate citizens, and create the impression that the government is not “serious” about the ban.

Require Public Accountability

BC should implement public accountability measures to increase transparency of enforcement and compliance. Suggested accountability measures include requiring the Minister

⁷⁰ *CEPA*, at s.18.

⁷¹ *CEPA*, at s.18.

⁷² *Regulations Respecting Fishing and Fish Habitat in General and the Payment of Penalty and Forfeiture Proceeds Under the Fisheries Act*, SOR/93-53.

⁷³ *Fisheries Act*, R.S.C. 1985, c. F-14.

⁷⁴ *CEPA*, at s.40.

of Environment to collect and maintain enforcement statistics and make semi-annual or annual recommendations to the government on how to improve the effectiveness of the Act. The legislation should also require the Minister to issue a public report semi-annually or annually providing statistics and discussion on enforcement and the effectiveness of the legislation, as well as the recommendations for improvement contained in the report to government. To facilitate the collection of information on pesticide usage rates and prohibition enforcement (and by implication the effectiveness of the prohibition in curbing pesticide use), it is further recommended that both pesticide vendors and applicators be required to keep records of sales and use of controlled pesticides. Vendor and applicator records are discussed in greater detail under question 3.4.

8. Additional comments

Consultation Questions:

8.1 Do you have any additional comments or suggestions for the ministry regarding statutory protections to safeguard the environment from the cosmetic use of chemical pesticides?

ELC suggests that citizens elaborate in further comments and suggestions.

Thank you for your time and comments!

Please remember to return this response form to the ministry by February 15, 2010.

If you wish, you may also provide contact information. This information will be compiled separate from responses and used to inform respondents of posting of the summary of comments and subsequent ministry actions to develop and implement the regulatory changes.

(Optional) Contact Information

If you wish to have your name placed on the ministry listserv to receive further information concerning regulatory changes related to the cosmetic use of pesticides, please provide your contact information – **including an e-mail address** – below. Note that all submissions will be treated with confidentiality by ministry staff and contractors however information that identifies you as the source of those comments may be publicly available if a Freedom of Information request is made under the *Freedom of Information and Protection of Privacy Act*.

Contact Name:

**Business or Organization Name
(if appropriate):**

E-Mail:

Mailing Address:

Telephone:

Fax:

Background and Area of Interest

Please check "✓" in the appropriate boxes if your primary interest in the ministry's intentions relates to your:

Interest as a member of the public:

Work in the private sector:
Please describe (e.g., IPM services, turf manager, retail sales):

Work for a government regulatory agency:
Please describe (e.g., federal, provincial, municipal):

Work for a public sector organization:
Please describe (e.g., health authority, education institution, Crown corporation):

First Nation:
Please describe:

Involvement or work for an environmental or community interest group:
Please describe:

Other interest:
Please describe:

Thank you once more for your time and interest in these regulatory changes.

If you have any further questions, please contact cindybertram@shaw.ca.

You may print this form and either:

mail to:

or

fax to:

Cindy Bertram
PO Box 28159 Westshore RPO
Victoria, BC
V9B 6K8

(250) 598-9948

Appendix A – Model Act

THE COSMETIC PESTICIDES ACT

A LAW TO REGULATE, RESTRICT, AND PROHIBIT THE SALE AND USE OF POTENTIALLY HARMFUL PESTICIDES USED FOR COSMETIC PURPOSES WITHIN THE PROVINCE OF BRITISH COLUMBIA

WHEREAS cosmetic pesticides are known to expose humans and animals to harmful carcinogens; and

WHEREAS cosmetic pesticides are known to contain neurotoxins and endocrine disrupting chemicals; and

WHEREAS cosmetic pesticides are known to have detrimental health effects on non-target animals, plants, and their habitats;

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Short Title

1. This Act may be cited as “The Cosmetic Pesticides Act”.

Interpretation

2. In this Act and Schedule I,

“**agriculture**” means the production of crops for commercial trade.

“**child-centered area**” means a child care facility, park, playground, schoolyard, or sports field.

“**cosmetic**” means non-essential, or an item used for the intention of improving or maintaining an esthetic quality.

“**enforcement officer**” means an enforcement officer designated in Section 16.

“**minister**” means the Minister of Environment or someone designated to act on the Minister of Environment’s behalf.

“**person**” includes a corporation.

“**pesticide**” means a micro-organism or material that is represented, sold, used or intended to be used to prevent, destroy, repel or mitigate a pest, and includes

- (a) a plant growth regulator, plant defoliator or plant desiccant,
- (b) a control product as defined in the *Pest Control Products Act* (Canada), and
- (c) a substance that is classified as a pesticide by regulation.

“sell” includes barter or distribute, offer, expose, advertise or possess for the purpose of selling.

“use” means the placement or application of a pesticide, or the mixing, dilution, or loading of a pesticide for the purpose of placing or applying it.

Bylaws are Operative

3. Nothing in this Act affects a municipality’s or regional district’s power to make bylaws to regulate, restrict, or prohibit the sale or use of pesticides used for a cosmetic purpose.
4. Where there is a conflict between a provision of this Act and a provision of a municipal or regional district bylaw that regulates, restricts, or prohibits the sale or use of pesticides used for a cosmetic purpose, the more restrictive provision prevails.

Prohibition on Sale, Transfer, and Use

5. No person shall sell or transfer a pesticide used for a cosmetic purpose other than a low-risk pesticide prescribed in Schedule I of this Act.
6. No person shall use a pesticide for a cosmetic purpose other than a low-risk pesticide prescribed in Schedule I of this Act.

Excepted Uses

7. Subject to any regulation enacted for the purposes of this section, sections 5 and 6 do not apply to the following uses:
 - (a) Uses related to agriculture
 - (b) Uses related to managing pests that impact forestry
 - (c) Uses related to maintaining golf courses for a period of three years beginning on the day that this Act comes into effect, after which Sections 5 and 6 will apply
 - (d) Uses related to the preservation and promotion of public health and safety
8. A person claiming an exception under Section 7 shall hold a permit required for that purpose and shall comply with the terms and conditions in or attached to that permit.

Permits for Excepted Uses

9. The minister shall designate administrators for the purposes of this Act.
10. A person applying for a permit shall submit to an administrator a permit application that

- (a) is in the form specified by the administrator,
- (b) contains the information required by the administrator, and
- (c) is accompanied by a prescribed fee.

11. An administrator may issue a permit to a person if the administrator is satisfied that the permit application is for a use enumerated in Section 7 and complies with Section 10.

12. An administrator may refuse to grant a permit.

13. If the administrator issues a permit to a person, the administrator shall specify the terms and conditions in or attached to the permit, including

- (a) the name of the permit holder,
- (b) the date on which the permit expires, and
- (c) any other conditions the administrator considers appropriate in the circumstances.

14. An administrator may revoke a permit at any time.

15. An administrator shall disclose a copy of any permit to any person who requests it.

Enforcement and Powers of an Enforcement Officer

16. The minister shall designate enforcement officers for the purposes of this Act.

17. Sections 15 to 24 of the *Integrated Pest Management Act* shall apply, *mutatis mutandis*.

Offences

18. A person who contravenes Section 5 of this Act is liable for a fine not exceeding \$1000 for a first offence. For each subsequent contravention of Section 5, that person is liable for a fine not exceeding \$20 000.

19. A person who contravenes Section 6 of this Act is liable for a fine not exceeding \$500 for the first offense. For each subsequent contravention of Section 6, that person is liable for a fine not exceeding \$10 000.

20. A person who contravenes Section 6 of this Act while in a location the enforcement officer determines to be a child-centered area is liable for a fine listed in Section 19 and an upward variation of not more than 30% of that fine.

21. In addition to a fine, the Attorney General may apply to the Supreme Court for an injunction against any person who, having been convicted of an offence against this Act, continues to contravene this Act or any related regulation, ordering the to cease selling, transferring, or using pesticides for a cosmetic purpose in British Columbia until the person complies with this Act or any related regulation.

Appeals to the Environmental Appeal Board

22. Section 14 of the *Integrated Pest Management Act* shall apply, *mutatis mutandis*.

Education

23. The provincial government shall develop and execute ongoing public education and awareness-raising programs providing information to the public on

- (a) why restrictions exist on the sale and use of pesticides for cosmetic purposes, including health and environmental impacts of use,
- (b) sustainable landscape management practices,
- (c) authorized active ingredients as prescribed in Schedule I,

and shall provide any other ongoing education deemed helpful in fulfilling the purposes of this Act.

Monitoring Act Effectiveness

24. The minister shall collect and maintain statistics related to enforcement of this Act, including names of persons found to be in violation of this Act, and semi-annually make recommendations to the government for improving the effectiveness of this Act.

Public Accountability

25. The minister shall semi-annually deliver a report to the public discussing the effectiveness of this Act and recommendations for improving the effectiveness of this Act. The report shall include the statistics, names of persons found to be in violation of this Act, and recommendations contained in the report to government mandated by Section 24.

Creation and Revision of Schedule I

26. The minister shall create Schedule I, which shall list authorized low-risk pesticides.

27. The minister may add low-risk pesticides to Schedule I at any time.

28. The minister shall establish a funded multi-stakeholder committee that shall semi-annually

- a) add to Schedule I low-risk pesticides as they emerge on the market or are discovered,
- b) remove from Schedule I any item that could contravene the purposes of this Act, and
- c) publicly disclose the names and occupations of the committee's members.

Severability

29. If any provision or provisions of this Act shall be held to be invalid, illegal, unenforceable, or in conflict with a law of provincial or federal jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

Commencement

30. This Act comes into force by regulation of the Lieutenant Governor in Council.

SCHEDULE I AUTHORIZED LOW-RISK PESTICIDES

Schedule I shall be created from the low-risk pesticides designated as biopesticides by the Pest Management Regulatory Agency. As mentioned in sections 26 to 28 of the Cosmetic Pesticides Act, the minister or multi-stakeholder committee may add low-risk pesticides to this list. Only the multi-stakeholder committee may remove items from Schedule I.
